



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OLC PSF

Introduction

This hearing dealt with an application by the tenants for an order that the landlord comply with the Act, regulation or tenancy agreement, and an order that the landlord provide services or facilities required by law. Two tenants, DW and MF, and two agents for the landlord, DK and PC, participated in the teleconference hearing.

Issue(s) to be Decided

Should the landlord be ordered to provide electricity, gas and heat, as per the tenancy agreement?

Background and Evidence

The undisputed facts are as follows. The landlord, a property management company, advertised the rental unit for rent for \$1600 per month. The tenants responded to the ad, and on October 1, 2010, two of the tenants, DW and KD, viewed the property with two agents of the landlord, DK and PC. The landlord checked the tenants' references and then offered the unit for a monthly rent of \$1700.

On October 4, 2010, the landlord's agent PC faxed the tenants a copy of the tenancy agreement. The written agreement indicated a monthly rent of \$1700. The boxes for electricity, gas and heat were not ticked off, which meant that those items were not included in the rent. The tenants ticked off those boxes, signed the agreement, and faxed it back to the landlord. The landlord's agent DK then signed the agreement and faxed a copy back to the tenants.

The testimony of the tenants was as follows. When DW and KD viewed the property on October 1, 2010, they had conversation with PC, who told them that utilities were included with the rent. The tenants also had subsequent telephone conversations with PC, who informed them that utilities were included. When the tenants received the faxed tenancy agreement that indicated utilities were not included, they called PC and told him that they were not willing to sign the tenancy agreement unless the utilities were included. PC told them they should tick off the boxes for gas, electricity and heat, and sign the agreement. The tenants did so, and faxed the agreement to the landlord. The tenants testified that they would not have entered into the tenancy agreement

unless the utilities were included, particularly after agreeing to the increased amount of \$1700 for rent.

The landlord's response was as follows. DK conducted the showing of the property to the tenants on October 1, 2010, and while PC was also present, he was a new employee and was there primarily to observe. The landlord did not intend to rent the property with utilities included, and had in fact advised the owners of the property not to include utilities in rent. DK acknowledged that he signed the tenancy agreement without checking whether there were any alterations.

PC's testimony was that he could not recall whether he had discussions with the tenants about utilities when they viewed the property. PC acknowledged that he did have telephone conversations with the tenants, but he could not exactly recall whether they discussed having the tenants check off the boxes to include utilities.

Analysis

In considering the evidence, I find that the written tenancy agreement, signed by the tenants and the landlord's agent, must prevail. I accept the testimony of the tenants that they would not have signed the tenancy agreement unless rent was included. I find it is more likely than not that PC, acting in his capacity as an agent for the landlord, told the tenants that they could tick off the boxes indicating that electricity, gas and heat were included in the rent. DK, acting in his capacity as agent for the landlord, signed the tenancy agreement with those boxes ticked to include utilities in the rent. I therefore find that the landlord is responsible for providing electricity, gas and heat for the rental unit.

Conclusion

I hereby order that the landlord comply with the tenancy agreement and provide electricity, gas and heat to the rental unit. The cost of these utilities is to be included in the \$1700 rent as per the tenancy agreement, and the landlord is responsible for the cost of any reconnection or other fees in regard to these utilities.

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 21, 2011.

Residential Tenancy Branch