



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to allow her to rent her mobile home to another occupant.

The hearing was conducted via teleconference and was attended by the tenant only. While the landlord did submit a letter directly to this hearing, she did not attend. The landlord did not provide a copy of her letter to the tenant.

The tenant testified that she served the landlord with Notice of Hearing documents for this dispute by registered mail on August 22, 2011. Based on the landlord's submission, I find the landlord was adequately and sufficiently served for purposes of this hearing and in accordance with the *Manufactured Home Park Tenancy Act (Act)*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to rent her manufacture home to another occupant, pursuant to Sections 1, 28, 32, and 40, of the *Act*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by both parties on July 26, 2010 for a tenancy beginning on August 1, 2010 for monthly pad rental of \$225.00 due on the 1st of each month.

The tenant provided a copy of the park rules issued by the landlord showing the tenant reviewed and initialled each page. While all of the rules are typewritten there is one on the last page that is handwritten that reads: "Tenants may not sublet or rent mobile home #14".

The tenant acknowledges that she wrote this rule and initialled it at the landlord's request when they were signing the tenancy agreement. The tenant testified that she was unaware if a similar clause appeared in all of the other tenants' park rules. The tenant also testified that she was not aware of any other tenants renting their manufactured homes out, in the park.

The tenant testified that she understood that if allowed to rent her manufactured home to another person and should that person breach any of the terms of her current tenancy agreement with the landlord the tenant would be held responsible.

The letter submitted by the landlord indicates the tenant signed a copy of the park rules when she purchased the manufactured home; that she has explained to the tenant why she is not willing to change the rule; and that if the tenant does rent her manufactured home out the landlord will issue an eviction notice.

Analysis

As the letter submitted by the landlord was not served to the tenant in accordance with the Residential Tenancy Branch Rules of Procedure and the landlord was not in attendance at the hearing I find I cannot place any evidentiary weight on the letter.

Section 28 of the *Act* states that a tenant may assign a tenancy agreement or sublet a *manufactured home site* if the tenant has received the landlord's prior written consent; is deemed to have obtained the consent if the landlord has not responded to a written request within 10 days; has obtained an order of the director authorizing the assignment or sublease; or the tenancy agreement authorizes the assignment or sublease.

Section 1 defines "manufactured home" as a structure that is designed, constructed or manufactured to be moved from one place to another by being towed or carried, and used or intended to be used as living accommodation. The same section defines "manufactured home site" as a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purposes of being occupied by a manufactured home.

From the evidence and testimony presented, I find the tenant was not seeking to assign or sublet her "manufactured home site" (as defined above) but rather to rent her "manufactured home" (as defined above). As such, I find that Section 28 is not relevant to this matter.

Section 40 of the *Act* allows a landlord to end a tenancy for, among other things, not complying with the requirements under Section 28. As I have found that Section 28 is not relevant to the matter before me, I find the landlord would not be able to end the tenancy for this cause.

Section 32 of the *Act* allows a landlord, where there is no park committee, to establish "Park Rules" that are in accordance with the regulation. Section 29 of the Manufactured Home Park Tenancy Regulation (Regulation) states that prior to a person entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement.

Section 30(3) of the Regulation also stipulates that a rule established is enforceable against a tenant only if, among other things, the rule applies to all tenants in a fair manner.

I find there is no evidence or testimony from the landlord confirming that all tenants must abide by the rule written into this tenant's park rules that states: "Tenants may not sublet or rent mobile home #14". As such, I cannot determine if the park rule is compliant with the requirement in the Regulation to apply to all tenants in a fair manner and therefore I find it is unenforceable.

Conclusion

Based on the above, I grant the tenant's Application and order the landlord may not end the tenancy based solely on the tenant renting her manufactured home to another occupant. I note that this tenant remains responsible for all of her obligations under the current tenancy agreement and enforceable park rules.

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: September 20, 2011.

Residential Tenancy Branch