



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPT, AS, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an Order of Possession of the rental unit or site, for an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld, and to recover the filing fee from the landlord for the cost of this application.

Both parties attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession of the rental unit or site?
Is the tenant entitled to an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld?

Background and Evidence

The parties agree that this tenancy is a site in a manufactured home park. Rent in the amount of \$279.00 per month is payable in advance on the 1st day of each month.

The tenant testified that the tenancy agreement is between his father and the landlord. The tenant bought the manufactured home for \$7,000.00 from his father in 2006 but the tenant didn't transfer the home into his name until January 18, 2011 because he didn't have the \$365.00 fee for that transfer. He further testified that he has lived in the home since 2006 and completed over \$10,000.00 worth of renovations. He testified that he sold the home on December 1, 2010.

The tenant testified that after the sale his father contacted him stating that he had to talk to the landlord, so the tenant called. The landlord told him she had concerns with the new owner but she would give him a chance if he met the criteria.

The new owner subsequently approached the tenant stating that he was served with a notice to end tenancy by the tenant's father who told the new owner he wasn't going to let him move in and that the Bill of Sale had a forged signature of the witness. The tenant testified that it was not forged; he was there at the time and saw the witness sign the document.

The tenant further testified that he bought the home back on January 15, 2011 because the landlord wouldn't let the new owner move in. He further stated that he was not served with the notice to end tenancy, and that the notice names himself and his dad as tenants, and the second page of the notice was omitted and not served at all.

The landlord testified that 3 other tenants in the park voiced concerns about the new owner and allowing a tenancy for him. She stated that she asked the police who advised that the person was known to them and that she shouldn't let him move into the park. She confirmed that she had told the tenant that if the new owner met the criteria she would let them move in, but the new owner never went to see her or to apply for tenancy.

The landlord further testified that she contacted the Residential Tenancy Branch who advised that the tenant is the registered owner. Further, the tenant did not tell her that the home had been sold, and she did not approve or disapprove of the new owner.

A copy of the 1 Month Notice to End Tenancy for Cause was provided by the tenant in advance of the hearing, which does not contain both pages.

Analysis

In the circumstances, I agree that the registered owner ought to be the tenant. However, in the circumstances, I find that the written tenancy agreement in place is between the tenant's father and the landlord.

I have reviewed the notice to end tenancy, and find that there is no reason written thereon to evict the tenant. Therefore, I cannot uphold the notice.

A tenant must obtain the landlord's consent before assigning a tenancy agreement. The tenant did not have a tenancy agreement to assign. I further find that if asked, the landlord's consent cannot be unreasonably withheld, but I find that the tenant didn't ask.

The tenant has now re-purchased the manufactured home, and I find that the tenancy now exists between the tenant before me and the landlord. Where I find that the notice

to end the tenancy cannot be upheld, I find that the tenant is entitled to an Order of Possession.

I further find that the landlord does not have to enter into a tenancy agreement with any other persons. If the tenant wishes to sell the home, the tenant must ensure that the purchaser meets with the landlord to be approved and to enter into a tenancy agreement or comply with the *Act* by giving appropriate notice and move the manufactured home.

Since the tenant has been partially successful with his claim, I find that the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession of the manufactured home site in favour of the tenant effective January 18, 2011, pursuant to Section 47 of the *Manufactured Home Park Tenancy Act*.

The tenant's application for an order allowing the tenant to assign or sublet is hereby dismissed.

I further order that the tenant be permitted to deduct the amount of \$50.00 from his next pad rent payable to the landlord.

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: February 22, 2011.

Residential Tenancy Branch