



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kitsilano Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order that the landlord comply with the *Act* by including the standard terms in the tenancy agreement, and for a determination that hydro is included in the rent.

The tenant and an agent for the landlord company attended the call, and the landlord's agent called one witness. The tenant was also accompanied by an observer, who did not testify or take part in the proceedings, and the landlord's agent did not object. The parties and the witness each gave affirmed testimony, and the parties provided evidentiary material in advance of the hearing to the Residential tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised, however after the hearing concluded, the landlord submitted a letter to the Residential Tenancy Branch. That evidence has not been provided in accordance with the Residential Tenancy Branch Rules of Procedure, and I decline to consider it.

Issue(s) to be Decided

Has the tenant established that hydro is included in the rent under the tenancy agreement made between the parties?

Background and Evidence

The tenant testified that this fixed-term tenancy began on May 1, 2013, expired after 6 months and then reverted to a month-to-month tenancy, and the tenant still resides in

the rental unit. Rent in the amount of \$800.00 per month is payable in advance 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 tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The tenant further testified that during mid to late April, 2013 the tenant viewed the apartment and talked to the property manager. The tenant made the agreement to take occupancy, had enquired about utilities, and was under the understanding, and operated under the premise that utilities were included in the rent. When the tenant moved in the power and water were on, and the tenant was not told to arrange for hydro to be transferred into his name, and the tenancy agreement is silent. The form used is an application to rent as well as a tenancy agreement and states: "B. It is agreed that upon acceptance, a monthly rent of \$800.00 plus parking \$0, and total \$800.00 will be paid promptly in advance by the first day of every month." There is no mention of utilities.

The tenant has learned that central heat and water are provided by the landlord, but the tenant is expected to pay for other hydro costs. The tenant didn't get a bill and the hydro company cut the power off on July 15, 2014. The tenant called the manager and the parties did some trouble-shooting, then the manager asked if the tenant had paid the power bill, to which the tenant replied that it was included in the rent. The manager disagreed. The tenant called the principle operator of the landlord company around July 20, 2014 but was not able to come to that agreement; the tenant was simply dismissed. The tenant had to pay a year of unpaid hydro bills. On August 8, 2014 the tenant contacted the hydro company and managed to convince them that the tenant could commit to paying the bill and the hydro was reconnected. The tenant had no power from July 8, 2014 to the evening of August 8, 2014. The hydro account is now in the name of the tenant, and the tenant gave a copy of the bill to the landlord's agent.

The tenant also testified that he did some research about standard terms of a tenancy agreement which includes whether or not utilities are included. Cable and internet are not included in the rent, and the tenant testified he asked the manager about water and power. The tenant submits that the tenancy agreement is lacking and needs to be corrected.

The landlord's agent testified that the property manager and the tenant had a conversation when the tenant viewed the rental unit, and he moved in. The property manager is a seasoned property manager and always explains such things as utilities.

The landlord's agent speculates that the previous tenant failed to cancel the hydro account, and confirms that the landlord did not get any bills. He submits that it's common sense, hydro is never included in rent.

The landlord's witness testified that he is the property manager, and when the tenant viewed the rental unit, the witness told the tenant that hydro is on top of the rent, and the tenant's responsibility. Other utilities, such as telephone and internet are also the tenant's responsibility.

The witness also testified that the tenant had asked the witness questions about the neighbourhood and about other tenants in the building. The rental unit is one of 6 units in the complex. The witness told the tenant that an application to rent would be submitted to management and if accepted, the witness would collect a security deposit. He also reminded the tenant when he moved in to open an account with the hydro company and ensure that he's not charged for any hydro amounts outstanding from previous tenants. The witness does not have access to either of the hydro accounts and doesn't know if the previous account had been closed.

The tenant also questioned the witness about his memory, experience and knowledge of the *Residential Tenancy Act*.

Analysis

The tenant submits that the *Residential Tenancy Act* requires a tenancy agreement to include standard terms. I agree, however the standard terms exist whether or not the agreement is put into writing, by virtue of the collection of rent by a landlord from a tenant. Further, the regulations state:

Disclosure and form of agreement

- 12** (1) A landlord must ensure that a tenancy agreement is
- (a) in writing,
 - (b) signed and dated by both the landlord and the tenant,
 - (c) in type no smaller than 8 point, and
 - (d) written so as to be easily read and understood by a reasonable person.
- (2) A landlord must ensure that the terms of a tenancy agreement required under section 13 [*requirements for a tenancy agreement*] of the Act and section 13 [*standard terms*] of this regulation are set out in the tenancy agreement in a manner

that makes them clearly distinguishable from terms that are not required under those sections.

Standard terms that must be included in a tenancy agreement

- 13** (1) A landlord must ensure that a tenancy agreement contains the standard terms.
- (1.1) The terms set out in the schedule are prescribed as the standard terms.
- (2) A landlord of a rental unit referred to in section 2 [*exemptions from the Act*] is not required to include the following in a tenancy agreement:
- (a) section 2 of the Schedule [*security and pet damage deposit*] if the landlord does not require payment of a security deposit or a pet damage deposit;
 - (b) sections 6 and 7 of the Schedule [*rent increase, assign or sublet*].

No where in the *Act* or the regulations does it require a landlord to mention whether or not utilities are included. Therefore, the onus is on the tenant to establish that hydro is included. The tenancy agreement does not specify that it is, and the landlord's witness testified that he always tells tenants to ensure that hydro is properly transferred. The tenant questioned him about his memory, but I am not satisfied in the evidence before me that the tenant has established that the landlord agreed to pay the utility.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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: December 10, 2014

Residential Tenancy Branch

