



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of her security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in May 2010 and that a written tenancy agreement was generated. Rather than photocopying the tenancy agreement, the parties simply filled out another agreement so each would have a copy. The tenant's copy of the tenancy agreement indicates that electricity is included in the rent. The landlord's copy originally indicated that electricity was included in the rent, but this was crossed off and initialled by the landlord with the notation "not included, verbal discussion."

The parties agreed that approximately one month into the tenancy they had a discussion in which they agreed that the tenant would pay for natural gas. The landlord insisted that during that discussion, the tenant also agreed to pay for electricity. The tenant denied agreeing to pay for electricity.

The tenant testified that she has never paid for electricity or seen an invoice for electrical usage. The landlord testified that the previous tenants had the BC Hydro account in their name during their tenancy and she did not pay for electricity during or after their tenancy.

The tenant testified that on October 6, the electricity to the rental unit was shut off by BC Hydro. The tenant had already given notice to vacate the unit at the end of October for

other reasons and when she complained to the landlord, she was told that she should place the BC Hydro account in her name. The tenant had never had an account with BC Hydro and was unwilling to set up an account for less than one month. The tenant advised the landlord that she would remove all of her belongings by October 7 and verbally requested the return of her rent and security deposit. The landlord refused.

The tenant claims the return of \$850.00 in rent paid for October as well as the return of the \$425.00 security deposit paid at the outset of the tenancy.

Analysis

First addressing the security deposit, pursuant to section 38 of the Act, the landlord is not obligated to deal with the deposit until the tenant has provided her forwarding address in writing. The tenant acknowledged that she did not give the landlord her forwarding address in writing. The claim for the return of the deposit is dismissed with leave to reapply. I note that the landlord has made a claim against the security deposit which will be heard at a later date.

The parties had a tenancy agreement in writing and it is clear that at the outset of the tenancy, electricity was included in the rent. The landlord believed she had agreed with the tenant to amend that provision and she altered her copy of the agreement to reflect her understanding. However, the tenant does not acknowledge having verbally agreed to amend the decision and I find that absent such an acknowledgment, the landlord has failed to prove that the parties agreed to amend the agreement in this respect. I find that electricity was included with the rent.

The question remains whether the tenant is entitled to recover the rent she paid for the month of October. I find that the landlord's position that the tenant should have put the BC Hydro account into her own name was unreasonable. The tenant had not agreed in writing to amend the tenancy agreement, there was no history of the tenant having paid for electricity and the tenant was vacating the unit in less than a month so demanding that she assume responsibility for the Hydro account at that point was nonsensical.

I find that the tenant was justified in vacating the rental unit as she could not live there without electricity. I find that the tenant is entitled to recover rent for October 6 – 31, those being the days that electricity was unavailable to her. At a daily rate of \$27.42, I find that the tenant is entitled to recover \$712.92 for the last 26 days in October and I award the tenant that sum.

I also find that the tenant is entitled to recover the \$50.00 filing fee paid to bring her application and I award her \$50.00.

Conclusion

The tenant is awarded a total of \$762.92. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 08, 2011.

Residential Tenancy Branch