

## **Dispute Codes:**

CNR

## **Introduction**

This is the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent.

The parties gave affirmed testimony and the Hearing proceeded on its merits.

## **Issues to be Decided**

- Does this tenancy fall within the jurisdiction of the Act, and if so;
- Should the Notice to End Tenancy issued September 2, 2009, be cancelled?

## **Background and Evidence**

The Tenant lives in a suite of a house. The Tenant used to own a 1/5<sup>th</sup> interest in the house. The other owners were two of her brothers, her sister and her mother. The Tenant removed her name from Title in 1997.

The Tenant moved into a suite in the house, with its own bathroom and kitchen facilities. The Tenant's mother lives on the main floor of the house.

There is no written tenancy agreement. Rent is \$400.00 a month. The Notice to End Tenancy states that the Tenant has failed to pay rent in the amount of \$400.00 that was due on July 23, 2009.

### **The Tenant gave the following testimony:**

- The Tenant received the Notice to End Tenancy on September 2, 2009.
- The Tenant testified that rent was due at the end of the month.
- The Tenant paid rent for the month of June, but has not paid any rent since because she did not have enough money to pay the rent.
- The Tenant stated that the suite was not a legal suite, and therefore she wasn't sure if it fell under the jurisdiction of the Act.

### **The Landlords gave the following testimony:**

- The Landlords stated that rent was due on the first of the month, but the Tenant gradually started paying rent later in the month. In May of 2008, the Landlords

accepted that rent would be paid on the 23<sup>rd</sup> of each month. The Tenant paid her rent for June on July 21, 2009, and has paid nothing towards rent since July 21, 2009.

- The Landlords stated that they wanted to end the tenancy and asked for an order of possession.

## **Analysis**

Section 4 of the Act defined what the Act does not apply to. I find that this particular situation does not fall into the exceptions set out in Section 4, which states:

### **What this Act does not apply to**

**4** This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
  - (i) are primarily occupied for business purposes, and
  - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
  - (i) in a community care facility under the *Community Care and Assisted Living Act*,
  - (ii) in a continuing care facility under the *Continuing Care Act*,
  - (iii) in a public or private hospital under the *Hospital Act*,
  - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,

- (v) in a housing based health facility that provides hospitality support services and personal health care, or
- (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

The question of whether or not a suite is "illegal" falls under the jurisdiction of the Municipality.

The Tenant also stated that there was no written tenancy agreement between the Tenant and the Landlords.

The Act defines tenancy agreements as follows:

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

I find that an oral tenancy agreement existed between the Tenant and the Landlords. In the absence of a written tenancy agreement, the standard terms apply.

Therefore, I find that this particular tenancy does fall within the jurisdiction of the Act.

Based on the testimony of both parties, I find that the Tenant has not paid rent since she paid rent for June, 2009, on July 21, 2009. Section 26 of the Act states that rent must be paid when it is due. Based on the testimony of both parties, I find that rent was due on the 23<sup>rd</sup> of each month. I dismiss the Tenants' application to cancel the Notice to End Tenancy.

The Landlords requested an Order of Possession and I make that Order.

**Conclusion**

I hereby grant the Landlords an Order of Possession effective **2 days after service upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 22, 2009.

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