



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing was held in response to the tenant's Application requesting a Notice to End Tenancy for Cause be cancelled and a request for filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Should the 1 Month Notice Ending Tenancy for cause issued on May 15, 2011, be cancelled?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants were required to vacate the rental unit on June 30, 2011.

The tenancy commenced in 2006 for rental of a site for a manufactured home. Rent is due by the 15th of each month.

The reasons stated for the Notice to End Tenancy were that the tenants assigned or sublet the site without the landlord's written consent.

The tenants did not dispute the landlord's submission that approximately 1.5 years ago they sublet their manufactured home to a third party. The tenants testified that they now understand sublets are not allowed in the Park, as determined by Park Rules they signed in 2008.

The landlord stated that his property manager had recently received complaints about the occupant who was subletting the home and that the Notice was then issued. The landlord confirmed that no warning was given to the tenants prior to the Notice having been issued. The landlord could not provide any information his agent's prior knowledge of the presence of the sublet; only that recent complaints by other occupants, some of whom also wanted the right to sublet, caused the landlord's agent to issue the Notice.

The tenants confirmed that they did not request prior permission to sublet their unit and that they did not know if the property manager was aware of the sublet. The neighbours knew the unit was sublet and the tenants did not hide the fact that the unit was sublet.

The tenants stated that as soon as they received the Notice ending tenancy they asked the occupant to leave and that the home was vacated by the end of May, 2011. The tenants testified that they will no longer sublet that they will comply with the Park Rules.

Analysis

No evidence submission was made outside of a copy of the Notice issued on May 15, 2011.

I find, pursuant to section 55(3) of the Act, that the Notice ending tenancy for cause issued on May 15, 2011, is of no force or effect.

The tenants had sublet their unit for approximately 1.5 years and it was not until the landlord received complaints from other occupants of the Park that the Notice was issued. It is difficult to accept that the landlord's agent was not aware of the existence of the sublet arrangement prior to May 2011, and it appears that it was the complaints that resulted in the landlord's agent issuing the Notice.

As soon as the tenants were given the Notice ending tenancy the unit was vacated by the third party and it is no longer sublet.

I find that by allowing the sublet arrangement to remain in place for 1.5 years an underlying assumption was made that the sublet could remain in place. I find that the legal principle of estoppel applies in this case, as the sublet was in place for an extended period of time during which the landlord's agent failed to take any action. In the absence of any evidence as to when and how the landlord became aware of the sublet, I find that it is reasonable to accept there was an underlying agreement as a result of the conduct of the parties over the past approximately 1.5 years.

Given the underlying assumption made by the tenants; who admit they had not read the Park Rules which prohibit sublets, combined with the length of time the sublet was allowed to remain in place; I find it would be unjust or unfair to allow the landlord to evict the tenants.

Further, I find that if the tenants had been provided a warning prior to the landlord issuing the Notice the matter could likely have been rectified and the need for a Notice avoided. By giving an eviction Notice as the first indication that the tenants had breached a Park Rule, the tenants were not afforded the opportunity to respond to the landlord's concerns and to rectify their breach of the Park Rules or to discuss what they had believed was an underlying assumption that the sublet was of no consequence to their tenancy in the Park.

The sublet has now been terminated and the tenants must adhere to the Park Rules.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 40 of the Act, the 1 Month Notice to End Tenancy, dated May 15, 2011, is of no force or effect and I order that this tenancy continue until it is ended in accordance with the Act.

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: June 16, 2011.

Residential Tenancy Branch