



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated June 8, 2011. Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on testimony and the evidence are:

- Should the One-Month Notice to End Tenancy issued under section 40(4) of the *Manufactured Home Park Tenancy Act*, (the Act), be cancelled?
- Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began in 1993 and the current pad rent is \$240.00 per month.

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated June 8, 2011 showing an effective date of July 31, 2011. The Notice to End Tenancy for Cause indicated that the tenant had:

- Jeopardized the health, safety or lawful right of another occupant or the landlord
- Breached a material term of the tenancy agreement and failed to correct it within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

Submitted into evidence by the landlord was written testimony, copies of communications between the parties, including warning letters, copies of completed "Intent to Rent" forms, a copy of the Park Rules and a copy of a medical report.

The landlord testified that the tenant's adult son had returned to live in the tenant's manufactured home located in the park. The landlord stated that any new resident coming to live in the park must fill out a tenancy application, an "Intent to Rent" form, and be approved by the landlord. The landlord testified that the form was given to the tenants to have their son complete. However, the tenancy was not approved and the landlord stated that the tenants refused to comply with the rules as the son is still living in their home.

The landlord testified that this is considered to be a "sublet" situation and under the Manufactured Home Park Tenancy Act and the park rules, would not be permitted without the landlord's written approval.

In addition to the above, the landlord stated that, although this tenancy began prior to the requirement under the Act for a written agreement, there has been an existing verbal term of each tenancy in the park, including this one, that any new occupant living in the park or co-habiting with an existing tenant, is required to become a tenant under the tenancy agreement of the existing tenant and to do so must first fill out the mandatory "*Intent to Rent*" form and be approved.

The landlord stated that it has also been an accepted practice of the park not to allow any new residents to share an existing manufactured home unless they have been approved as tenants by the park owner. The landlord stated that, otherwise there would be no restriction on who could live in the park. The landlord pointed out that additional residents without controls would overburden the water resources and sewer facilities paid for by the landlord. The landlord pointed out that this tenancy, like many others had started long before there was a requirement for a written tenancy agreement.

The tenant testified that they are not subletting the site to anyone else. Their son is living with them as he has intermittently for many years. The tenant did not agree that there was a verbal term requiring any new residents sharing their home to be approved by the landlord.

Analysis

Section 55 (1) of the Act gives the dispute resolution officer the The director authority to determine (a) disputes in relation to which the director has accepted an application for dispute resolution, and (b) any matters related to that dispute that arise under this Act or a tenancy agreement. (my emphasis)

A dispute resolution officer can may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act and may make any order necessary to give effect to the rights, obligations and prohibitions under this Act,

including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

I find that the evidence submitted by both parties, relating to the character of the tenant's son, is not relevant to this dispute and will not be considered.

With respect to the verbal agreement between these parties, the Act defines "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

With respect to assigning the tenancy agreement, section 28(1) of the Act states that A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies:

(a) the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;

(b) the tenant has obtained an order of the director authorizing the assignment or sublease;

(c) the tenancy agreement authorizes the assignment or sublease.

(2) A landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulations.

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

The Manufactured Home Park Tenancy Regulation section 42 defines "assign" to mean to assign a home owner's tenancy agreement to a purchaser under section 28 (1) of the Act [*assignment and subletting*];

"home owner" means an owner of a manufactured home who rents a manufactured home site from a park owner;

"purchaser" means a person who has purchased a home owner's manufactured home;

"sublet" 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.

Black's Law dictionary defines "subtenant" as "*An under-tenant: one who leases all or part of the rented premises from the original lessee for a term less than that held by the latter.*"

I find that the tenant did not assign the, (verbal), tenancy agreement for use of the site to a purchaser of the manufactured home. I also find that the tenant did not sublet all or part of the rented site pad they are currently leasing from the park to another individual for that individual's use.

With respect to the issue of subletting, had the tenant completely moved out and rented their manufactured home to another person in their absence, they would then be considered as landlords governed by the Residential Tenancy Act . The new occupant residing in their unit would still not be in a tenancy relationship with the park owners. However, subletting the site would only be possible if the tenancy agreement or park rules specifically allowed such rentals. I find that the park rules in this park do permit subletting of this nature. However, the statutory requirements to be strictly followed for arranging to sublet are set out in detail in section 7 of the Regulation and would always apply.

In the case before me, the issue of subletting is not material to the matters under dispute. Since the tenant continues to reside in the manufactured home on the subject site, and is still leasing the site for their own use and occupancy, I find that the tenant could not have sublet the landlord's site pad to another party.

I find that the tenant is merely sharing their own manufactured home , which they own and over which they have domain, with another occupant of their choosing. As such they are at liberty to use their own home as they see fit. I find that the occupant, who tenant's son, does not meet the definition of "tenant", either under the Manufactured Home Park Tenancy Act, nor the Residential Tenancy Act. An occupant is not in a landlord/tenant relationship with the park owners and therefore as no status, rights nor responsibilities under either Act . That being said, the tenant is responsible for the conduct of their guest or occupants sharing their home.

Given the above, I find it necessary to cancel the One Month Notice.

In cancelling this Notice, I encourage the parties to communicate with respect to mutually agreeing on what terms are included in this tenancy agreement and put something in writing that they would both be willing to sign.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of June 8, 2011 is cancelled and of no force nor effect.

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: July 05, 2011.

Residential Tenancy Branch