

Decision

Dispute Codes: CNC, AS, FF

Introduction

This hearing was convened in response to the tenant's application for cancellation of a notice to end tenancy for cause / authority to assign or sublet because the landlord's permission has been unreasonably withheld / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act

Background and Evidence

The tenant owns the manufactured home, and rental of the manufactured home site began in February 2009. Monthly rent is \$230.00.

Previous hearings have been held in regard to the same general dispute in this tenancy. In summary, the landlord's notice to end tenancy for cause was set aside and the sublet continued. Subsequently, the sublet at issue ended, and on June 17, 2011 the tenant made a new request to the landlord for consent to sublet. By way of response on that same date, the landlord denied the tenant's request as follows:

I am denying your request under sections 48 e, 48 g. Please note that you also have not used the required form for this application, again.

Part 7 of the Regulation addresses **Assignment and Sublease**. Section 48 of the Regulation speaks to **Grounds for withholding consent to a request**. In particular section 48(e) & (g) of the Regulation provide as follows:

48 For the purposes of section 28(2) of the Act [*landlord's consent*], the landlord of the park may withhold consent to assign or sublet only for one or more of the following reasons:

(e) the proposed purchaser or subtenant does not intend to reside in the manufactured home and

(i) intends to use the manufactured home for business purposes, or

(ii) has purchased more than one manufactured home in the landlord's manufactured home park;

(g) the landlord, as a result of being unable to contact one or more references provided under section 44(3)(e),(f) or (g) [*required information*], has insufficient information to make a decision about the request, if the landlord

(i) promptly advised the home owner of his or her inability to contact one or more of those references, and

(ii) made every reasonable effort to contact those references and any references provided by the home owner in place of those references;

In response to the landlord's denial of her request, on June 18, 2011 the tenant informed the landlord in part, as follows:

...the proposed tenant does intend to reside in the unit as her Job is in Invermere, (i) they are not using the unit for business purposes and (ii) do not own another mobile home within the [mobile home park].

...one day of trying to contact the references is not a legitimate excuse to suggest insufficient information to make a decision. You have not made every reasonable effort to contact these references as again, it has only been one day. I have also made contact with the references.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 56 of the Act addresses **Opportunity to settle dispute**. Limited discussion during the hearing around resolution of the dispute failed to lead to a settlement.

Based on the documentary evidence and the testimony of the parties, I find that there is insufficient evidence to support the landlord's claims which are that the subtenant does not intend to reside in the manufactured home, or that the subtenant plans to use the manufactured home for business purposes, or that the subtenant has purchased more than one manufactured home in the manufactured home park.

I further find that there is insufficient evidence to indicate that the landlord undertook to make “every reasonable effort” to contact “one or more references.”

Section 44 of the Regulation speaks to **Written request for consent to assign or sublet**, and sub-section 44(3) sets out what information must be provided in such a request. Related to the request, the Residential Tenancy Branch (“RTB”) produces form #RTB – 25: “Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement.” This form can be downloaded from the RTB website, and a copy is attached to this decision for ease of reference. On page 6 of the form it is noted in part:

The Act does not require a home owner to use this form to request the park owner’s consent to sublet to a proposed subtenant; however, the park owner can require that this form be used and may refuse consent to a sublet if the request is made in some other form.

I find that while the landlord has made reference to “the required form,” it is not clear whether the reference is to his personal requirement, or to a presumed requirement of the legislation. In any event, I find there is insufficient evidence that the landlord has specifically instructed the tenant that he requires this form to be used in making a request for consent to sublet, and that failure to use it will lead to denial of a request.

Notwithstanding that the tenant proceeded to sublet after her request for consent was denied by the landlord, and before filing her application for dispute resolution, I find that the landlord’s permission to sublet has been unreasonably withheld, and that he has therefore not established entitlement to an order of possession for cause.

Conclusion

Following from all of the above, the 1 month notice to end tenancy for cause is hereby set aside, with the effect that the tenancy / the sublet continue in full force and effect.

I hereby ORDER that the tenant may recover the \$50.00 filing fee by way of withholding this amount from the next regular payment of monthly rent.

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*.

DATE: August 18, 2011

Residential Tenancy Branch