



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an order permitting the landlord to retain the security deposit and to recover the filing fee from the tenants for the cost of this application.

The named landlord and her husband both attended the conference call hearing, and both tenants also attended. The parties each gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit?

Background and Evidence

This month-to-month tenancy began on September 1, 2010 and ended on December 29, 2010. Rent in the amount of \$950.00 per month was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$475.00.

The landlord testified that she and her husband bought the house on August 28, 2010. The tenants gave the landlords 12 post-dated cheques for the rent. The landlord gave the tenants a Tenancy Agreement to complete and return to the landlords. The tenants did not complete or return it.

The landlord further testified that the natural gas for the house is on one meter for 2 suites, but the hydro has separate meters for each suite. She further testified that the

tenants were supposed to have both utilities in their name, but they did not register with the utility companies, so the landlords did. The tenants were to pay half of the gas and all of their own hydro.

The husband of the landlord testified that his son had placed an advertisement on Craig's List, the tenants saw the unit and made an appointment to pay the rent and the security deposit. At that first meeting, the landlord told the tenants they would have to register for gas and hydro and there was only one meter for the gas for the tenants to share equally. Also, the washer and dryer were included in the downstairs meter; they could use the appliances but had to pay for that usage. The landlord did not know at that time how much it would be. He stated they called BC Hydro and learned that the usage would be \$23.00 or \$25.00 per month, and would cost these tenants \$12.00 or \$13.00 per month. These tenants rented the upstairs unit, and 4 other tenants share the downstairs unit.

The landlords have returned \$126.12 of the security deposit to each of the two tenants, leaving a balance of \$222.77 held in trust by the landlord.

The tenants testified that there was no tenancy agreement, and utilities were to be included in the rent. They further testified that they did not know anything about payment of utilities, and during the first meeting with the landlord, they negotiated a monthly rental of \$950.00; the landlords had originally wanted \$975.00. They further testified that BC Hydro sent a letter in September, 2010 stating that if they didn't register, the power would be cut off, so they registered and paid the power bills. There was definitely no agreement respecting paying extra hydro for the washer and dryer.

Analysis

The *Residential Tenancy Act* puts the onus on the landlord to prepare in writing a tenancy agreement. In the absence of such an agreement, it is not possible for the landlord to prove that utilities were not included in the rent. A verbal agreement may suffice in some circumstances, however the tenants have disputed that there was any requirement for them to pay extra for the washer and dryer or the gas bill and that no such agreement existed. Therefore, I must find that the landlord has not established the claim before me.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply. I order that the landlord return the remaining security deposit in the amount of \$222.77 to the tenants forthwith.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 07, 2011.

Residential Tenancy Branch