



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Riverdale Trailer Court Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, CNC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the *Manufactured Home Park Tenancy Act (the "Act")* seeking an order allowing the tenant to assign because the landlord's permission has been unreasonable withheld, seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), and for recovery of the filing fee.

The parties appeared, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Matters-

#1-The listed applicants/tenants are not the original tenants listed in the relevant tenancy agreement, which is still the prevailing tenancy agreement in this matter. I have, however, allowed the applicants to proceed with their request to cancel the Notice and to have the tenancy agreement assigned due to the applicant, SC, signing the application for dispute resolution as a representative of the original tenant. I therefore concluded that the applicants were the agents of the original tenant.

#2-The parties were previously in dispute resolution on these same issues. In a Decision of April 8, 2013, another Arbitrator cancelled the landlord's 1 Month Notice to End Tenancy for Cause as it was not provided into evidence and declined to order an assignment of the tenancy agreement as the tenant failed to provide a Request for Consent to Assign a Manufactured Home Site Tenancy Agreement.

The Decision went on to state that the tenant's agent was advised of the obligation and the tenant's agent responded that she would obtain the approved form and serve a copy on the landlord as soon as possible.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the Notice to End Tenancy?
2. Is the tenant entitled an order allowing the tenancy agreement to be assigned?

Background and Evidence

Included in the tenant's relevant evidence was the following:

1. A written summary of her position supporting her application;
2. RTB form 10, which is a Request for Consent to Assign a manufactured home site tenancy agreement (Request) completed and signed by the tenant;
3. The landlord's written response to that Request;
4. Cancelled cheques for pad rent from January through April 2013, from the tenant's agents;
5. The Notice; and
6. The previous dispute resolution Decision

Included in the landlord's relevant evidence was the following:

1. A tenant application, dated February 18, 2013, for the manufactured home pad site in question, signed by the tenant's agent and her spouse;
2. A statement from the caretaker, who was the representative of the attending landlord during the winter months while the landlord was away from the country;
3. A tenancy agreement prepared and signed by the tenant's agent and her spouse, proposing to begin a new tenancy at the manufactured home pad site in question, on March 1, 2013;
4. A call history concerning the landlord's phone; and

5. The tenancy agreement in question, signed in April 2012, for a tenancy to start on April 26, 2012, for a monthly pad rent of \$386.

As it is the landlord's obligation to support his 1 Month Notice, pursuant to the Residential Tenancy Branch Rules of Procedure (Rules), the landlord proceeded first in the hearing.

The landlord confirmed that he was out of the country during February 2013, the time period during which the tenant's agent and her spouse began moving into the manufactured home, owned by her mother.

The landlord said that during February 2013, the tenant's agent and her spouse began moving their personal property into the manufactured home and took legal ownership of the manufactured home. Also the tenant's agent submitted an application for tenancy, and this document was submitted to the landlord's agent, the caretaker, who was in charge of the property in the landlord's absent. It is noted that the landlord is an agent for the owner of the property.

The landlord contended that the move into the manufactured home and assumption of legal ownership was without the approval of the landlord.

In response the tenant's agent said that the Arbitrator in the previous hearing stated that the matter of an assignment could easily be dealt with with the submission of the Request for Assignment on the approved form.

The tenant's agent said that the manufactured home park was run by two people, the caretaker and the attending landlord. The caretaker, representing the landlord in the time period in question, accepted the January and February pad rent payments and was the only landlord she dealt with. The caretaker was aware of the sale of the manufactured home and the tenant's agent and spouse moving into the manufactured home and never indicated that they would not be approved.

The tenant's agent stated that she submitted an application for tenancy, but never received a response from the landlord.

The tenant said that earlier in the year, there was no one living in the manufactured home as her mother had a terminal illness and was required to leave for care.

As to the issue of assigning the lease, the landlord agreed he received the Request signed by the tenant on or about April 9, 2013, and that he refused to sign the approval

on the ground that it was his opinion that the proposed tenants are unlikely to comply with the tenancy agreement.

In support the landlord said that the proposed tenancy agreement submitted by the proposed tenants, the tenant's agent and her spouse, listed that 3 cars were permitted, when the original tenancy agreement permits only 2 cars. Additionally the landlord said that the proposed tenants are in violation of the no pet policy of the park and that the proposed tenants have made alterations to the manufactured home and manufactured home pad site in contravention of the tenancy agreement.

In response, the tenant's agent said that the proposed new tenancy agreement, which was submitted to the caretaker along the application for tenancy, contained a blank for the number of permitted cars, and that she filled in the number 3 as her spouse had a motorcycle.

The tenant's agent also said that the no pet policy was discretionary in that there were several pets living in the park and as well, her cat was 12 years old, is never outdoors, and will never be outdoors.

As to the alterations, the tenant's agent said that they have been completing repairs for nearly a year, all in plain sight of the landlord and not one word was said.

The tenant's agent also submitted that the caretaker held on to their application for tenancy and the proposed tenancy agreement throughout this time period and never responded to the tenants about acceptance of the tenancy; however, the landlord never expressed that there would be a problem with the tenancy.

Analysis

After considering the relevant oral and written evidence, and upon a balance of probabilities, I find as follows:

1 Month Notice- Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

After considering all of the evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the cause listed on his Notice. In reaching this conclusion I was persuaded by the timing of the Notice as I find that the matter of the assignment of the tenancy agreement was an issue at the previous dispute resolution hearing. The Decision from that dispute resolution hearing shows that

the Arbitrator instructed the tenant of the requirement to serve the landlord with the proper Request for Consent to Assign a Manufactured Home Site Tenancy Agreement before an assignment could be considered and/or ordered by an Arbitrator.

The Decision also shows the clear intent of the tenant to obtain and submit that form to the landlord, which I find that she so did. As such, I find it clear that the parties were aware that the tenant would be seeking such an assignment; however, in a preemptive move, the landlord served another Notice on the tenant's agents directly after the hearing.

I also considered that the tenant's agents sought to obtain the landlord's permission to enter into a new tenancy agreement by submitting an application for tenancy; however the landlord never responded to the application, to the detriment of the tenants.

I also find that the evidence shows that the landlord's agent was well aware of the circumstances of the tenant's declining health and that the tenant's agents had moved into the manufactured home by January 2013, accepted pad rent from the tenant's agents, and yet said nothing.

I do not accept that the landlord's agent could not act for the landlord in the landlord's absence from the country, and I find that the landlord's agent actions implied acceptance of the tenant's agents' tenancy.

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the cause listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued April 8, 2013, for an effective move out date of May 13, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Assignment of the tenancy agreement-

Residential Tenancy Branch Policy Guideline #19 states that an assignment is the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. In a manufactured home site tenancy, an assignment usually coincides with the sale of the manufactured home.

Under section 28 of the Act, the tenant may assign a tenancy agreement with the landlord's prior written consent. 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.

Section 48 of the Regulations to the *Manufactured Home Park Tenancy Act* states, in relevant part, that "For the purposes of section 28(2) of the Act [*Landlord's consent*], the landlord of the park may withhold consent to assign or sublet only for one or more of the following reasons:

- (a) The request is for consent to assign, and
 - (i) the landlord, on the basis of relevant information, has reasonable grounds to conclude that the purchaser is unlikely to comply with the tenancy agreement or applicable rules (*as is the case here*)

In the case before me, the landlord contended that he believed the proposed tenants did not intend to follow the park rules and the tenancy agreement terms, as shown by the tenants' proposed tenancy agreement, which differed in some parts from the original tenancy agreement.

In reviewing the evidence before me, I find that the tenants' proposed tenancy agreement was based upon an attempted negotiation with the landlord, or rather the landlord's agent in the landlord's absence from the country, to which the landlord never responded. Rather, when the landlord returned to the country, his response was to serve a 1 Month Notice to end the tenancy, rather than respond to what I find to be a good faith effort by the proposed tenants to enter into a new tenancy agreement.

I do not find that the landlord submitted sufficient evidence which would indicate that the proposed tenants would not comply with the tenancy agreement or the park rules, as I find the underlying reason for the landlord's refusal was contained in his statement during the hearing, that the proposed tenants "were stirring things up in the park."

I find that the tenant has, on the balance of probabilities, proven that landlord has unreasonably withheld consent to assign.

I therefore grant the tenant's application and pursuant to section 58 of the Act, I order that the tenancy agreement between the parties, signed in April 2012, for a tenancy

beginning on April 26, 2012, may be assigned and that the landlord may not withhold his consent to the assignment.

I remind the tenant she remains responsible for all of her obligations under the current tenancy agreement and enforceable park rules and that any assignment would be under the same terms and conditions as the original tenancy agreement.

I find merit with the tenant's application and allow recovery of the filing fee of \$50. The tenant is authorized to deduct \$50 from the next monthly pad site rental in satisfaction of her monetary award.

Conclusion

The tenant's application is granted as I have cancelled the 1 Month Notice to End Tenancy for Cause and ordered that the tenancy agreement may be assigned as the landlord is directed that he may not withhold his consent to the assignment.

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: May 17, 2013

Residential Tenancy Branch

