



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Is the tenant contractually obligated to pay for natural gas?

Background and Evidence

The parties agreed that the tenancy began in October 2006 when the rental unit was under different ownership. The landlord testified that he received a copy of the tenancy agreement when he purchased the property in 2008 and that the agreement was two pages long. The first page of the agreement is signed by the tenant. The landlord submitted a copy of a second page which was not signed or initialled by the tenant. The tenant testified that he was unaware of a second page and was of the understanding that the first page of the agreement constituted the entire agreement. The first page of the agreement contains the following statement: "The Tenant in addition covenants and agrees to the terms and conditions on the reverse hereof." The second page of the agreement contains the following provision: "1. [The tenant covenants] To pay for all power telephone, heat and other utilities."

The tenant testified that when he signed the tenancy agreement, there was a large sign on the lawn of the residential property advertising rentals and stating "heat and hot

water included.” The tenant testified that the sign was removed by the current landlord. The landlord denied any knowledge of that sign.

The landlord seeks an order for unpaid utilities from July 2008 – present. The parties agreed that the tenant has always paid his own BC Hydro bill, which is in his own name but has never paid the Terasen Gas bill. There are 9 units in the residential property and the gas is not separately metered. The landlord seeks 1/9 of the total Terasen Gas bill for each month.

Analysis

In order to establish his claim, the landlord must prove on the balance of probabilities that the tenant has a contractual obligation to pay for Terasen Gas. I find that the landlord has not met his burden. I have arrived at this conclusion because there is no indication that the tenant was aware of the second page of the tenancy agreement. Although it is referenced in the first page, the tenant does not recall seeing it, nor does his signature or initials appear on it. Further, there is no evidence that the tenant paid for natural gas between the time the tenancy began and the time the landlord purchased the building, which leads me to believe that the previous landlord had either verbally assured the tenant that he did not need to pay for it or had waived his right to strictly enforce the contract by failing to pursue the tenant for the unpaid bills. I find on the balance of probabilities that the tenant is not obligated to pay for natural gas.

Conclusion

The landlord’s claim is dismissed.

Dated: December 24, 2009.
