



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Penticton Apts. Ltd. & Pacific Cove Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, CNR, DRI, LAT, LRE, MNDC, PSF, RP, RR

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore, will deal with the request to cancel a 10 day Notice to End Tenancy, and I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

This tenancy began approximately 4 years ago and at that time all utilities are included in the rent.

The landlord testified that:

- In 2011 the tenant was given a \$31.00 rent reduction and informed that from then on he would have to pay his own utilities.

- The tenant fell behind in his utility payments and therefore on March 13, 2013 the tenant was given a demand letter requesting that he pay the outstanding utilities, which at that time total of \$305.05.
- The tenant failed to pay the full outstanding utilities, and therefore on April 17, 2013 he was served with a 10 day Notice to End Tenancy for failure to pay utilities, which at that time total \$228.05.
- The tenant has still failed to pay the full outstanding utilities, and at this time there is a total of \$193.00 in utilities outstanding.
- He is therefore requesting that the Notice to End Tenancy be upheld and that this tenancy ends.

The tenant testified that:

- All utilities are supposed to be included with this tenancy.
- He was never given any rent reduction, he was just informed in 2011 that he had to start paying his own utilities or he would be evicted.
- He has therefore been paying those utilities under duress ever since.
- The utilities are paid to a separate corporation who collects the utilities for the landlord; however it's been very confusing as the company has sent out some conflicting information.
- He does not believe he should be paying any utilities, and believes that this Notice to End Tenancy should be canceled.

Analysis

It's my finding that the landlord has not shown that the tenant is required to pay utilities under his tenancy agreement.

The landlord has admitted that utilities were originally included in the tenancy agreement, the claims of the tenant was given a rent reduction and then required to pay utilities, however the landlord admits that the tenant was not given a notice of rent increase at that time.

The landlord does not have the right to unilaterally change the tenancy agreement and require that the tenants start paying utilities that had previously been included in their agreement.

Further although the landlord claims of the tenant was given a rent reduction, the landlord has provided no evidence in support of that claim.

Further even if the tenant had been given a rent reduction, that did not give the landlord the right to start charging the tenant for utilities that had been previously included.

Therefore since the landlord has not shown that the tenant is required to pay utilities, I allow the tenants request to set the notice aside.

Conclusion

The 10 day Notice to End Tenancy dated April 17, 2013 is hereby canceled and this tenancy continues.

As stated above the remaining claims on this application for dispute resolution are dismissed with leave to reapply.

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: May 21, 2013

Residential Tenancy Branch

