



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC and FF

Introduction

This application was brought by the tenant seeking an order for the landlord to comply with the rental agreement and legislation after the landlord presented her with a document that would waive her future right to enter into a sub-tenancy agreement.

Issue(s) to be Decided

This matter requires a decision on whether the tenant's right under the rental agreement and park rules and regulations, in effect at the beginning of the tenancy, continues if park rules are amended to prohibit subletting.

Background and Evidence

The rental unit in question occupies one of 135 sites in the manufactured home park. The tenancy has been under way since August 1, 2005 and pad rent is currently \$384 per month.

The tenant has recently moved into a seniors' residence. Her daughter gave evidence that, after two sales were lost, the tenant sought to obtain consent of the landlord to enter into a sublet agreement.

As a matter of note, that landlord has now authorized a sublet and the sub tenant is currently residing in the rental unit.

However, during communication with the landlord on her seeking consent, the tenant was presented with a document dated October 25, 2011 which by her signature would acknowledge that no future sub-lets would be permitted.

The document gives consent for a named renter, but includes the following paragraph:

“Please take notice that [name of park] intends to disallow subletting in the future. This protects the community from unruly renters.”

By reply of October 26, 2011, the tenant advised that she declined to sign the document and indicated her opposition to such a change.

Analysis

Subletting of rental units is governed by section 28 of the *Act* which provides as follows:

- (1) 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 tenant submits a copy of Schedule C from the Park Rules and Regulations and points to item 22 which expresses the right to sublease with landlord consent.

Part 7 of the Regulations prescribes the forms and requirements with respect to a tenant's application for landlord consent and set time limits and the parties were directed to the section of the Residential Tenancy Office website where the *Act*, *Regulations*, forms and fact sheets may be obtained.

Regulation 48, in listing the reasons a landlord may decline an application for a sublease includes a tenancy in which the tenant “has ...agreed in the tenancy agreement not to sublet.”

That that does not appear to be the case in the present application, although I cannot say so definitively as I do not have a copy of the full rental agreement. In addition, there is no mechanism within the *Act* under which I can proffer an opinion on a proposed change to a park rule and to do so would compromise the boundary between adjudication and advocacy.

However, the question is not a matter of urgency at the moment as there is a sub-tenant in place and the tenant remains at liberty to apply for dispute resolution in future if the landlord withholds consent on a future application.

I decline to award the filing fee for this proceeding as the issue has, for the moment, been resolved without the necessity of dispute resolution.

Conclusion

The order requested in the application is moot as the tenant's application to the landlord for consent to enter into a sublet agreement has been granted and the sub tenancy is in place.

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: November 22, 2011.

Residential Tenancy Branch