

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the One Month Notice to End Tenancy for Cause served on February 24, 2010 to take effect on April 01, 2010. The tenant also seeks an Order for the landlord to comply with the *Manufactured Home Park Tenancy Act (Act)*, regulation or tenancy agreement.

The tenant served the landlord by registered mail on March 08, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 81 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the Act?

Background and Evidence

This tenancy started in January 1988. There was a verbal agreement to rent the manufactured home site at a monthly rent of \$350.00. This is a month to month tenancy. No security deposit was paid. The tenant owns the manufactured home and rents the site from the landlord.

The tenant testifies that he received a One Month Notice to End Tenancy on February 24, 2010. The reason given on this Notice is that the tenant has assigned or sublet the site without the landlords' written consent. The tenant argues that he has rented this site from the landlord and it has been sublet for over 20 years and the landlord has never asked him to get his permission in writing when new tenants have moved into the manufactured home. The tenant argues that the landlord always knew he was renting the trailer and he advertised locally each time he required a new tenant. The tenant states that when he rented to new tenants he always told them to introduce themselves to the park manager and obtain a copy of the park rules.

The tenant testifies that he rented his manufactured home again to new tenants on August 15, 2007. The park manager came over and said she was not aware that new tenants were moving in and the tenant had not obtained pre-approval for them. After the sublease tenants had moved in the landlord contacted the tenant and told him about the new rules and that pre-approval was required. The tenant argues that his tenants had already moved in before he was made aware of these new rules and the landlord allowed them to move in. The tenant argues that four years later the landlord cannot now evict him giving this as valid reason. The tenant states that since that date he has obtained a preapproval form from the landlords' brother and then later obtained one from the landlord and is willing to comply with this rule for any future sublets now he has been made aware of it.

The tenant testifies that he did agree with the landlord in 2007 that he would sell his manufactured home as the landlord requested. However, the landlord has made this difficult by now insisting that the manufactured home can only be sold to an owner occupier. The tenant feels this is affecting his opportunities to sell particularly when there are other sublet trailers on the park. The tenant argues that his realtor has declined to sell the trailer due to the landlords demands and as the landlord would not approve all purchasers if they want to lease the trailer themselves. The tenant states he can put the trailer back on the market if the landlord lifts the restrictions placed upon the sale.

The tenant seeks an Order for the landlord to comply with the Act by affording his tenants their right to quiet enjoyment of the trailer without threats, noise or other incidents and to instruct his park manager to deal with any compliant issues raised by him or his tenants. The tenant also seeks an Order for the landlord to comply with the regulations concerning assigning the lease.

The landlord testifies that he told his tenant that his sublease tenants had moved in illegally as he had not gained written permission from the landlord to sublet the site. The landlord claims that he told the tenant he could “boot these tenants out” or the tenant could sell the manufactured home. The landlord states that he thought he had an equitable verbal agreement with the tenant to sell the home but as the tenant has not done so this agreement has ended and the landlord seeks an Order of Possession for the site and wants the tenant to remove the manufactured home from the park.

The landlord states that he will not allow anymore subleases on the park and all residents must be owner occupiers. He states that the tenant must put this in his contract of sale so prospective purchasers are aware.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. On the basis of the evidence and testimony before me I find the landlord allowed this tenant to sublet the trailer for twenty years and throughout this time no agreement was put in writing between them. I further find that the landlord had no issues with the tenant subletting his trailer to other tenants during this time. I find that when the landlord changed the rules for tenants, which meant they had to seek pre-approval before they sublet a trailer this rule was not put in writing to the tenant and was only brought to his attention after he sublet to new tenants in August 2007.

I find it is the responsibility of the landlord, or his appointed person acting on his behalf, to give any changes to the park rules to the tenant so they are fully aware of them. In

this instance this was not done and the sublease tenants have continued to reside in the trailer for nearly four years before the landlord decided to take any action against the tenant by issuing him with a One Month Notice to End Tenancy for Cause. I find it would now be unreasonable of the landlord to rely on section 28 of the Act after this amount of time has lapsed. Consequently, I uphold the tenants' application to cancel the One Month Notice to End Tenancy for Cause.

With regard to the tenants application seeking an Order for the landlord to comply with the *Act*, regulation or tenancy agreement; I refer both parties to Part 7 of the Manufactured Home Park Tenancy Regulations. This part deals with assigning and sublease. I find the tenant must also comply with this part of the regulations by putting any request to the landlord to assign the tenancy agreement in writing. The landlord argues that he intends to make the site an owner occupier site only however the landlord must still comply with the Act and the regulations in relation to this. Consequently, **I Hereby Order** the landlord to comply with Part 7 of these regulations with regard to any request made in writing from the tenant for consent to assign his home owners tenancy agreement to a purchaser.

As the tenant is the landlord for his tenants living in the manufactured home I find he is reasonable for his tenants and as such must ensure their right to quiet enjoyment is upheld. With this in mind the tenant seeks an Order for the landlord to comply with the act to protect his tenant's right to quiet enjoyment of the manufactured home and their right to freedom from unreasonable disturbance. Therefore, **I ORDER** the landlord of the manufactured home park site to ensure any complaints are dealt with swiftly and effectively to protect the sublease tenants right to quiet enjoyment under the *Act* pursuant to section 22 of the Act.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated February 24, 2010 is cancelled and the tenancy will continue.

I ORDER the landlord of the manufactured home park site to deal with any complaints swiftly in order to protect the tenant's right to quiet enjoyment. **I FURTHER ORDER** the landlord to comply with Part 7 of the Manufactured Home Park Tenancy Regulations.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: April 21, 2010.

Dispute Resolution Officer