



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the Application) made by the Tenants on June 8, 2015 for 'Other' issues and to recover the filing fee from the Landlords.

Both Landlords named on the Application appeared for the hearing. One of the named Landlords was the property manager (as referenced on the front page of this decision) and the other Landlord was the owner of the rental unit (also referenced on the front page of this decision); the owner had with him a Translator for the hearing. One of the Tenants also appeared for the hearing. Only the Tenant and the property manager provided affirmed testimony during the hearing.

The property manager confirmed receipt of the Tenants' Application and their documentary evidence by registered mail pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The property manager confirmed that they had not provided any evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have considered the evidence provided by the parties in this case but I have only documented the evidence which I relied upon to make findings in this Decision.

### Issue(s) to be Decided

- Are the Tenants obligated to pay utilities in this tenancy?
- If so, what proportion of utilities do they have to pay?

### Background and Evidence

The parties agreed that the Tenants' tenancy for the basement suite with the previous landlord started on October 1, 2011. A written tenancy agreement was signed by the Tenants which requires them to pay \$1,450.00 rent on the first day of each month. The tenancy agreement shows that heat and electricity were **not** included in the rent. This was further re-enforced by an addendum to the tenancy agreement at point 3 which states "*The tenant agrees to shared costs for heat and electricity with the upstairs unit*". The addendum was signed by one of the Tenants.

The Tenant testified that when the tenancy started the previous landlord did not provide a utility bill or make a request for payment of the heat or electricity. The previous landlord continued to pay the utilities for a period of over three years until the property was sold and came under ownership of the new Landlords on April 1, 2015. The new Landlords are now demanding that the Tenants pay the utilities under the agreement.

The Tenants submit that they should not have to pay the utilities that were agreed with the previous landlord because the previous landlord set a precedent that now requires nonpayment of utilities. The Tenants submit that by not paying any utilities for such a significant period of time this had changed the terms of the agreement and this cannot be changed again by the new Landlord. The Tenants make this Application under the "Other" issue and require a determination to be made on this matter.

The property manager explained that the new owner disputed the Tenants' submissions and wants to enforce the original tenancy agreement which he received when he purchased the rental unit. The property manager testified that the upstairs rental unit contains the same amount of occupants as the Tenants' rental suite and is of similar square footage. Therefore, they request that the Tenants pay 50% of the heat and electricity as this amount apportioned between both rental properties was not established by the previous landlord in the addendum.

### Analysis

Section 14 of the Act stipulates that a tenancy agreement may not be amended or changed to remove a standard term. In this case, I find that the Tenants entered into a written tenancy agreement in October 2011 with the understanding and requirement that they were responsible for utilities. However, in this case I find that the previous Landlord did not change this requirement of the tenancy agreement by not demanding or requesting payment of rent. The term of the tenancy agreement remained in effect and was not changed or amended on the agreement in any way with the consent of

both parties. In this case, the Tenants benefited from the failure of the previous landlord to collect and demand the utilities by not having to pay this for a long period of time.

The new owner took over this tenancy agreement with the understanding that the Tenants were to pay the said utilities. Therefore, the new owner is not estopped from enforcing the written tenancy agreement signed by both parties as they move forward with this tenancy. Similarly, a tenant's requirement to pay rent would not stop if a landlord stopped taking payment of rent. Based on the foregoing, I find the Tenants are required to pay utilities as per the tenancy agreement. Accordingly, I dismiss the Tenants' Application and deny them the recovery of their filing fee from the Landlords.

I allowed the property manager, the owner and the Tenant to engage into a voluntary discussion as to what proportion of the utilities the Tenants would be responsible for. The Tenant and property manager had a small discussion and the parties **agreed** that the Tenants would pay for **50% of the heat and electricity** until the tenancy is ended in accordance with the Act. The Tenant asked the Landlord for some time to make payment of the accumulated amount of utility arrears and the property manager stated that he would work with the Tenants on this matter.

The Landlords are cautioned that they must present the Tenants with utility bills for the period of April 1, 2015 onwards and follow the requirements of Section 46(6) of the Act if payment is not made. The Tenants are cautioned that failure to pay utilities under a tenancy agreement will give cause to the Landlords to end the tenancy.

### Conclusion

For the above reasons, the Tenants are to pay 50% of utilities for the period of April 1, 2015 onwards. The Tenants' Application is dismissed **without** leave to re-apply.

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: July 21, 2015

---

Residential Tenancy Branch

