

DECISION

Dispute Codes CNC, AS, & FF

Introduction

This hearing dealt with an application by the tenants seeking authorization to sublet their mobile home. The tenants also seek to have a one month Notice to End Tenancy for Cause issued by the landlord set aside.

The tenants provided copies of registered mail receipt showing that the landlord was served with notice of this application and hearing on August 19, 2010. The tenants also served the landlord with a copy of their amended application and evidence by registered mail on September 25, 2010.

Section 90(a) of the *Act* provides that documents are deemed to have been received by a party on the 5th day after they were mailed. Pursuant to section 90(a) I am satisfied that the landlord was served with notice of this application and hearing.

The tenant presented affirmed evidence in oral and written form and was provided the opportunity to make submissions to me.

Issues(s) to be Decided

Does the landlord have reasonable grounds on which to deny the tenants permission to sublet the manufacture home?

Background and Evidence

There is no written tenancy agreement; however, the tenants did provide a copy of their agreement to purchase the mobile home. The tenants submitted that the tenancy began on April 8, 2005 for the monthly rent of \$300.00. The tenants submitted that there is also an oral agreement allowing them to have animals as part of the tenancy.

On July 29, 2010 the tenants wrote the landlord requesting permission to sublet their manufactured home. The tenants' state that they wish to rent the manufactured home

as of September 1, 2010 and once suitable tenants are located they would arrange an opportunity for the landlord to meet the prospective tenants. This letter was given to the landlord on August 1, 2010 when the rent was paid.

On August 7, 2010 the landlord responded in writing to the tenants' letter. The landlord interpreted the letter from the tenants as a notice to vacate the manufactured home as of September 1, 2010. The landlord also stated in the letter that he does not wish to have another tenant on that site or to assign or sublet.

The parties discussed the situation over the phone on August 11, 2010 and the tenants followed up the conversation in a letter dated August 15, 2010.

The tenants understood the landlord's position as an attempt to change to their original oral tenancy agreement by now withdrawing the right to assign or sublet their manufactured home. In their response letter the tenants state that they do not agree to the landlord's attempt to change the terms of their tenancy agreement. The tenants testified that they were never told when they entered into the tenancy agreement that they would not be allowed to assign or sublet.

On September 1, 2010 the landlord wrote the tenants a second letter proposing that if they moved their trailer by December 31, 2010 he would reimburse the tenants four month's rent. Attached with the landlord's letter was a mutual agreement to end the tenancy.

On September 10, 2010 the tenants wrote the landlord clarifying that they did not give notice to end the tenancy but requested authorization to sublet the tenancy. The tenants also rejected the landlord's offer to end the tenancy mutually and stated that if the landlord intends to end the tenancy he is required to provide 12 months notice pursuant to the *Act*.

On September 15, 2010 the landlord personally served the tenants with a one month Notice to End Tenancy for Cause. The notice states that the tenants have assigned or sublet the rental unit without the landlord's authorization.

On September 22, 2010 the tenants filed an amendment to this application requesting that the one month Notice to End Tenancy be set aside. The tenants seek authorization to sublet the rental unit as they submit the landlord has unreasonably withheld consent.

The tenants also raised the issue that the landlord has not accepted the payment of October 2010 rent and is not returning the tenants telephone calls. They have left a note for the landlord to make arrangements to pay the rent owed.

Analysis

The assignment and subletting of a manufactured home is governed by section 28 of the *Act* and by Part 7 of the regulations.

Part 7 of the regulations defines subletting as follows:

Means to sublet the manufactured home site on which the home owner's manufactured home is situated to a subtenant under section 28(1) of the Act.

The *Act* and regulations provide that a tenant is required to request in writing permission from the landlord to sublet their tenancy provided the tenancy agreement allows subletting. The regulations require that the tenants give as much information as possible to the landlord, including but not limited to, the proposed start date of the sublease, the current monthly rent, the name of the proposed sub tenant, and two references of the sub tenant. The purpose of this information is to give the landlord the ability to make an informed decision to allow or decline the request to sublet or accept or reject the proposed sublet tenants.

The landlord and tenants never reached a point of the landlord considering the viability of prospective tenants, as the landlord immediately denied the tenants' request to sublet. I accept the tenants' evidence that they have several prospective tenants that could have been considered by the landlord; however, because of the landlord's position the discussions have never reached that point.

In addition, the landlord also appears to have misunderstood the tenants' original request and appears to be acting as if the tenancy has ended. I find that the landlord has no understanding of the process to accept or deny a request to sublet a manufactured home as required by the *Act* and the regulations.

The landlord can only deny a request to sublet on specific grounds found in regulation 48, such as, specific information that manufactured home will not be used for a residence or reasonable grounds to suspect that the proposed tenant will not pay the rent. In his letters to the tenants the landlord has not provided any ground or reason for denying the request to sublet the tenancy.

I accept the evidence of the tenants that there is no provision in their oral tenancy agreement with the landlord which prohibits the assignment or subletting of the manufactured home. I also find that the landlord is arbitrarily and unreasonably withholding consent from the tenants to sublet their mobile home and that the landlord's actions are contrary to section 28 of the *Act* and section 48 of the regulations.

Although the landlord has the right to consider prospective tenants, and under reasonable grounds deny prospective tenants, I find that the landlord has circumvented this right by outright denial of the tenants' request. I am satisfied that the tenants have made a reasonable attempt to follow the regulations by requesting consent from the landlord and were willing to have prospective tenants reviewed by the landlord.

Therefore pursuant to section 58(1)(g) of the *Act*, I authorize and Order that the tenants may proceed to sublet their manufactured home. The tenants do not require the consent of the landlord to sublet their manufactured home.

Pursuant to regulation 50, the effect of a sublease means that the tenants become the landlord for the sub-tenant but remain the tenant of the landlord and obligated to that oral tenancy agreement. The tenants are liable to the landlord for any breach of the tenancy agreement during the sublease. In addition, the tenants must include in the sublease any rules or terms of the tenancy and ensure that the terms of the sublease do not conflict with their tenancy agreement with the landlord.

Finally, I grant the tenants' request to have the one month Notice to End Tenancy for Cause set aside. This notice is of no force or effect and the tenancy will continue.

As I have granted the tenants' application for Dispute Resolution, I Order that the landlord reimburse the tenants the \$50.00 paid to file this application. The tenants may deduct this sum off of their next month's rent.

Conclusion

I grant the tenants' application. I authorize the tenants to sublease their manufactured home pursuant to section 58(1)(g) of the *Act* due to the landlord's failure to provide consent contrary to section 28 of the *Act*.

I have also set aside the one month Notice to End Tenancy which is of no force and effect and granted the tenants' request to have the landlord reimburse them the \$50.00 filing fee paid for this application.

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 04, 2010.

Dispute Resolution Officer