



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VEDA 800 KELOWNA STUDENT HOUSING LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FFL

Introduction

On June 10, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the rental unit; to keep a security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlords’ agents (“the Landlord”) and the respondents attended the teleconference.

At the start of the hearing, I introduced myself and the participants. The Landlord and respondent provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord testified that the tenancy began on September 1, 2019, as a fixed term tenancy that continues until August 27, 2022. The rental unit is a self-contained bachelor unit with common areas shared with other occupants living in other rental units on the property. Rent in the amount of \$985.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$450.00.

The parties identified that the Tenant Mr. L.R. sublet the rental unit to Mr. C.C. from May 1, 2021 to August 27, 2021, and the sublet was approved by the Landlord.

The Landlord has named both the Tenant and the sub tenant in their application. The Landlord was asked to clarify which person they are seeking compensation from. The Landlord stated that they are not seeking compensation from the actual Tenant because he was not living in the rental unit on May 6, 2021 when a flood from a toilet in the unit caused damage and therefore, he is not covered under his parents' house insurance policy. The Landlord stated that their monetary claim is against Mr. C.C. the sub tenant.

Residential Tenancy Branch Policy Guideline # 19 Assignment and Sublet is intended to help the parties to an application understand issues that are likely to be relevant and what information or evidence is likely to assist them in supporting their position.

The Policy Guideline provides:

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

...

...Again, it should be noted that there is no contractual relationship between the original landlord and the sub-tenant. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.

I find that the contract between the Tenant and sub tenant was for a shorter period of time than the original fixed-term tenancy agreement and therefore it meets the requirement of being a sublet. The Tenant remained responsible to pay the rent to the Landlord and the sub tenant paid rent to the Tenant.

I find that there is no contractual relationship between the Landlord and the sub tenant.
I find that the Landlord cannot proceed with the monetary claim against the sub tenant.

With respect to a claim against the actual Tenant, the Landlord stated at the start of the hearing that their claim is not against the Tenant Mr. L.R.

The Tenant's father who was in attendance did not make any submissions in response to the Landlord's claim and I note that the Landlord clarified they were not proceeding against the actual Tenant. As a monetary claim against the actual Tenant is not before me, I make no finding on whether or not the Tenant is responsible to pay compensation to the Landlord.

The Landlord's application against the respondent/ sub tenant is dismissed without 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: December 28, 2021

Residential Tenancy Branch