



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes AS, FF

### Introduction

This matter dealt with an application by the tenant to be allowed to assign or sublet because the landlords permission has been unreasonable withheld and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the landlord on November 24, 2010. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it.

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:

### Issue(s) to be Decided

Should the tenant be allowed to assign or sublet her rental unit?

### Background and Evidence

Both Parties agree that this tenancy started on February 01, 2000. The tenant owns the trailer and rents the pad from the landlord on this Manufactured Home Park for a monthly rent of \$255.50. This is a month to month tenancy.

The tenant testifies that she has been refused permission to sublet her trailer. She states her tenancy agreement and the park rules she was given at the start of her tenancy states that she

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can sublet the trailer with the landlords permission and she has done so on two other occasions in 2001 and 2004. The tenant states other trailers on the park are also sublet and she feels the landlord has acted unreasonably in withholding consent for her to sublet.

The tenant states she has now purchased a home and she filled in a form to request to sublet her trailer on November 17, 2010. The tenant states she approached the manager of the park with this and had to then complete a sublet agreement before it could be considered. The tenant states she gave this to the manager but did not get a response back within 10 days. The tenant states when she first approached the manager his wife told her she could not sublet but the manager later came to her home and told her she could but he did not have the correct paperwork with him. She states she heard nothing back from him and three days later she contacted him and was told that the owner of the park would not allow sublets. The tenant states she then lost these prospective sublet tenants.

The tenant claims that on December 09, 2010 she gave the landlord two more applications to sublet her trailer. She states that she did not hear from the landlord within 10 days allowed under the *Act* so she proceeded to sublet her trailer to one of these groups of tenants. They moved into the trailer on December 19, 2010.

The tenant states the landlord has discriminated against her and appears to make the rules up as he goes along as she was never informed of this change in the park rules or informed that new rules had been posted in the office of the park.

The landlords' agent testifies that on November 17, 2010 after speaking to the Residential Tenancy Board, he took a letter to the tenant which stated the landlord does not allow sublets anymore. The landlords' agent states they stopped allowing sublets a year ago in July 2009 due to problems with tenants who were subletting. He states this is mostly a senior's park and they have to keep the park to a high standard for all the tenants.

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The landlords' agent states that the tenant did not obtain permission to sublet the unit and has allowed other tenants to move in. Since that time he has had to issue the tenant with infraction notices because her sublet tenant has kept an unlicensed car at the park.

The landlords' agent states he received the second set of applications from the tenant on November 17, 2010 not December 09, 2010 as claimed by the tenant. He states this did not give the landlord opportunity to carry out necessary checks on these tenants. He faxed these off to the owner who refused to sign them to give the tenant permission to sublet as a letter had already been sent to her stating the landlord no longer allows trailers to be sublet in the park. He states the tenant ignored this letter and went ahead and sublet the trailer without the landlords' permission.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The landlords' agent argues that the change to the rules regarding sublets was posted in the office and tenants were made aware of this. The tenant argues that she was not aware the rules had changed, other trailers are sublet and she received nothing in writing from the landlord concerning the change to the rules. Section 30 of the Regulations states:

## **Making rules**

**30 (1)** The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:

- (a) it promotes the convenience or safety of the tenants;
- (b) it protects and preserves the condition of the manufactured home park or the landlord's property;
- (c) it regulates access to or fairly distributes a service or facility;
- (d) it regulates pets in common areas.

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(2) If there is a park committee, the rules must be established, changed or repealed according to the procedure set out in sections 22 [*park committee decisions*] and 23 [*vote by landlord and tenants*].

(3) A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if

- (a) the rule applies to all tenants in a fair manner,
- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
- (c) notice of the rule is given to the tenant in accordance with section 29 [*disclosure*], and
- (d) the rule does not change a material term of the tenancy agreement.

Section 29(2) of the *Act* states a landlord must give Notice in writing to that tenant of any rules at least two weeks before the rule becomes effective.

I find the landlord did not disclose to the tenant in writing at least two weeks before the rule became effective that the rules had changed concerning sublets in the park. A tenant could not comply with a rule if she had not been given written notice of the rule change. A letter from the landlord which states that the landlord does not allow subletting does not refer the tenant to a change of the park rules; I also find the new rule does not apply to all the tenants in a fair manner as some other trailers remain sublet.

When a tenant gives a landlord an application to sublet her trailer part F of that application form states the park owner must complete this section and return the form to the home owner promptly, not later than 10 days after receiving the home owners request. If the home owner does not receive the response within 10 days, the landlords request will be conclusively deemed to have been given. There is also a section of the form for the landlord to give his reasons if he is going to withhold his request. In this instance there is a disagreement about when the tenant



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gave this application to sublet to the landlords' agent however, the landlords' agent also states the landlord told him he would not sign the form as he had already told the tenant she could not sublet her trailer.

Therefore, it is my decision that the landlord did not comply with section 29(2) of the *Act* and has not followed section 30 of the regulations. Consequently, the tenants' application to sublet her trailer is upheld.

As the tenant has been successful she is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 65(1) of the *Act*. The tenant may withhold the sum of **\$50.00** from her next rent payment to the landlord.

## Conclusion

The tenants' application is upheld. The tenant is allowed to sublet her trailer to the tenants residing there at this time. Both the landlord and tenant must ensure they comply with the *Act* and Regulations for any future sublets of the trailer.

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: January 04, 2011.

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