



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes dri, ff, lat, o, olc, psf, rp, rr

Introduction

This is a dispute over the issue of whether utilities of gas and electricity are included in the rent. The tenants allege these services are included, and request that these services be in the landlord's name, and that any payments they have made for these services be deducted from their rent.

Both parties attended and were heard at the hearing. There are no issues as to the receipt of the evidence by either party.

The tenant confirmed that the issue regarding utilities was the most important issue to be dealt with at this hearing, but in fact there are numerous other claims listed by the tenants in the application also. One of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with an array of issues of concern to the tenant in one short hearing. Accordingly, hearings are generally limited to issues that are related in fact and law. In this case, all other issues are not related to the dispute over the utilities. The further claims are therefore dismissed pursuant to Rule 2.3, with liberty to re-apply.

Issues to Be Decided

- Are utilities of gas and electricity included in the rent in this tenancy?
- If so, is it appropriate to order that these utilities be in the landlord's name?
- Can the tenants deduct any payments made for gas and electricity from their rental payments?

Background and Evidence

Prior to the tenancy beginning, landlord orally advised the tenants that utilities were included in the rent, and confirmed this statement by email.

The landlord agrees that she stated that utilities were included, but testified that the word "utilities" meant only those utilities due to the City of Kamloops, and never were meant to include services of gas or electricity. The tenants never asked for clarification about this. The landlord resides in California, and negotiations were done by phone or email. She prepared a written tenancy agreement for the tenants to sign. The agreement did not indicate that gas and electricity were included. The tenants returned only the signed page, not any other pages. The agreement in the tenant's evidence however, is different, as it indicates that gas and electricity are included in the rent.

The tenant submits that it was orally agreed, and confirmed by email, that the rent specifically included utilities, which she understood to include the services of gas and electricity. She initially testified she signed and returned the tenancy agreement to the landlord by email in the same form it was received, but later admitted that she had sent only the final page. The gas and electricity were initially registered in the landlord's name, but these services were discontinued by the landlord, and were shut off on March 8. As the tenants did not qualify to have these services in their own names, they were registered in the name of a friend (who attended the hearing as the tenant's agent).

Analysis

In terms of the written tenancy agreement, the landlord prepared, signed and emailed to the tenants a form of tenancy agreement to be signed. The landlord alleged that this agreement did not include the utilities of gas and electricity in the rent. The tenants amended the document to include these services, signed the amended document, and sent back only the signed page. The tenant denies that the agreement was altered before it was signed, but admitted that only the last page was sent to the landlord. Under these circumstances, I find on a balance of probabilities that the tenants did alter the agreement before signing it. I find there has not been a meeting of the minds as to the written agreement, as the altered document signed by the tenants was never agreed to by the landlord, while the version of the agreement originally prepared by the landlord was not agreed to by the tenants. I am not asked to determine whether or not the failure to provide the entire agreement to the landlord was a form of misrepresentation by the tenants. Given that the tenants are in fact in possession, and have paid rent which was accepted by the landlord, a tenancy is now clearly in place. Under a more benign contractual approach, I find that the exchange of documents was an offer by the landlord and a counter offer by the tenants, with no final agreement being reached. In particular, and for the purposes of this hearing, the written document fails to reflect an agreement as to whether or not gas and electricity are included in the rent.

In the absence of a written agreement, I must look to the surrounding circumstances and communications of the parties, to determine whether it is the landlord or tenants who are liable for the services of gas and electricity. In this respect, the word "utilities", when not otherwise qualified, is generally accepted and interpreted to include the services of gas and electricity. At no time prior to the tenants taking possession, did either party further clarify for the other what this word meant. The onus in this regard lay with the landlord, and if indeed the landlord did not intend for gas and electricity to be services included in the rent, she should have made this clear to the tenants before they took possession. Under these circumstances, I find that the services of gas and electricity are both services included in the rent.

The landlord wrongfully shut off these services, and I order that the landlord must immediately arrange that these services are again provided, in the name of the landlord. I further order that any payments for gas and electricity made by the tenants in the course of this tenancy (whether past or future) must be reimbursed to them by the landlord. The tenants are at liberty to deduct such payments from a future rental

payment, provided the tenants have first given the landlord proof of having made such gas or electricity payment.

As the tenants are successful with their claim, I order that they also recover their \$100.00 filing fee from the landlord. The landlord may pay this sum directly to the tenants, or alternatively the tenants may deduct this sum from a future rental payment.

Conclusion

Services of gas and electricity are included in the rent. The landlord must pay the tenants any payments they have made for such services as well as the sum of \$100.00 as recovery of their filing fee.

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: March 21, 2017

Residential Tenancy Branch