

DECISION

Dispute Codes AS, FF

Introduction

This is an application filed by the Tenant to be allowed to assign or sublet because the landlord's permission has been unreasonably withheld and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. It was confirmed with both parties that no evidence was submitted other than the Tenant's copy of the 1 month notice to end tenancy for cause dated April 18, 2012. It was clarified by both parties that the application for dispute by the Tenant was to cancel the notice to end tenancy.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for cause?

Background and Evidence

Both parties agree that the 1 month notice to end tenancy for cause dated April 18, 2012 was served on the Tenant on April 19, 2012. The notice displays an effective date of May 19, 2012 and 1 reason for cause. "Tenant has assigned or sublet the rental unit/site without the Landlord's written consent.

The Tenant seeks to cancel this notice as he states that his brother is living in the unit without paying any rent. The Landlord disputes this stating the Tenancy Agreement and Park Rules have a "No Sublet" condition. The Tenant states that he has not looked at both documents for some time and cannot comment on it. The Tenant stated that he notified the Landlord on April 3, 2012 that his brother would be living in the empty unit without paying any rent. The Landlord disputes this stating that no such message was received and that all of the messages are logged and that there is no record of such a message in the log.

Analysis

Section 52 of the Manufactured Home Park Regulations states,

Assigns and subtenants

52 An assign or subtenant must comply with the rules that are in effect at the time of, or after, entering into the assignment or sublease.

Neither party has submitted a copy of the Tenancy Agreement or the Park Rules. The Landlord states that there is a “No Sublet” clause which is not disputed by the Tenant.

Section 28 of the Manufactured Home Park Tenancy Act states,

Assignment and subletting

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.

Both parties agree that the Tenant did not obtain prior written consent of the Landlord to sublease the home. The Tenant has not obtained an order of the director authorizing the sublease nor has the Tenant shown that the Tenancy Agreement authorizes the sublease. As the Tenant has failed to provide any relevant evidence, I find in absence of this that the Landlord's claim that “no sublets” is a condition of the tenancy and park rules.

The Tenant has failed in his application to cancel the notice to end tenancy for cause and application is dismissed without leave to reapply. The notice dated April 18, 2012 is upheld.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: May 14, 2012.

Residential Tenancy Branch

