



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenants by mailing, by registered mail to where the Tenants reside on April 16, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business on April 20, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated April 13, 2015?

Background and Evidence

The tenancy began approximately 4 years ago. It involves the rental of a manufactured home pad. On April 28, 2011 the parties signed a written tenancy agreement that is 8

pages in length. It provided that the tenancy would start on May 1, 2011. The rent was \$175 per month payable in advance on or before the first day of each month.

Paragraph 13 of that agreement entitled "Subletting the home" was deleted. However, on page 8 of the tenancy agreement there was an Addendum that included the standard terms under the Manufactured Home Park Tenancy Act and included a provision that the tenant may assign or sublet only if the tenant has obtained the prior written consent of the landlord of the Park to the assignment or sublease, or is deemed to have obtained the consent in accordance with the Regulations or the Tenant has obtained an Order of an Arbitrator authorizing the assignment or sublease. The provision further stated that **"The landlord and the tenant must follow the specific procedures when consent is sought. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent (my emphasis)."** The next paragraph states that the landlord cannot unreasonably withhold consent to the assignment or sublet.

The landlord produced an agreement between the landlord and the tenants consent to a sublet to MR dated April 28, 2011. MR has since vacated the rental unit.

In February the landlord received a report of an authorized person occupying the rental unit. He phoned the tenants and again stated the tenant's need for the landlord's written consent before they can rent the manufactured home. The tenants assured the landlord no one was occupying the home. The landlord subsequently called the police as he was out of town. The police were dispatched and they were advised that the people living in the manufactured home had a tenancy agreement with the respondents.

The landlord sent a Caution Notice by regular mail to the tenants. They deny receiving it. The landlord was told that RS and HH were occupying the manufactured home. On April 1, 2015 the landlord sent a second caution. The tenants deny receiving it.

The tenants were contacted by the landlord and told that the occupants did not have permission to occupy and the landlord demanded that the tenants take steps to require them to vacate.

The tenants testified that in early March which they gave the landlord a piece of paper which they thought was sufficient for the landlord was to use to run a credit check in order for him to give his permission.

The landlord objects on the following basis:

- The occupants have already taken possession and respondents failed to make a prior request.
- The handwritten note given by the tenants was not in a form that he could use to conduct appropriate searches.
- The landlord has appropriate application forms which the tenant could have and should have used prior to the occupants taking possession.
- He has experienced problems with occupants in the manufactured home park and determined it was necessary to do searches before he gives his consent.
- The tenants followed the proper procedure and he gave his consent to MR in April of 2011.

Grounds for Termination:

The Notice to End Tenancy relies on section 40(1)(h) of the *Manufactured Home Park Tenancy Act*. That section provides as follows:

Landlord's notice: cause

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(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*];

Section 28 of the Manufactured Home Park Tenancy Act provides as follows:

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.

Section 44, 47 and 48 of the Manufactured Home Park Tenancy Act Regulations provides as follows:

Written request for consent to assign or sublet

- 44** (1) Sections 45 [*response within 10 days*] and 46 [*deemed consent*] apply to a home owner's request for consent to assign or sublet only if the home owner requests the consent of the landlord of the park to assign or sublet in writing in the form approved by the director.
- (2) The home owner must serve the request on the landlord
- (a) in accordance with section 81 of the Act [*service of documents*], and
 - (b) within sufficient time prior to the effective date of the proposed assignment or sublease to allow the landlord to respond under section 45 (1) (c) [*response within 10 days*].
- (3) The written request under subsection (1) must be signed by the home owner and must provide all of the following information:
- (a) the name and address of the home owner making the request;
 - (b) the name and address of the landlord or landlord's agent;

- (c) the proposed effective date for the assignment or sublease;
- (d) the name of the proposed purchaser or subtenant;
- (e) the current address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address;
- (f) if the length of time at the address provided under paragraph (e) is less than 2 years, the previous address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address;
- (g) the names and telephone numbers of two personal references for the proposed purchaser or subtenant;
- (h) the signed consent of the proposed purchaser or subtenant authorizing the landlord to contact the other landlords whose names are provided under paragraphs (e) and (f) and the personal references provided under paragraph (g) for the purpose of verifying or obtaining information relevant to the request to assign or sublet;
- (i) if the manufactured home site is in a park in which every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the *Human Rights Code* [permitted age requirements], the date of birth of the proposed purchaser or subtenant who meets the age requirement and proof of that person's age;
- (j) if the request is for consent to sublet, a statement that the home owner has complied with section 50 (2) [effect of sublease];
- (k) if the request is for consent to assign,
 - (i) the current monthly rent for the manufactured home site,
 - (ii) the effective date of the most recent legal rent increase,
 - (iii) the proposed purchaser's signed consent authorizing the landlord to obtain a credit report on the proposed purchaser,
 - (iv) the proposed purchaser's signed statement that he or she has been informed of and agrees to comply with
 - (A) the tenancy agreement, and
 - (B) the applicable rules,
 - (v) a copy of
 - (A) any part of the tenancy agreement that is in writing, and

- (B) any of the rules that are in written form and that apply to the tenancy of the home owner, and
- (vi) a copy of any outstanding orders or notices given under the Act respecting the manufactured home park site;
- (l) any additional information required by the form approved by the director referred to in subsection (1).

Section 47 and 48 of the Manufactured Home Park Tenancy Act Regulations provides as follow:

Request to assign or sublet that does not comply

- 47** (1) If a home owner's request for consent to assign or sublet does not comply with section 44 [*written request*], the landlord of the park must do one of the following:
- (a) consent to the request;
 - (b) notify the home owner in writing that consent to the request is withheld on one or more of the grounds under section 48 [*withholding consent*];
 - (c) advise the home owner promptly that only a request for consent that complies with section 44 [*written request for consent*] will be considered. (my emphasis)**
- (2) If the landlord withholds consent under subsection (1) (b), the landlord must indicate
- (a) the grounds under section 48 on which he or she is withholding consent, and
 - (b) the source and nature of the information that supports those grounds.

Grounds for withholding consent to a request

- 48** 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, or
 - (ii) the landlord, on the basis of credit information, has reasonable grounds to conclude that the proposed purchaser is unable or unlikely to pay the rent;

- (b) the request is for consent to sublet and the landlord, on the basis of relevant information, has reasonable grounds to conclude that the proposed sublease is likely to result in a breach of the home owner's obligations under the tenancy agreement and rules;
- (c) the request is for consent to sublet and the tenant has agreed in the tenancy agreement not to sublet;
- (d) there is not at least one proposed purchaser or subtenant in a proposed assignment or sublease who meets the age requirement in a park where every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the *Human Rights Code* [permitted age requirements];
- (e) the proposed purchaser or subtenant does not intend to reside in the manufactured home and
 - (i) intends to use the manufactured home for business purposes, or
 - (ii) has purchased more than one manufactured home in the landlord's manufactured home park;
- (f) the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed;
- (g) the landlord, as a result of being unable to contact one or more references provided under section 44 (3) (e), (f) or (g) [required information], has insufficient information to make a decision about the request, if the landlord
 - (i) promptly advised the home owner of his or her inability to contact one or more of those references, and
 - (ii) made every reasonable effort to contact those references and any references provided by the home owner in place of those references;
- (h) the home owner owes the landlord arrears of rent or an amount due under an order of the director;
- (i) the manufactured home does not comply with housing, health and safety standards required by law.

[am. B.C. Reg. 234/2006, s. 9.]

Analysis:

The tenants failed to follow the procedure set out in the Act and Regulations. It is not difficult to see how the landlord might be frustrated with the tenants for the following reasons:

- The tenants failed to obtain the written consent of the landlord prior to the occupants taking possession.
- The tenants failed to comply with the Manufactured Home Park Tenancy Act Regulations and failed to provide a proper request to assign or sublet as required by the Regulations.
- The tenants had previously obtained the consent of the landlord for a previous tenant in 2011. They should reasonably have known what was required.
- The tenants mislead the landlord about the occupants moving in.
- From the landlord's perspective the tenants have ignored the two Caution letters he sent. The tenants testified they did not receive the two Caution Letters. Even if that is so the conduct of the landlord in talking to them on different occasions made it clear that the landlord was requiring the tenants to follow appropriate procedures before he was prepared to give his consent.

However, while the tenants have failed to follow the required procedures I determined that the landlord has also failed. The provisions in the Addendum to the tenancy agreement relied on by the landlord state: **"2. The landlord and the tenant must follow the specific procedures when consent is sought. The landlord must not charge a fee or receive benefit, directly or indirectly, for giving this consent."** I determined the procedures referred to in that section refer to the procedures in the Regulations. I determined the tenants made a request that the landlord consent to an assignment or sublet. In my view a fair reading of section 47(1) of the Manufactured Home Park Tenancy Act Regulations imposes an obligation of the landlord to either:

- (a) consent to the request;
- (b) notify the home owner in writing that consent to the request is withheld on one or more of the grounds under section 48 *[withholding consent]*;
- (c) advise the home owner promptly that only a request for consent that complies with section 44 *[written request for consent]* will be considered (my emphasis).**

The landlord has failed to follow the requirements under section 47(1)(c). In my view would not be appropriate to grant the landlord an Order for Possession where the landlord has failed to comply with the Act and Regulations. It would not be a difficult for the landlord to comply with section 47(1)(c) and wait a reasonable time to see whether the tenant complies. If the tenant complies the landlord could consider the request on its merits. If the tenant does not comply the landlord would be in a position of complying with his obligations under the Act and Regulations and would be at liberty to serve a new one month Notice to End Tenancy.

Determination and Orders:

As a result I ordered that the Notice to End Tenancy dated April 13, 2015 be cancelled. As the Notice has been cancelled there is no basis to grant the landlord's request for an Order for 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: June 03, 2015

Residential Tenancy Branch

