



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC

Introduction

This hearing was scheduled in response to an application by the tenants for an order instructing the landlord to comply with the Act, Regulation or tenancy agreement. Both parties participated and / or were represented in the hearing and gave affirmed testimony. The only applicant absent from the hearing was tenant “MM,” and tenant “DH” confirmed that tenant “MM” had delegated authority to her to represent tenant “MM’s” views at the hearing.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement(s).

Background and Evidence

The complex within which the eight (8) units which are the subject of this dispute are located, is comprised of forty two (42) units in total. There appears to be no dispute that at one time or another, a written tenancy agreement was entered into between the landlord and each of the subject tenants. Tenancies vary in their duration and rents vary in their amounts. However, there appears to be no dispute that at the start of each of the subject tenancies, whether or not it is clearly reflected in the written tenancy agreement, the mutual understanding was that hydro (electricity) is included in the rent.

With increases in the cost of hydro over time, in combination with what the landlord testified have been no rent increases since 2008, the landlord concluded that there is no sound business case for continuing to include hydro in the rent. Accordingly, the landlord undertook to transfer responsibility for the cost of hydro to each individual tenant. In exchange for taking responsibility for the cost of his / her own hydro, the landlord variously provided for an immediate reduction in monthly rent, and / or an undertaking not to introduce a rent increase for one year. In some cases, as rent was already seen to be at a low level, no immediate reduction in rent was offered. The landlord introduced the change / transfer in responsibility for hydro by way of the “Notice

Terminating or Restricting a Service or Facility” (RTB – 24), to be effective September 30, 2011.

The tenants take the position that the landlord has breached the tenancy agreements by no longer including hydro in the rent. Further, they dispute that rent concessions introduced by the landlord provide the tenants with a net cost benefit, and that in some cases the change has created a financial hardship. The tenants take the position that lawful annual increases in rent would have been more agreeable than a shift in the responsibility for hydro. The remedy sought by the tenants is to “have this essential service reinstated at the owners’ expense.”

The landlord testified that there are broad differences in the amount of hydro being used by tenants, and that going forward, new tenancy agreements make no provision for hydro to be included in the rent.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 1 of the Act provides, in part, that

“**service or facility**” includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

(b) utilities and related services;

(l) heating facilities or services;

Section 13 of the Act addresses **Requirement for tenancy agreements**, and provides in part:

13(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(vi) which services and facilities are included in the rent;

Section 14 of the Act speaks to **Changes to tenancy agreement**:

14(1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) a rent increase in accordance with Part 3 of this Act;

(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;

(c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

Section 27 of the Act speaks to **Terminating or restricting services or facilities**:

27(1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Additionally, Residential Tenancy Policy Guideline # 22 addresses “Termination or Restriction of a Service or Facility.”

Further, Residential Tenancy Policy Guideline # 8 addresses “Unconscionable and Material Terms.”

Based on the documentary evidence and testimony in the case of the eight (8) subject tenancies, and in consideration of the statutory and guideline provisions set out above, I find that the tenants have met the burden of proving that provision of hydro is “essential to the tenant’s use of the rental unit as living accommodation,” and that provision of hydro “is a material term of the tenancy agreement.”

Conclusion

With regard to the tenancies which are the subject of this dispute, I hereby order the landlord(s) to transfer back the responsibility for the hydro accounts to the landlord(s) from the tenant(s) effective August 1, 2012, at no cost to the tenant(s).

Effective August 1, 2012, I also order that the landlord(s) may terminate reductions in monthly rent which were introduced for certain of the subject tenant(s) in association with the recent transfer of responsibility for hydro accounts.

I further order that the landlord(s) may withdraw the offer of “no rent increase” which was made in association with the recent transfer of responsibility for hydro accounts, such that future rent increases may be introduced in compliance with the relevant statutory provisions.

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: June 29, 2012.

Residential Tenancy Branch