

Decision

Dispute Codes: CNC, MNDC, FF / OPC

Introduction

This hearing was convened in response to the tenant's application for cancellation of a 1 month notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated and / or were represented in the hearing and gave affirmed testimony. During the hearing, legal counsel representing the landlord confirmed that the landlord seeks an order of possession pursuant to issuance of the notice to end tenancy.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on June 1, 2011. The only person named as a tenant on the tenancy agreement is the subject tenant / applicant. Monthly pad rent of \$335.00 is payable in advance on the first day of each month.

The landlord issued a 1 month notice to end tenancy for cause dated November 14, 2011. The tenant filed an application to dispute the notice on November 21, 2011. A copy of the notice was submitted into evidence. Reasons shown on the notice for its issuance are as follows:

Breach of a material term of the tenancy agreement that was not corrected 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

Clause # 9 of the tenancy agreement addresses "assign or sublet" and provides, in part, that a tenant must obtain the "prior written consent of the landlord of the park" in the event that the tenant wishes to assign or sublet the tenancy agreement. The Park Rules (Revised 2011) further address "subletting" as follows:

Subletting is no longer allowed. Unless you have special written permission from management. If this is done without our knowing we will give warning than [sic] proceed with eviction. Please do not try to bypass this procedure as we must know who is living in the park. And they are willing to comply with park rules.

By way of his signature on page 5 of the Park Rules on May 31, 2011, the tenant acknowledged having read them and having undertaken to abide by them.

Subsequently, the landlord issued a Warning Notice dated October 28, 2011. In short, the notice alleges that the tenant has either sublet or rented the unit. The date specified in the notice by when the alleged violation must be resolved is November 1, 2011.

A second Warning Notice dated November 7, 2011 was issued for the same reasons set out above. The date specified in this notice by when the alleged violation must be resolved is November 14, 2011.

Thereafter, a third Warning Notice dated November 22, 2011 was issued. Further to the reasons set out in the above two notices, this notice also alleges that the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

None of the three particular allegations, as set out immediately above in the third notice, comprise any aspect of the 1 month notice to end tenancy.

Prior to any of the above notices, a Warning Notice dated August 26, 2011 was issued for a matter unrelated to assignment or subletting. In short, the tenant was instructed to "cut your grass & maintain your yard." It is understood that this concern was remedied in a timely manner.

It is understood that the landlord's allegation around assignment and subletting arises out of the presence of the tenant's stepson at the unit. The tenant testified that while he has not either assigned or sublet the tenancy agreement, his stepson stayed in the unit on a temporary basis during the limited period from October 17 to November 27, 2011. The tenant stated that he was helping his stepson during the period in question until his stepson was able to find his own accommodation. The tenant also testified that he himself continued to pay the pad rent even while he was not living in the unit, and that

he collected no rent from his stepson. The tenant further testified that his stepson did not stay overnight in the unit for each and every one of the days falling within the aforementioned period.

While the tenant identified his understanding which is that the landlord is also concerned about overnight stays in the unit by his spouse, legal counsel for the landlord clarified during the hearing that the landlord does not in fact have such a concern.

The tenant stated that no one presently resides in the unit and that it is for sale.

Neither the park manager nor the park owner gave direct testimony during the hearing. Rather, legal counsel acting on their behalf represented the landlord's position.

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 40 of the Act speaks to **Landlord's notice: cause**, and provides in part as follows:

40(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(g) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(h) the tenant purports to assign the tenancy agreement or sublet the manufactured home site without first obtaining the landlord's written consent or an order of the director as required by section 28 [*assignment and subletting*];

Section 40(4) provides that a tenant "may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice." I find that the tenant's application was filed within the 10 day period available.

Section 28 of the Act speaks to **Assignment and subletting**, and provides:

28(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.

Part 7 of the Regulation addresses **Assignment and Sublease**, and section 42 of the Regulation includes the following definitions:

“assign” means to assign a home owner's tenancy agreement to a purchaser under section 28(1) of the Act [*assignment and subletting*];

“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.

Further to the above, Residential Tenancy Policy Guideline # 19 speaks to “Assignment and Sublet.”

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant's stepson stayed in the unit on an *ad hoc* basis during the period from October 17 to November 27, 2011. I also find that the tenant's stepson was the only person residing in the unit during that time, that he did not stay overnight on each of the days falling within this period, that he did not pay rent to the tenant, and that the tenant himself continuously paid rent to the landlord pursuant to the tenancy agreement. Following from the foregoing, I find that the tenant did not either assign or sublet the tenancy agreement. In the result, as the landlord has provided insufficient evidence to support the existence of cause identified in the 1 month notice to end tenancy, the landlord's notice is hereby set aside, the landlord's request for an order of possession is hereby dismissed, and the tenancy continues uninterrupted.

Section 65 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's claim in the amount of \$800.00, which arises variously for costs such as wage loss, fuel, and "time spent picking up notices, phone, making up documents" is hereby dismissed.

Section 22 of the Act speaks to **Protection of tenant's right to quiet enjoyment**. On a balance of probabilities, I find there is insufficient evidence before me on this occasion to prove that the tenant's entitlement to this statutory provision has been breached. Accordingly, the tenant's application for compensation of \$400.00 is hereby dismissed.

However, as the tenant has succeeded in his application to have the notice to end tenancy set aside, I find that he has established entitlement to recovery of the full filing fee of \$50.00.

Conclusion

The landlord's 1 month notice to end tenancy for cause is hereby set aside.

The tenancy continues in full force and effect.

I 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 *Residential Tenancy Act*.

DATE: December 8, 2011

Residential Tenancy Branch