



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking to cancel a Notice to End Tenancy given for unpaid rent and seeking recovery of the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving cause (unpaid rent or utilities) to end this tenancy?

Background and Evidence

This tenancy began on May 15, 2008. In the Tenancy Agreement submitted into evidence the rent of \$750.00 was to include various appliances, carpets, parking and water. Garbage collection was not noted as being included but the tenant testified that when he asked the landlord about this when this tenancy first began the landlord advised that he had forgotten to check that box and garbage was included. Indeed the tenant says he has never been billed for garbage or sewer until he was advised in August of 2012 that he was responsible for Sewer charges of \$150.89 and garbage charges of \$248.00 along with a penalty for non-payment of \$39.88. The tenant did not pay these sums and the landlord therefore issued a 10 day Notice to End Tenancy on August 29, 2012 which is the subject of this dispute.

The landlord agrees that there was a bookkeeping oversight and the tenant was not previously billed for water or sewer. However the landlord says these were never intended to be included in the rent and the Tenancy Agreement clearly states this to be so.

Analysis

The Tenancy Agreement submitted into shows that the rent was to include: Water, Stove & Oven, Dishwasher, Refrigerator, Carpets and parking for 2 vehicles. Garbage Collection is not checked as being included and from this I would assume it was not intended to be included. However, the tenant says the original manager told him it was to be included and he simply forgot to check the box and, indeed over the course of this tenancy of almost 4 years in duration, the landlord has failed to seek to collect this sum. Based on the testimony of the tenant and the fact that fees for this utility were never sought I find that it is more reasonable to conclude that the tenant was never intended to pay for garbage collection as he has stated. In the alternative, having not sought to collect this sum for almost four years I find that the landlord has set a new agreement in place one in which garbage collection costs are included in the rent.

With respect to sewer charges, the same holds true however in this case the matter of sewer charges are not clearly stated at all in the tenancy agreement. Further when “water” is checked as being included it is reasonable to assume that “water” includes sewer and I find that this sum was to be included in the rent as well.

Based on these findings I will allow the tenant’s application and I therefore cancel the Notice to End Tenancy issued on August 29, 2012 effective September 8, 2012. The effect of this decision is that this tenancy will continue as though this Notice had not been served. However, the tenant has submitted that he has given notice to end this tenancy and therefore this tenancy will end as set out in the tenant’s notice.

As the tenant has been successful in this application I direct him to deduct \$50.00 from his next rental payment to realize recovery of the filing fee he has paid for this application.

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: October 03, 2012.

Residential Tenancy Branch