



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS, FF

Introduction

The Tenant's application included the name of another person, her daughter (J.M.) as a tenant. However the Parties confirmed (and I find) that only S.S. is a Tenant and that for this reason, J.M. should not have been named as a Party to these proceedings. Consequently, the style of cause is amended by removing J.M. as a Party.

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated June 27, 2011, for an Order allowing the tenant to assign or sublet and to recover the filing fee for this proceeding. During the hearing, the Tenant said she was not seeking an Order to assign or sublet the rental unit and as a result, that part of her application is dismissed.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started approximately 8 ½ years ago. The Landlord is the owner of the rental unit and the manufactured home park in which it is located. The current Landlord purchased the manufactured home park approximately 5 years ago.

The Landlord said the Tenant's daughter moved in with her in November or December 2010 along with a dog. The Landlord said she gave her verbal consent to this arrangement because the Tenant advised her that it would only be for a short time or until the Spring of 2011. The Landlord said she has received a number of complaints from other residents of the manufactured home park about the Tenant's daughter trespassing in their yards and letting her dog defecate in their yards. The Landlord said that when she has brought these matters to the Tenant's daughter's attention, she has become verbally abusive with her and her assistant manager and made the Landlord fear for her safety. Consequently, the Landlord said on June 27, 2011 she served the Tenant with a One Month Notice to End Tenancy for Cause dated June 27, 2011. The grounds stated on the Notice were as follows:

- The Tenant or a person permitted on the property by the Tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

There is no written tenancy agreement. Landlord said the Park Rules provide that no pets are allowed and that a Tenant must get the Landlord's consent to have another person reside in the rental unit.

The Tenant said she approached all of the residents of the manufactured park and they indicated in writing that they had no complaints about her daughter or her daughter's dog. The Tenant said she was aware of only one resident in the park that may have complained about her daughter or her dog and argued that this complaint was without merit. In particular, the Tenant denied that she or her daughter had trespassed onto this person's yard or taken any flowers or tomatoes.

Analysis

RTB Policy Guideline #13 – Rights and Responsibilities of Co-tenants differentiates between a tenant and an occupant (or roommate) as follows:

"A tenant is the person who has signed a tenancy agreement to rent residential premises.... Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant."

I find that the parties' (verbal) tenancy agreement was only between the Landlord and the Tenant, S.S. I find that when the Tenant sought the Landlord's approval for her daughter, J.M., to live with her, the Landlord's approval was given on the basis that her daughter would only be residing there for a short time (although unspecified). For this reason, I find that the Tenant's daughter is not a tenant but rather an occupant or roommate of the Tenant's and that accordingly, the Tenant cannot be said to have sublet or assigned her tenancy agreement. Consequently, I find that there is no merit to this ground of the One Month Notice to End Tenancy for Cause.

The Landlord provided **no** evidence that the Tenant or her daughter had in any way jeopardized the health, safety or lawful right of another occupant or the landlord and as a result, I also find that there is no merit to this ground of the One Month Notice.

The Landlord claimed that there had been a number of complaints about the Tenant's daughter disturbing other residents of the manufactured home park but she did not want to disclose the identity of those complainants or particulars that might identify them. The Landlord also claimed that the Tenant's daughter had been verbally abusive to her and her assistant manager. The Tenant claimed that she had written statements from the other residents that they had not made complaints to the Landlord about her daughter. The Tenant admitted that there may have been one resident who had complained but argued that this person was elderly, subject to memory loss and easily agitated when not on medication and was therefore not reliable.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. Given the contradictory evidence of the Parties regarding complaints allegedly made by other residents of the manufactured home park, I find that there is insufficient evidence to conclude that the Tenant or her daughter has significantly interfered with or unreasonably disturbed other occupants of the park. Furthermore, I find that there is no evidence that the Tenant or her daughter have been verbally abusive to the Landlord's assistant manager or to a degree with the Landlord that would warrant ending the tenancy.

As there is insufficient evidence to support any of the grounds set out on the One Month Notice to End Tenancy for Cause dated June 27, 2011, it is cancelled and the tenancy will continue. As the Tenant has been successful in this matter, she is entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee she paid for this proceeding. I order pursuant to s. 72(2) of the Act that the Tenant she may deduct this amount (\$50.00) from her next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenant's application to assign or sublet the tenancy agreement is dismissed without leave to reapply. The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated June 27, 2011 and to recover the filing fee for this proceeding are granted.

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: July 25, 2011.

Residential Tenancy Branch