



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Shepherd's Inn Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: AS, FF
OPL

Introduction

This hearing was scheduled in response to the tenant's application for permission to assign or sublet because the landlord's permission has been unreasonably withheld / and for recovery of the filing fee.

In the landlord's documentary submission, the landlord requests that the tenant's application be dismissed, and that an order of possession be issued in favour of the landlord.

Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

It is understood that the subject manufactured home park (the "park") was created in approximately 1982, and that there are presently about 12 manufactured homes (the "trailers") located there. "KK," the original owner of the subject trailer, died on November 17, 2012, and there is no written tenancy agreement for the tenancy which began around 10 years ago.

The tenant / applicant is "KK's" daughter. In the tenant's application she states that she "has a duty to deal with the property in question on behalf of her seven siblings and herself as beneficiaries under her father's will." No one presently resides in the trailer, and while monthly manufactured home site rent is \$155.00, the park has not assessed any rent since "KK's passing.

It is further understood that residents in the park have in common a membership in the faith based organization (the “church”) that owns / manages the park. The tenant claims that her attempts to either assign or sublet have been frustrated by the landlord, as the landlord takes the position that any future resident of the trailer must also be a member of the church.

The articulated student representing the landlord confirmed that there are no written park rules. Further, the articulated student confirmed that the landlord does not take the position that the park falls outside the jurisdiction of the Act or the Regulation.

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

At the outset, below the attention of the parties is drawn to certain specific provisions of the legislation.

Section 5 of the Act provides that **This Act cannot be avoided:**

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 12 of the Act provides that **Tenancy agreements include the standard terms:**

12 The standard terms are terms of every tenancy agreement

(a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and

(b) whether or not the tenancy agreement is in writing.

Section 28 of the Act addresses **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;

(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 speaks to **Assignment and Sublease** (sections 42 to 52):

Section 42: **Definitions**

Section 43: **Providing tenancy agreement and rules**

Section 44: **Written request for consent to assign or sublet**

Section 45: **Response within 10 days**

Section 46: **Deemed consent if no response within 10 days**

Section 47: **Request to assign or sublet that does not comply**

Section 48: **Grounds for withholding consent to a request**

Section 49: **Effect of assignment**

Section 50: **Effect of sublease**

Section 51: **Terms of sublease**

Section 52: **Assigns and subtenants**

Further, Residential Tenancy Policy Guideline # 19 addresses "Assignment and Sublet."

Based on the documentary evidence and testimony, I find that the tenant has not presently requested the landlord's written consent to assign or sublet pursuant to the above statutory provisions. Accordingly, the principal aspect of the tenant's application is hereby dismissed with leave to reapply. Following from this, the tenant's application to recover the filing fee is hereby dismissed.

In relation to the landlord's request for dismissal of the tenant's application pursuant to written submission, section 55 of the Act addresses **Director's authority respecting dispute resolution proceedings**, in part as follows:

55(4) The director may dismiss all or part of an application for dispute resolution if

- (a) there are no reasonable grounds for the application or part,
- (b) the application or part does not disclose a dispute that may be determined under this Part, or
- (c) the application or part is frivolous or an abuse of the dispute resolution process.

I find there is insufficient evidence that the tenant's application or part is frivolous or an abuse of the dispute resolution process. Further, as noted above, the main aspect of the tenant's application is dismissed but with leave to reapply.

As to the landlord's request for an order of possession, section 48 of the Act speaks to **Order of possession for the landlord**. Having considered that circumstances of this dispute, I find that there is presently no evidence of grounds to support issuance of an order of possession in favour of the landlord.

Conclusion

The main aspect of the tenant's application is hereby dismissed with leave to reapply. The tenant's application for recovery of the filing fee is hereby dismissed.

The landlord's request that the tenant's application be dismissed, and that an order of possession be issued in favour of the landlord, are both hereby declined.

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 02, 2013

Residential Tenancy Branch

