



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, AS

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause, and an Order to allow the tenant to assign or sublet because the landlords' permission has been unreasonably withheld.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were faxed to the landlord on November 17, 2010.

The tenant and her lawyer appeared and the agent for the landlord appeared. Both parties 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:

Preliminary Issues

The landlord has requested an adjournment as he has had a sudden death in the family as had to leave the Province to fly to the funeral. The landlord has requested an adjournment for a week to allow him opportunity to take part in the hearing. The landlord did however brief his agent and provided documentary evidence and statements.

At the outset of the hearing the landlords' agent again requested an adjournment but when notified that no hearing could be rescheduled for the following week she stated she would take part in the hearing today as the landlords representative.

Issues(s) to be Decided

- Is the tenant entitled to cancel the One Month Notice to End Tenancy?



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- Is the tenant entitled to an Order allowing her to sublet or assign?

Background and Evidence

Both parties agree that this tenancy started on February 06, 2009. The tenant owns the trailer and rents the site from the landlord at a monthly rent of \$230.00 which is due on the first of each month.

The landlords' agent testifies that the tenant was served with a One Month Notice to End Tenancy for cause as she has purported to assign or sublet the residential premises without the consent of the landlord. The landlords' agent states that the tenant had decided to rent her trailer to a third party and applied to assign the trailer to this tenant. She states the tenant did not make it clear whether she was assigning or subletting her home as under the *Act* assignment means to assign her tenancy agreement to a purchaser and subletting means to sublet the manufactured home site to a subtenant.

The landlords' agent also states there were other problems with the tenants' application. The tenant did not provide, with her application, all portions of the tenancy agreement that are in writing, the name and address of the landlord or the landlords agent, the current address of the proposed subtenant, the length of time the proposed subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address; the signed consent of the proposed subtenant authorising the landlord to contact the other landlords whose names are provided and personal references for the purpose of verifying or obtaining information relevant to assign or sublet. The landlords' agent also states the tenant altered one of the rules and regulations concerning pets.

The landlords' agent states the proposed tenant gave his consent for reference checks and credit checks to be carried out by a different legal entity and not by the landlord or the landlords' business name under which the manufactured home park operates. Instead the consent was given to another of the landlords businesses which meant the landlord was unable to complete the required checks without permission being given directly to him.



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The landlord states in his written submissions that he sent a reply to the tenants' lawyer that he could not use the information and authority provided. The landlord then submits that he attempted to obtain some of the missing information from the tenants' application but was unable to do so. The landlords submissions state he was about to write to the tenants lawyer regarding his position when his park manager called him to say the subtenants had already started to move in on October 30, 2010.

The landlords agent states the tenant did not meet the requirements under the *Act* and did not provide the landlord with enough time to perform his rights before placing a subtenant into the home regardless of obtaining his permission or not.

The tenants lawyer states the landlords' allegations are false; the tenant provided the two page rules and regulations document signed by the tenant and the manager of the community on February 16, 2009, the application to lease in the name of the tenant and two Notices to the tenant. The tenant states these are the only documents given to her by the landlord or his agent and she was never given a tenancy agreement. The tenant states she did not alter the rules and regulation but did add "no pets are allowed" to highlight this clause in the rules.

The tenant states only one piece of information was missing from her application to sublet and this was the full address for the proposed tenant. The tenant states the application provided the full name of the landlord and his business address as obtained from a business card of the landlords. The tenant also provided the length of time the proposed tenant had resided at his residence.

The tenant states the proposed tenant gave his consent for the landlord to contact his references and to do a credit check on him. The tenant agrees that the name used is not the landlords name or his manufactured home park business name however her lawyer states that the Personal Information Protection Act would in no way preclude the landlord from obtaining personal references and/or credit references in respect of this proposed tenant as he clearly gave his consent to do so when he signed the application. The tenant states that the landlord owns both entities and his complaint amounts to a technicality when he knew the application in front of him were in respect of the manufactured home park. The personal information Act

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section 8(1) deems this information could be used when consent is given and the purpose would be considered obvious to a reasonable person and the individual voluntarily provided the information to the organisation for that purpose.

The tenants' lawyer states that the landlord did not provided any reasonable reason as to why the tenants' application to assign her home was refused. The landlord simply states in his letter dated October 30, 2010 that he could not accept the information. The tenants' lawyer also states the tenant was told by the park manager that the management did not accept rentals and the last person who applied was evicted from the park. The tenant suggests the landlord has acted in bad faith by rejecting her application to assign her home to a third party.

The tenants' lawyer states the tenant has wanted nothing more then to meet the requirements of the landlord and did what she thought was required. The question of whether it was an assignment or a sublet could have been clarified by the tenant if the landlord had spoken to her along with all the other queries. The tenants' lawyer states he tried on eight occasions to speak to the landlord but the landlord failed to return any of his calls. The tenant then assumed the landlord was satisfied with the information provided and commenced with renting her home to this sublet tenant. The sublet tenant did not take possession of the home until November 03, 2010.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Part 7 of the Manufactured Home Park Regulations deals with assigning and sublets. The landlord argues that he was not given all the required information concerning the tenants' application to sublet her trailer and he responded to the tenant by letter stating that he cannot accept the information she has provided to his Strata management company or the authority granted under this Strata management company. Section 47 of the regulations states:

47 (1) *If a home owner's request for consent to assign or sublet does not comply with section 44 [written request], the landlord of the park must do one of the following:*

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(a) consent to the request;

(b) notify the home owner in writing that consent to the request is withheld on one or more of the grounds under section 48

[withholding consent];

(c) advise the home owner promptly that only a request for consent that complies with section 44 [written request for consent] will be considered.

(2) If the landlord withholds consent under subsection (1) (b), the landlord must indicate

(a) the grounds under section 48 on which he or she is withholding consent, and

(b) the source and nature of the information that supports those grounds.

I find the landlord did not comply with section 47 of the Act. When he realized he did not have all the required information from the tenant concerning her request to sublet he should have advised the tenant in writing that she had not provided sufficient information. He should have also advised the tenant that the consent to complete checks on the proposed tenant were not valid in order to give her the opportunity to provide more information and the landlord should have sought clarification concerning the tenants intent to either sublet or assign her trailer.

It is my decision that the landlord has acted unreasonable in this matter by not complying with section 47 and consequently the One Month Notice to End Tenancy is cancelled and the tenancy may continue.

It is also my decision that the tenant must provide the landlord with all additional information regarding her sublet tenant to enable the landlord to have all relevant information to hand regarding references and credit checks. However, as the landlord has not complied with section 47 of the Act it is my decision that the tenants application to be allowed to sublet the trailer is



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upheld as I have determined that the landlord has acted unreasonable. If any problems arise from this sublet tenancy the landlord is at liberty to serve the tenant with a relevant Notice to End Tenancy under sections 39 or 40 of the Act.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated November 05, 2010 is cancelled and the tenancy will continue.

The tenant is hereby allowed to sublet the trailer to the new tenant and must provide the landlord with all relevant information concerning this tenant upon receipt of this decision.

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 06, 2010.

Dispute Resolution Officer