

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: CNR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for unpaid utilities. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Is the cost of heating the unit included in the rent? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on January 20, 2006. The monthly rent is \$758.00 due in advance on the first day of the month.

During the hearing, two tenancy agreements dated January 20, 2006 and November 28, 2006 were reviewed. The initial agreement did not state that the cost of heating by gas was included in the rent. In the second agreement, it appeared as if a check mark was added after the agreement was printed, to indicate that heat was included in the rent. The tenant denied having added the check mark and since it was not initialled by both parties, I find that it is not a valid check mark. Therefore, pursuant to both the tenancy agreements, the cost of heat was not included in the rent.

However, the supply of gas is shared by three tenants and there was no agreement between the parties of how the cost of gas was going to be split among the tenants. The three units are of different sizes and one unit houses two tenants while the other two units house one tenant each.

The tenant was not asked to pay for gas until well over two years into the tenancy. Therefore the tenant's understanding was that the cost of gas was included in the rent.

During the hearing the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Analysis

Pursuant to Section 63 of the *Residential Tenancy Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle their dispute under the following terms.

- The landlord agreed to withdraw the notice to end tenancy and the tenancy will continue.
- The landlord agreed that the tenant will not be required to pay the cost of gas usage prior to August 27, 2009
- Both parties agreed that effective August 27, 2009, the tenant will be responsible for paying 27.85% of the gas bill (based on the square footage of this tenant's living area)

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Since both tenancy agreements did not contain specific arrangements regarding payment of the gas bill by three tenants, thereby giving the tenant the impression that gas was included in the rent which resulted in this dispute, I find that the filing fee should be shared by both parties. The tenant may withhold \$25.00 from the next month's rent.

Conclusion

On the basis of the settlement agreement reached by the parties, the notice to end tenancy is set aside and the tenancy will continue. The tenant will pay 27.85% of the monthly gas bill starting August 27, 2009. The tenant may withhold \$25.00 from a future rent towards the filing fee that he paid to file this application.

Dated August 27, 2009.

Dispute Resolution Officer