



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlords for the cost of the application.

One of the named tenants attended the hearing, gave affirmed testimony, and also represented the other named tenant. Both landlords also attended, however only one gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Have the landlords established that the notice to end the tenancy given to the tenants was issued in accordance with the *Manufactured Home Park Tenancy Act*?

### Background and Evidence

**The landlord** testified that the landlords purchased the manufactured home park in January, 2012 and all tenants resident on the property signed new tenancy agreements in December, 2011. This tenancy began prior to the purchase, and it is on a month-to-month basis. A copy of the tenancy agreement has been provided. Rent in the amount of \$250.00 per month is payable on the 1<sup>st</sup> of each month and there are no rental arrears.

The landlord further testified that the tenants do not reside in the manufactured home park but own a manufactured home that is situated in the park. Presently the home is vacant, however the tenants have had different people residing in it.

The landlords joined the Manufactured Home Park Alliance, and were given advice on how to have the park designated as for tenants aged 55 or older. The landlords were to write a letter, which was dictated by someone in the Alliance, and give it to each tenant. A copy was

personally handed to the tenant who attended this hearing. The park was designated as age 55+ on June 23, 2014 and a copy of the letter given to the tenants has been provided. It is dated June 23, 2014 stating that the 55+ rule applies to purchasers but not tenants who presently reside in the park.

In May, 2015 the tenant asked if her children could move into the manufactured home, and advised the landlord that they were "grandfathered." The landlord didn't say yes or no. After multiple conversations wherein the tenant insisted that the age restriction didn't apply because her children grew up there, the landlord wrote a letter to the tenants and has provided a copy for this hearing. The letter is dated May 19, 2015 and states that the park was designated as 55+ in June, 2014, that the landlords had a tenancy agreement with the tenants, and that if the tenants allowed anyone else to live there that is not named on the agreement, the tenants would be evicted. The landlord told the tenants that their children could reside there but only if the tenants also resided there because someone had to be aged 55 or older, and their children are not that age. The tenants' daughter moved in, but moved out when the landlords served a notice to end the tenancy, and was only resident in the manufactured home for about 5 days. The tenant's sister had resided in it, and is age 55+ but now has another manufactured home within the same park. The manufactured home is now vacant.

The landlord further testified that there are existing rules made up by the landlords and the previous owner. The old rules exist except they don't include a 50+ requirement, and all tenants have signed a copy of the new rules. A copy of the rules signed by the tenants has not been provided, and the landlord testified that she can't say for positive, but believes the tenants signed it.

While the tenants' daughter was resident in the manufactured home the landlords served the tenants with a 1 Month Notice to End Tenancy for Cause on August 17, 2015 by sending it by registered mail to the tenants, a copy of which has been provided for this hearing. The notice is dated August 16, 2015 and contains an effective date of vacancy of September 25, 2015, and the landlord testified that according to the *Act* the effective date ought to read September 30, 2015. The reason for issuing the notice is: "Tenant has assigned or sublet the rental unit/site without landlord's written consent."

During the course of the hearing the landlord orally requested an Order of Possession.

**The tenant** testified that her daughter moved into the home in 2011 and moved out in November, 2011. In May, 2015 the tenant phoned the landlord who said it was fine for the daughter to move in, and also approved the tenants' son and girlfriend. The landlord then changed her mind a few days later saying that the son's girlfriend had to be age 55. In July, 2015 the tenant called the landlord, and on July 13, 2015 the tenant sent a letter to the landlords asking if either the tenants' son or daughter could move in, but the landlords didn't reply. The tenants' daughter moved in on August 15, 2015 and the tenants received the notice to end the tenancy on August 18, 2015. The tenants had their daughter move in with them and the manufactured home is vacant.

The rules were given to the tenants in April, but there is no place for a tenant to sign, and the tenant testified that the tenants did not sign any new rules.

The tenants' son stayed at the manufactured home lots of weekends and nothing was said about him staying there. The rules specify that tenants are allowed to have family there.

### Analysis

Where a tenant disputes a notice to end the tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Manufactured Home Park Tenancy Act* which can include the reasons for issuing it. I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

Firstly, the parties agree that the reason for issuing the notice was resolved immediately after its issuance, and the manufactured home remains vacant.

I have reviewed the tenancy agreement signed by the parties on January 1, 2012, and the parties agree that it is silent with respect to age requirements, and there are no provisions with respect to sub-letting. It also states that: "The tenant acknowledges having signed and received a copy of the regulations dated Dec. 16 2011, and agree to abide by the same said rules and regulations which are attached thereof. The tenant further agrees that this tenancy may be terminated upon thirty (30) days written notice in the event of written infraction of any of the regulations." However, there are no such rules attached, and the landlord testified that they weren't attached at the time the tenancy agreement was signed, and no such rules or regulations containing that date have been provided for this hearing. A document that appears to be rules of the park has been provided, however it is not dated, there are no signatures of the parties, no place for a signature of any party, and there is no mention of an age restriction.

The term "grandfathering" is not a term referred to in the *Manufactured Home Park Tenancy Act*. The tenant testified that their children grew up there and the tenants intended to keep the manufactured home for use by their children after they grew up or other family members. The reason for issuing the notice is that the tenants have assigned or sublet without the landlord's consent. The *Act* states that:

### **Changes to tenancy agreement**

**14** (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) a rent increase in accordance with Part 4 of this Act;

(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 21 *[terminating or restricting services or facilities]*;

(c) park rules established in accordance with section 32 *[park rules]*;

(d) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

(Underlining added). In other words, so long as Section 32 is complied with a tenant's agreement is not required to establish park rules. Section 32 states:

### **Park rules**

**32** (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

(Underlining added).

The regulations to the *Manufactured Home Park Tenancy Act* specify that a tenant must request permission to sublet, and if the landlord requests it, the tenant must use the approved form and provide specific information. The landlord must respond in writing promptly and within 10 days of receipt. If the landlord withholds the consent, the landlord's response must indicate the grounds for withholding such consent. If the tenant does not make the request in writing in the approved form, the landlord can consent to the sublet, or notify the tenant in writing the grounds for not consenting, or advise the tenant that only the approved form would be considered. The regulations also set out what those grounds can be, including:

(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;

(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]

52 An assign or subtenant must comply with the rules that are in effect at the time of, or after, entering into the assignment or sublease.

In the circumstances, I find that the landlords had a legal right to withhold consent, having not been served with the request to sublet in the approved form, and gave the tenants written grounds that comply with the regulations. Therefore, I also find that the landlords had cause to issue the notice to end the tenancy, and the tenants' application to cancel it is dismissed.

The *Act* also states that where a tenant's application to cancel such a notice is dismissed or the notice is upheld at arbitration, if the landlord makes an oral request for an Order of Possession, I must grant one. In this case, the landlord made such an oral request, and I hereby grant an Order of Possession in favour of the landlords.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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 30, 2015

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Residential Tenancy Branch

