



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: AS, FF

Introduction

This is the tenant's Application for Dispute Resolution seeking an order allowing them to assign or sublet the home because the landlord's permission has been unreasonably withheld.

Issue(s) to be Decided: Is the tenant entitled under the Act or tenancy agreement to assign or sublet the manufactured home?

Preliminary Matters

At the outset of the hearing, the landlord objected to being served with an amended application by the tenant less than 14 days before the hearing, contrary to the Act. After some clarification, it was determined that the tenant's application had not been amended, but the tenant had submitted additional evidence that they served on the landlord on November 12, 2014, 7 days before the hearing.

Although the landlord had already submitted 46 pages of their own evidence, received by RTB on November 7, 2014, the landlord argued that they were not given sufficient time to respond to the tenant's most recent evidence package.

I determined that the tenant's last evidence package consisted of documents that appear not to be relevant to the issues under dispute. The landlord was assured that if this data was later found to be pertinent to the issue under dispute during the hearing, we would then discuss whether or not the landlord would be prejudiced by consideration of the tenant's additional evidence and if so, what action should be taken. The hearing proceeded and the tenant's new evidence was not considered.

Background and Evidence

The tenancy began in July 2004 and the current pad rent is \$399.00 per month. Submitted into evidence were:

- Written statements,
- A copy of the tenant's "APPLICATION FOR TENANCY",

- A copy of a “*MANUFACTURED HOME SITE AGREEMENT*” for a tenancy that apparently was to start on November 7, 2012, which did not identify the tenant by name, but was apparently initialed by the landlord and the tenant’s son,
- A copy of the park’s “*RULES FOR COMMUNITY LIVING*”,
- Copies of communications,
- Photographs,
- Proof of service.

The tenant testified that for the past few years they had been living in a different residence not located in the park and had placed their manufactured home for sale. The tenant testified that they initially allowed their adult son to reside in the home for a time, with the landlord's consent, while the unit was for sale.

The tenant testified that, after their son had vacated, they hoped to advertise and rent their unit to a third-party renter. The unit is still for sale. The tenant testified that they sought no other changes to their tenancy and they intend on retaining responsibility for the pad rent and all other aspects of their tenancy agreement with the landlord.

The tenant stated that after they let the landlord know that they were intending to rent their home, they received a formal letter from the landlord dated September 24, 2014, that states,

“To follow-up on your recent mail and our conversation on Saturday, I would like to confirm that there will be no consent for subletting or renting in (the park)”

The tenants testified that the landlord has unilaterally changed the terms of their tenancy agreement to bar them from subletting. The tenant alleges that the landlord has arbitrarily denied their request to sublet without reasonable consideration and without basing their refusal on reasons permitted under the Act.

The landlord testified that the tenants never signed a tenancy agreement, but the park rules that were originally in place when the tenant first moved in, were given to them. The landlord pointed out that the park rules included a term accepted by the tenants that prohibited subletting.

A copy of the Park rules dated July 27, 2003 was in evidence. This document contains rules governing the common areas of the park.

However, under the heading, “SELLING AND SUBLETTING”, the 2003 park rules also include the following paragraphs:

“3. Residents will not assign or sublet without the written consent and approval of the owner. If owner unavailable the Manager and Park Committee will need to give there approval.

4. Renters must abide by the same rules as owner.” (Reproduced as written)

The tenants pointed out that the 2003 park rules verify that subletting was definitely permitted at that time. According to the tenants there was therefore a recognized term in their verbal tenancy agreement at the start of the tenancy that *did* allow them to sublet with written permission from the landlord. The tenant’s position is that the landlord is now unreasonably withholding consent to sublet and they are seeking an order to force the landlord to comply with the Act.

The landlord pointed out that they have the right to alter the park rules and these rules were recently changed to forbid any subletting. A communication from the landlord issued to park residents on September 20, 2014, states:

“RE: RULE CHANGE FOR CLARITY

In the rules that everyone signed before being accepted as a tenant of the park, about subletting/renting needs to be written clearly. In order to tighten this up we are making the following change:

THERE WILL BE NO SUBLETTING, ASSIGNING OR RENTING ALLOWED IN THIS PARK....WE ARE AN OVER 55 year old OWNER OCCUPIED FACILITY.

This change will be effective October 5, 2014, in accordance with the two-week notice outlined in the Mobile Home Park Tenancy Act.” (Reproduced as written)

The landlord’s position is that they are legally entitled to deny the tenant’s request to sublet based on the verbal tenancy agreement and the park rules.

Analysis

Section 55 (1) of the Act gives an arbitrator authority to determine (a) disputes in relation to which the RTB has accepted an application for dispute resolution, and (b) any matters related to that dispute that arise under **the Act or a tenancy agreement**. (my emphasis)

An arbitrator can may make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act and may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

The definition of "*sublet*" means to sublet the manufactured home site on which the home owner's manufactured home is situated to a subtenant under section 28 (1) of the Act.

Black's Law dictionary defines "subtenant" as "*An under-tenant: one who leases all or part of the rented premises from the original lessee for a term less than that held by the latter.*"

Section 28(1) of the Manufactured Home Park Tenancy Act states that a tenant may 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.** (my emphasis)

In the case before me, I find that the landlord neglected to create a written tenancy agreement and the agreed-upon terms were verbal.

The Manufactured Home Park Tenancy Act defines "***tenancy agreement***" as an agreement, **whether written or oral**, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.

The right to sublet is covered by the Act. As the above excerpt confirms, the Act makes reference to terms of the tenancy agreement.

Section 28(2) of the Act states that 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.

In regard to the tenancy agreement between these parties, I find that neither party submitted a copy of any written tenancy agreement.

Given the above, I find that, whatever verbal tenancy terms were agreed-upon at the time this tenancy was entered into must continue, unless both parties have agreed to change the tenancy agreement. Therefore, I find that if subletting was allowed at the beginning of the tenancy, then it would still be allowed at the present time.

Park Rules

I accept that the landlord provided the tenant with a copy of the park rules when the tenancy began and the rules included a section about subletting.

Section 30(1) of the Regulation states that a park rule may be established if it is reasonable under the circumstances and if it has the effect of promoting the convenience or safety of the tenants, protecting the condition of the manufactured home park, regulating access to, or fair distribution of, a service or facility or regulating pets in common areas. Park rules only regulate the operation of the park. For example this would include rules regarding parking, yard upkeep, pet control, speed limits and use of common areas and facilities.

The landlord or park committee are at liberty to change the park rules and section 30(3) states that a rule established, or the effect of a change or repeal of a rule changed or repealed, is enforceable against a tenant only if the rule applies to all tenants in a fair manner, is clear enough that a reasonable tenant can understand how to comply with the rule, notice of the rule is given to the tenant in accordance with section 29 *[disclosure]*, and the rule does not change a material term of the tenancy agreement.

In the case before me, I find that the question to be answered is whether the landlord can utilize park rules, or change the park rules, to deny the tenant's right to sublet and search for a renter to rent their unit site.

In regard to the park rules, section 32 of the Act provides a park committee or landlord may establish, change or repeal rules for governing the operation of the manufactured home park, provided that none of the rules conflict with the Act or the Regulations.

I find that the Park Rules contain a prohibition against any tenant subletting and renting and that the tenant read, understood and initialled each page of the Park Rules.

However, although mentioned in the park rules, I find that subletting is a tenancy term that pertains to specific contractual obligations formed between this landlord and this tenant as part of their individual tenancy agreement, and would not be a matter related to the general operation of park and the use of facilities or common areas usually governed by park rules. I find that park rules are not a valid substitute for contractual tenancy terms in a written agreement signed by both parties as required under the Act.

In any case, I find that the original Park Rules contained the following section that appears to have allowed for the possibility of subletting:

"SELLING & SUBLETTING"

1. *For Sale signs are limited to one in front of your unit.*

2. *When the unit sells the sign must come down one week after the sold sign has been placed.*
3. *Residents will not sign or sublet without the written consent of the owner. If the owner unavailable the Manager and the Park Committee will need to give there approval.*
4. *Renters must abide by the same rules as owner.”*
(Reproduced as written)

As mentioned, I find that park rules are made to govern the operation of the park and do not contain the actual terms of a tenancy agreement. A tenancy agreement is a contract between a specific tenant and the landlord, setting out the specific agreed-upon rental terms for a particular site.

However, given that subletting was documented in some form as a permitted practice in 2003, I find that on a balance of probabilities, the terms of this verbal tenancy agreement likely included the right to rent to sublet.

I do not accept the landlord's argument that a change to the Park Rules furnishes a blanket prohibition against subletting because altering tenancy terms agreed upon in the tenant's original tenancy agreement cannot be done without the consent of both parties.

I find that the term remains pursuant to section 14(2) of the Act which states:

“A tenancy agreement may be amended to add, remove or change a term, ... only if both the landlord and tenant agree to the amendment.”

I find that the tenant did not consent to any changes to the original tenancy agreement.

I find that under section 28(1)(c) of the Manufactured Home Park Tenancy Act the tenant has a right to sublet a manufactured home site if their own tenancy agreement authorizes the assignment or sublease.

Accordingly, because the tenancy agreement between this landlord and this tenant actually *does* contain a term permitting a tenant to rent out their unit, I find that no new park rule can be implemented to remove this tenancy term.

Section 5 of the Act states that a landlord or tenant may not avoid or contract out of the Act or regulations and any attempt to do so will have no effect.

In addition to the above, I find that under the Act a landlord is not allowed to unreasonably withhold consent to sublet. Section 28(2) of the Act states that 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.

Part 7 of the manufactured home park regulations sets out the steps that must be taken by both the tenant and the landlord with respect to a request to sublet.

Section 44 lists what the tenant must provide to the landlord in making the request and section 48 of the regulation lists the permissible reasons the landlord can rely upon to validly deny the tenant's request for a sublet to a specific renter.

Section 45 of the regulation requires that the landlord respond to the tenant's request within 10 days using the approved form. If the landlord decides to withhold consent I find that the landlord must provide valid grounds as provided under section 48 of the Act as the basis for denying the sublet.

Given the evidence, the Act and the regulations, I find that the tenant has a right to formally request the landlord's consent to sublet to a specific renter. I find that the Act requires both parties to strictly follow the mandatory steps outlined in the Regulation.

I find that the tenant's request must be given due consideration in compliance with the legislation and should not be arbitrarily denied. I further find that the landlord cannot rely on changes to the park rules to avoid the Act.

Accordingly, I hereby order that the landlord also comply with the Act and Regulation in responding to the tenant's future request(s) to sublet.

The tenant is entitled to be compensated the \$50.00 cost of this application and is ordered to deduct this amount from the next rental payment owed to the landlord.

Conclusion

The tenant is successful in the application and the landlord is ordered to duly consider requests to sublet in accordance with the Act and Regulations.

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: December 1, 2014

Residential Tenancy Branch

