



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

### Background and Evidence

The tenant has had a manufactured home on the rental site since November 1, 2002. The parties executed a written tenancy agreement for a fixed term tenancy to commence April 1, 2007 and expire March 31, 2010. The tenancy agreement did not require the tenant to vacate the rental unit at the end of the fixed term. Rather, the tenancy agreement provided that "the Parties may by written agreement, continue the tenancy for another fixed length of time." The parties did not enter into any written agreement to continue the tenancy for another fixed length of time.

On September 6, 2012 the landlord mailed a 1 Month Notice to End Tenancy for Cause with an effective date of October 31, 2012 by registered mail. The reason for ending the tenancy, as stated on the Notice, is that:

- the tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that it was determined during a site visit in August 2012 that two male occupants were residing in the tenant's manufactured home. The landlord submitted that at the end of the fixed term the tenancy agreement continued on a

month-to-month basis and that clause 13 of the tenancy agreement prohibited subletting. Clause 13 states:

**13. Subletting the home:**

*The Tenant understands and agrees that no subletting of the manufactured home will be permitted at any time during this tenancy or on this site.*

The last page of the tenancy agreement also includes terms, including a section called “Assign or Sublet” that is similar to the requirements of the Act.

The tenant argued that the tenancy agreement has expired and that the provisions of the tenancy agreement no longer apply. Rather, the tenant submitted that the requirements of the Act apply.

The tenant acknowledged that starting in May 2012 he moved to Ontario and began renting out his manufactured home. The tenant also moved to Ontario for the summer months of 2011 but did not rent out his manufactured home and when he returned it was mouldy, which is why he rented it out this year. The tenant stated that he intended to return to the manufactured home in the new year.

The tenant stated that he went to the landlord’s office on four occasions in April 2012 and that it was closed when he went there. When he called the landlord’s office he received a message that the office was closed for holidays. The tenant acknowledged that he has the landlord’s service address but did not send the landlord a written request for consent to sublet.

The tenant argued that the landlord knew that the tenant had sublet the rental unit as early as May 2012 when the landlord and tenant had a telephone conversation and that the landlord indicated this breach would be used to entice the tenant to enter into another fixed term tenancy agreement. The tenant also argued that the delay in issuing a Notice to End Tenancy implies the landlord had consented to the subletting of the site.

Analysis

Section 28 of the Act provides for assignment and subletting which I have reproduced below.

### **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.

[my emphasis added]

The Manufactured Home Park Regulation (the Regulations) define the terms “assign” and “sublet”. In the case before me, I find that the tenant has sublet the site and the provisions applicable to subletting apply.

The tenant argued the tenancy agreement entered into in 2007 no longer applies. The landlord argued that the tenancy agreement continued on a month-to-month basis after the expiry date. I accept the landlord's argument as correct based upon section 37 of the Act, which provides:

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the manufactured home site on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Since the tenancy agreement did not require the tenant to vacate the rental site at the expiry of the fixed term and the parties did not enter into a new tenancy agreement, pursuant to section 37(3) the parties are deemed to have renewed the tenancy agreement as a month-to-month tenancy on the same terms recorded in the tenancy agreement.

Although the landlord pointed to clause 13 of the tenancy agreement in support of the landlord's position, the landlord did not indicate on the Notice to End Tenancy that the landlord was ending the tenancy for breach of a material term. Therefore, I find it unnecessary to consider whether clause 13 is enforceable under the Act; however, I caution the landlord that any term that conflicts with the Acts or Regulations is not enforceable.

Upon review of the tenancy agreement I find that there is no provision authorizing the tenant to sublet. Nor did the tenant have the authorization of the Director to sublet. Therefore, the requirements of section 28(1)(a) apply.

The landlord indicated on the Notice to End Tenancy that the landlord was ending the tenancy because the tenant did not obtain prior written approval to sublet the site. Therefore, the issue is whether the tenant violated section 28(1)(a) of the Act.

In order to obtain consent to sublet the tenant under section 28(1)(a) the tenant must make a request in accordance with the requirements of the Regulations.

Section 44 of the Regulations detail several criteria in order for the tenant to request consent to sublet, including: the requirement that the tenant make the request in the approved form and submit it to the landlord with sufficient time prior to the proposed sublet date. In this case, the tenant undeniably did not submit the required information in the approved form to the landlord at any time. Therefore, I find the tenant violated section 28 of the Act.

A violation of section 28(1)(a) of the Act is basis for a landlord to end the tenancy by issuing a Notice to End Tenancy under section 40(1)(h). Section 40(1)(h) provides that a landlord may issue a 1 Month Notice where:

- (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];*

I reject the tenant's position that the tenant had the landlord's implied consent to sublet as unsubstantiated. Although the Act and Regulations provide for "deemed consent" by a landlord, this provision applies where the landlord does not respond to the tenant's written request to sublet in the approved form.

In light of the above, I find the landlord had the right to issue the Notice to End Tenancy as the tenant breached section 28 of the Act and the tenant has not established a basis for me to cancel the Notice under the Act. Therefore, I uphold the Notice with the effect that this tenancy ends October 31, 2012.

The landlord did not request an Order of Possession during the scheduled hearing; however, the landlord is at liberty to file an Application for Dispute Resolution seeking such an order if necessary.

### Conclusion

The tenant's request to cancel the Notice to End Tenancy has been dismissed. The Notice to End Tenancy has been upheld and the tenancy ends October 31, 2012.

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: October 24, 2012.

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Residential Tenancy Branch