



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Penticton & District Society for Community Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR MNDC O

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for unpaid rent, as well as for monetary compensation. The tenant and an agent for the landlord participated in the teleconference hearing.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On December 12, 2013 the landlord served the tenant with a notice to end tenancy for unpaid rent. The notice indicated that the tenant had failed to pay \$251.50 of his rent which was due on December 1, 2013.

The landlord stated that the tenant's rent was \$320 per month, as well as \$37.50 for mandatory cable and \$106 for optional meals. The landlord would receive payment for these amounts from the Ministry of Social Development in the last week of each month, as advance payment for the following month.

In May 2013 the tenant gave the landlord notice that he intended to vacate his unit by June 30, 2013. On June 26, 2013 the landlord received \$463.50 from the ministry as payment for July 2013. The landlord believed that the tenant was vacating on June 30, 2013, so they sent the cheque back to the Ministry. They also cancelled the tenant's meals.

The tenant did not vacate the rental unit. On July 24, 2013 the landlord received \$463.50 from the Ministry. The landlord allocated \$357.50 to the tenant's rent and cable costs for July 2013, and they credited \$106 toward rent for August 2013. The landlord then calculated that after the \$106 credit was applied, the tenant's rent still owing was \$251.50. The landlord continued to carry this amount forward every month, and on December 12, 2013 the landlord served the tenant the notice to end tenancy for failing to pay \$251.50 of his December 2013 rent.

The landlord stated that he went to the Ministry to see if he could do something about receiving payment for the outstanding rent, but he was informed that the tenant would have to initiate that process.

The tenant's response was that the landlord was fully paid for July 2013, and it had nothing to do with the tenant that the landlord sent the cheque back to the Ministry. The tenant stated that he also went to the Ministry to ask about this issue, and he was told that they don't go back that far.

Analysis

I find that the notice to end tenancy dated December 12, 2013 is not valid, for two reasons. First, a notice to end tenancy for unpaid rent may only claim for unpaid rent, except in the case of unpaid utilities, which is dealt with separately. In this case, it appears the landlord included the amount of \$37.50 for mandatory cable. Therefore, the notice is invalid for claiming an amount greater than rent. Second, neither party provided sufficient evidence that the other party was responsible for ensuring that the Ministry reimburse the outstanding amount.

Conclusion

The notice to end tenancy for unpaid rent is cancelled, with the effect that the tenancy continues until such time as it ends in accordance with the Act.

The remainder of the tenant's application is 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: February 7, 2014

Residential Tenancy Branch

