Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vista Village Trailer Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Manufactured Home Park Tenancy Act (the "Act"). The tenant applied for an order seeking cancellation of a 1 Month Notice to End Tenancy for Cause ("Notice") issued by the landlord.

The above listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other's evidence. Neither party raised any issues regarding service of the tenant's application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, cross examine the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter-On September 21, 2015, the Residential Tenancy Branch ("RTB") received additional evidence from the tenant, containing among other things, the tenant's amended application seeking to include a monetary claim of $5000.00.

I have not accepted the tenant's amended application, as I find this request for monetary compensation is unrelated to the primary issue of the application, and that is whether or not the Notice of the landlord has merit and is valid. Further, I did not find sufficient evidence from the tenant that the landlords/respondents had received the amended application 14 days prior to the hearing as required by the Rules.

Additionally, even if I had accepted the amended application, I would still make the decision to sever that portion of the application, pursuant to section 2.3 of the Rules dealing with unrelated issues on an application for dispute resolution.

The tenant is at liberty to make another application seeking monetary compensation from the landlord.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice?

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The tenancy for this manufactured home site began approximately 15 years ago.

The parties here have been in multiple dispute resolution hearings for multiple issues. Despite this, I determined only one prior dispute resolution application is relevant to the determination of the issues in this instant application.

On May 22, 2105, a hearing was held on the tenant's application requesting an order allowing the tenant to assign or sublet the manufactured home site as the landlord allegedly unreasonably withheld permission to do so and for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement. The potential purchaser in that matter, "MA", attended the hearing and participated as a witness. Although a potential purchaser, MA was also mentioned as being a tenant in the manufactured home park in question here. It is noted that the original request for an assignment contained a statement by MA that he needed a home for his daughter and grandson in which to reside, due to financial issues and to be closer to family. The tenant's request to the landlord for an assignment was submitted into evidence.

On June 12, 2015, another Arbitrator issued a Decision dismissing the tenant's application after finding that the landlord complied with the Act in refusing the request for an assignment. A copy of the Decision was submitted into evidence.

In the case before me, the undisputed evidence showed that the landlord served the tenant with the Notice on July 17, 2015, by registered mail, which listed an effective vacancy date of August 30, 2015. A copy of the Notice was submitted into evidence.

Section 46 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, the Notice effective date is changed to August 31, 2015, as that was the last day of August 2015.

The cause listed on the Notice alleged that the tenant had assigned or sublet the site without written consent from the landlord.

Pursuant to 11.1 of the Rules, the landlord proceeded first in the hearing in support of their Notice.

In support of the Notice, the legal counsel submitted that the landlord was informed by a neighbour that the tenant had been seen moving out of the manufactured home in May and that someone else was now living in the manufactured home. According to the legal counsel, the landlord mailed the tenant a letter about this concern; however, the mail was returned, suggesting that the landlord did not know where the tenant had moved.

The landlord's legal counsel submitted further that the tenant has vacated the manufactured home as of May 2015, after purchasing a fixed home in the community, and allowed MA's daughter and grandson to occupy and live in the home, in contravention of the tenancy agreement, park rules, and other RTB Decisions declining the tenant's request for an assignment to MA. The landlord submitted a copy of the written tenancy agreement and the park rules.

The legal counsel submitted that MA's daughter and grandson are residing in the manufactured home of the tenant pursuant to a written, open-ended housesitting agreement, which had the effect of a sublet or a *defacto* assignment as these were the same parties intending to occupy the manufactured home with the tenant's failed request to assign the tenancy agreement, as per the June 12, 2015, Decision of the other Arbitrator. Both parties submitted copies of the housesitting contracts, verifying that MA's daughter, "AA", and her son would be occupying the manufactured home under the agreements and it is noted that the contract was seven typewritten pages.

Tenant's response-

The tenant, through her legal advocate confirmed that the tenant had vacated the manufactured home, but that the housesitting contracts were short term agreements, intended to keep someone in the home until she was successful in finding a purchaser approved by the landlord. According to the legal advocate, the tenant's homeowner's insurance required that the home not be vacant and that the tenant wanted someone to look after the home while attempting to sell it.

The legal advocate submitted that the home is for sale and that the tenant would sell it to the first person approved by the landlord.

The tenant's advocate submitted that the tenant clearly does not want to live in the manufactured home park; however, the landlord has turned down multiple potential purchasers over the course of time and believed this to be her only option.

The tenant's advocate submitted that the tenant receives financial assistance with her rent and groceries and that should the landlord's Notice be upheld, the tenant would lose her only asset as the home could not be moved in its present state.

In response to my question, the tenant confirmed that the manufactured home was not listed publicly for sale; rather the sale of the home was made known through word of mouth.

Analysis

Under section 40(1)(h) of the Act, a landlord may issue a tenant a 1 month notice seeking to end a tenancy if the tenant has purported to assign or sublet a tenancy agreement without first obtaining the written consent of the landlord or without an order from the Director. The landlord bears the burden to prove that they have sufficient cause to end the tenancy upon the civil standard, or upon a balance of probabilities.

Section 28 of the Act, the tenancy agreement, and the park rules in the case before me prohibit a tenant from assigning a tenancy agreement or subletting their interest in the manufactured home site without the prior written consent of the landlord.

The landlord argues that the tenant's housesitting agreements made with AA are an attempt to circumvent the Act and the tenancy agreement as these agreements have

the same effect as a sublet or assignment; therefore the landlord has supported their Notice. I accept this argument.

In the case before me, the tenant relies upon the housesitting contracts in her argument to support that she has neither assigned her tenancy agreement nor sublet her interest in the manufactured home site. The house sitter in this case is the daughter of MA, the potential purchaser rejected earlier by the landlord in the tenant's request for an assignment of the tenancy agreement, the subject of an earlier dispute resolution proceeding.

I reject the arguments of the tenant as I do not find it coincidental that AA and her son have moved into the tenant's home, as was the purpose of her original request of the landlord to assign her tenancy agreement, rejected by the landlord and upheld in a Decision of June 12, 2015, by another Arbitrator.

Further, I would have been more willing to consider or accept the tenant's arguments that she only intended to have AA live in the home until she could sell it had the home been actively marketed for sale; however, that was not the case.

Upon a review of the housesitting contracts, I find the use of the term "licence to occupy" in the housesitting agreement, as this arrangement was coined, works in favour of the landlord in supporting their Notice that the tenant has sublet her interest in the manufactured home site, as park rule 7(g) states that subletting of trailers is not allowed and that the owner, the tenant in this case, must reside in the home. Therefore, the housesitting agreement, as does the evidence at the hearing, confirmed that the tenant is not residing in the home.

Based on the preponderance of evidence presented to me, I find that the tenant's housesitting contracts have the same effect of the tenant assigning or subletting her interest in the manufactured home site in avoidance of the Act and tenancy agreement, as the tenant has permanently vacated her home and the most recent potential purchaser's daughter is now residing in the home.

I therefore find that the landlord has proven that the tenant has purported to assign or sublet a tenancy agreement without first obtaining the written consent of the landlord or without an order from the Director.

I dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice valid and therefore enforceable.

Under Section 48(1) of the Act, if a tenant's application to cancel a Notice has been dismissed, I may grant the landlord an order of possession; however, the landlord at the hearing did not make an oral request for an order of possession. I therefore have not granted an order of possession in favour of the landlord.

The landlord is at liberty to make their own application for an order of possession should the tenant fail to vacate the rental unit immediately as the corrected effective end of tenancy date was August 31, 2015.

Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the landlord's Notice is dismissed, without leave to reapply.

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 13, 2015

Residential Tenancy Branch