



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Urban Heights Development Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for unpaid rent. The tenant and the landlord participated in the teleconference hearing.

Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The current tenancy agreement, signed by the tenant but not the landlord, indicates that the tenancy began on August 1, 2012, with a monthly rent of \$990 payable in advance on the first day of each month. The parties agreed that the tenant had occupied the unit under a six-month fixed term agreement that preceded the current agreement. The agreement shows that the rental unit in question is the basement unit at the rental property address. The landlord described the unit as a two-bedroom suite. The tenant described the second bedroom in the basement suite as a secondary suite. The tenant is the only person named on the agreement.

On July 9, 2013 the landlord served the tenant with a notice to end tenancy for unpaid rent in the amount of \$520. The landlord and the tenant agreed that the amount on the notice represented half of the monthly rent, in the amount of \$495, plus a \$25 late fee.

The tenant submitted that the notice is not valid because he had paid his half of July 2013 rent, but the tenant of the secondary suite had vacated without notice. The tenant

stated that his rent and the rent for the secondary room have always been paid independently, due to the transitory nature of the tenants occupying the secondary room. The tenant stated that the landlord had asked the tenant, at the outset of the tenancy, to only have the tenant's name on the lease for this reason. The tenant did not dispute that he collected the other basement tenant's rent and deposited it in the landlord's account. The tenant acknowledged that he withheld August 2013 rent, due to other issues with the tenancy.

The landlord stated that the tenant is responsible for the full rent of \$990, and this was the first time she had heard of splitting the rent or the transient nature of the occupants and a verbal agreement between the landlord and the tenant. The landlord stated that it was perfectly alright for the tenant to have a roommate, but the second bedroom is not a separate suite and there was no permission given to the tenant to sublet. In the hearing the landlord orally requested an order of possession pursuant to the notice to end tenancy for unpaid rent.

Analysis

I find that the notice to end tenancy for unpaid rent is valid. It may be that the landlord impliedly waived the term of the first tenancy agreement that set out the rent as \$990; however, that tenancy agreement ended and the tenant entered into a new tenancy agreement. I do not find the landlord's lack of signature on the current tenancy agreement to be a fatal flaw, as the tenant and the landlord agreed upon the terms set out in writing in the current tenancy agreement. I am not satisfied, based on the evidence, that the landlord impliedly waived the fundamental term of rent on either of the tenancy agreements, particularly the second agreement. I accept the landlord's testimony that she was not aware of any split in the rent. I find that the tenant is responsible for the full rent of \$990, and he did not pay that amount of rent for July 2013. I also find that the tenant was aware that the amount set out on the notice of \$520 represented \$495 in unpaid rent and a \$25 late fee.

As the tenant's application was not successful and the landlord orally requested an order of possession in the hearing, I must issue the order of possession.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order 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: August 15, 2013

Residential Tenancy Branch

