



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Midnight Sun Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AS

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and to allow a tenant to assign or sublet a rental unit.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on June 26, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant allowed to sublet the rental unit?

Background and Evidence

This tenancy started with the owner of the manufactured home, the Tenant, in 2010 and has been sublet on a number of occasions. The present sublet tenant moved into the manufactured home on March 1, 2015 and they have a tenancy agreement with the Tenant’s Agent. The Tenant’s agent is acting for the owner of the manufactured home/the Tenant. There is a tenancy agreement between the Tenant’s agent and the sublet tenants, but there is no agreement with the Manufactured Home Park owner or the Landlord and the sublet tenants. The rent on the pad is \$275.00 per month and the tenancy is on a month to month basis.

The Landlord said the owner of the park served the Tenant’s agent with a 1 Month Notice to End Tenancy for Cause dated June 20, 2015. The Notice was served on June 20, 2015 by fax and email to the Tenant’s agent. The Effective Vacancy date on the Notice is July 31, 2015. The Tenant’s agent has occupants living in the unit and the Landlord’s manager said the Landlord/owner wants to end the tenancy and have the manufactured home moved off the pad and out of the park.

The Landlord's manager continued to say that the reason for issuing the 1 Month Notice to End Tenancy for Cause is that the Tenant's agent did not complete and deliver the application and request to sublet the rental unit to sublet tenants until well after the sublet tenants moved in. The Landlord's manager said she did not know the Tenant's agent's tenants had moved in and she did not know who they were. The Landlord's manager said she received a complaint from another tenant in that Park about the Tenant's sublet tenants and the Manager had to phone the Police. The Manager said the Police said it was a Residential Tenancy matter as there was no violence or criminal activity. The Manager said the owner of the Park makes the decisions about issuing Notices to End Tenancies and he has indicated he wants to end this tenancy.

The Tenant's agent said she gave the sublet tenants the documentations to make the application to sublet on February 10 or 11, 2015. She said she thought the sublet tenants would give the documents to the Manager and they would meet with the Manager. Further the Tenant's agent said that when she did not hearing anything back from the sublet tenants or the Manager she believed the application to sublet was deemed to be approved. The Tenant's agent said she did not do any follow up to make sure the sublet application was accepted.

The Tenant's agent continued to say when she found out the sublet application was never delivered to the Landlord or his agents she made another application which she emailed to the Manager on March 18, 2015. Again the Manager said she did not receive the application so the application was not reviewed and not accepted. The Tenant's agent said that she did not realize this application was not received and so she made another application for sublet on June 5, 2015. On June 20, 2015 the Tenant's agent said she received the Landlord's Notice to End Tenancy for Cause. The Tenant's agent said she was mistaken in not following up on the applications to sublet, but she thought that the first application was deemed to be accepted after 10 days because she did not hear anything from the sublet tenants or the Landlord.

The Tenant's agent said she would like to continue the tenancy for everyone's benefits and she hoped the Landlord's Manger could make that decision.

The Manager said only the Landlord/owner makes those decisions and he is traveling so he cannot be reached. The Landlord's Manger said the Landlord wants to end the tenancy.

Analysis

Section 44 of the Act says; (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]*.

This is unfortunate situation were the Tenant's agent thought their sublet tenants would serve the Landlord the application and request to sublet or assign a rental unit. The sublet tenants did not serve the Landlord with the sublet application and the Tenant's agent did not follow up on the documentation; therefore the sublet tenants moved into the manufactured home without written authorizations from the Landlord. The Tenant's agent said there is a deemed acceptance of a sublet in the Act and regulations by the Landlord if the Landlord does not respond in writing within 10 days of receiving an application to sublet a rental unit. The Tenant's agent said this is what she made her decision on when she entered into the tenancy agreement with the sublet tenants even though she had not followed up on the sublet application. The deemed 10 Days for acceptance of a sublet tenancy is only applicable if the Landlord receives the sublet application and in this case the Landlord did not receive the first or second sublet application and only received a sublet application on June 5, 2015 , 3 months after the sublet tenants moved in. As the Landlord did not receive a written sublet application in compliance with the Act and the regulations prior to the sublet tenants moving in; I find the Tenant's agent has not established grounds to receive an order to cancel the 1 Month Notice to End Tenancy for Cause dated June 20, 2015. The Landlord's Notice to End Tenancy is valid and in full effect.

Further as the Tenant's agent did not comply with the Act and regulations regarding the application process for subletting in a manufactured home park I dismiss the Tenant's application to allow a sublet or assignment of the tenancy agreement. The Tenant's agent's application is dismissed without leave to reapply.

Conclusion

The Tenant's agent's application is dismissed without leave to reapply.

The Landlord's 1 Month Notice to End Tenancy for Cause dated June 20, 2015 is in full effect.

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: July 20, 2015

Residential Tenancy Branch

