



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Seabreeze MHP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPB, OPC
 Tenant: CNC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; her agent and the tenant and his witness.

At the outset of the hearing the landlord clarified that they were seeking an order of possession primarily based on the notice to end tenancy and the tenant subletting the manufactured home site and that the breach of the agreement was related to the tenant breaching the relevant clauses in the tenancy agreement and park rules. However, I note that neither party provided a copy of either the tenancy agreement or park rules.

Also at the outset of the hearing the tenant submitted that the landlord had deliberately delayed providing him with her Application for Dispute Resolution and her evidence and that he did not receive it until November 14, 2014 even though the landlord filed her Application for Dispute Resolution on October 15, 2014.

The landlord submits that she only provided the tenant with a mailed copy of her Application for Dispute Resolution and evidence to him at his out of province residence as a courtesy and that she had delivered the package to the manufactured home site on November 7, 2014 and posted it on the door of the manufactured home.

I note the tenant had provided the landlord with a service address on his Application for Dispute Resolution that was for his out of province residence. The landlord confirmed that she had received the tenant's Application for Dispute Resolution on or about October 10, 2014, before she submitted her on Application.

Section 82(2) of the *Manufactured Home Park Tenancy Act (Act)* states that an application for dispute resolution by a landlord seeking an order of possession must be given to the tenant in one of the following ways:

- (a) By leaving a copy with the person;

- (b) By sending a copy by registered mail to the address at which the person resides;
- (c) By leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) By attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) As ordered by the director under section 71 (1).

As such, I find that since the tenant actually resides out of province the landlord could not rely upon Section 82(2)(d) to leave the package attached to the door of the manufactured home. Further, the landlord had been provided with a service address for the tenant that she should have used to serve the package.

In addition, Section 52(3) of the *Act* a party who makes an Application for Dispute Resolution to serve the other party within 3 days of the Application submitting the Application to the Residential Tenancy Branch. However the landlord posted the first package to the manufactured home on November 7, 2014 after applying for dispute resolution on October 15, 2014 or nearly 3 weeks after receiving her hearing documents.

As the landlord has provided no explanation for delaying the service of the hearing package for at least 3 weeks and further after finding the landlord was required to serve the tenant to his out of province address I find it was unreasonable for the landlord to delay serving her Application for Dispute Resolution.

Therefore, I will not consider the landlord's Application for Dispute Resolution as it was submitted. However, because the tenant had applied to dispute a 1 Month Notice to End Tenancy and Section 48 of the *Act* allows the landlord to obtain an order of possession if requested during a hearing if a tenant's Application for Dispute Resolution seeking to cancel a notice is dismissed, I have considered the landlord's request for an order of possession only on the basis of the 1 Month Notice to End Tenancy for Cause and not based on the breach of an agreement.

Further, and despite the landlord's submission of her evidence with her Application I find that the landlord's evidence was served to the tenant 7 days prior to the hearing and as the evidence is in response also to the tenant's Application, I have considered the landlord's evidence.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause, pursuant to Section 40 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the

Application for Dispute Resolution, pursuant to Sections 40, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in July 2002 for a current monthly rent of \$394.00 due on the 1st of each month.

Both parties have submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on September 29, 2014 with an effective vacancy date of October 31, 2014 citing the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The tenant submits that he works out of province and despite having his home for sale between 2008 and 2010 he was unable to sell the home. He states that in September 2014 his sister-in-law moved into the manufactured home with understanding that she will be there is any problems arise with the home. The tenant testified that she does not pay any rent and there is no tenancy agreement between them.

The landlord submits that the tenancy agreement requires that the tenant obtain permission from the landlord prior to subletting and that occupants other than the owner of the manufactured home are not allowed. In addition, the landlord submits the agreement goes on to say that any change in persons living in site must be given to the landlord.

The landlord submits that they have no information about the tenant's sister-in-law as no applications or submissions were provided by the tenant seeking request to approve a sublet. The landlord confirmed rent is still being paid directly from the tenant.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 28.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As it is the landlord seeking to end the tenancy the burden is on the landlord to provide sufficient evidence to establish her cause to end the tenancy.

Black's Law Dictionary – 7th edition defines sublease as a lease by a lessee to a third party, conveying some or all of the leased property for a shorter term than that of the

lessee. It goes on to define lease as granting the possession and use of (land, buildings, rooms, movable property, etc) to another in return for rent.

As the tenant has testified that he has not entered into such an agreement, the landlord has provided no evidence that a lease has been entered into between the tenant and his sister-in-law, I find the landlord has failed to provide sufficient evidence that the tenant has sublet his site to third party.

Conclusion

Based on the above, I find the landlord has failed to establish cause to end the tenancy and I cancel the 1 Month Notice to End Tenancy for Cause issued on September 29, 2014. I find the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 60 in the amount of **\$50.00** comprised of the fee paid by the tenant for his application. I order the tenant may deduct this amount from a future rent payment.

I dismiss the landlord's request for an order of possession.

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: November 21, 2014

Residential Tenancy Branch

