



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on September 29, 2016. The landlord confirmed receipt of the package in this manner as claimed by the tenant. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per section 89 of the Act.

The tenant stated that the landlord was served with her first documentary evidence package by regular mail on October 28, 2016. The landlord confirmed receipt of this package in this manner. The tenant stated the landlord was served with the second documentary evidence package by email on October 17, 2016. The landlord confirmed receipt of this package in this manner. The landlord provided no documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per section 88 of the Act.

At the outset the tenant withdrew her application to be allowed to assign or sublet (AS) the rental unit because the landlord's permission has been unreasonably withheld. As such no further action is required for this portion of the application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlord served the tenant a 1 Month Notice to End Tenancy issued for Cause (the 1 Month Notice) dated September 20, 2016 by regular post mail. The 1 Month Notice sets out an effective end of tenancy date of October 26, 2016 and that it was being issued for one reason as:

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord states that the tenant has been renting the unit without the written consent of the landlord. The tenant disputes this stating that the tenant bought the rental unit in 2008 and that subsequently a verbal agreement was made with the landlord, J.K. that the unit would be used as a rental property. Since then the rental property has seen 5 different renters. The landlord confirmed that her late husband, J.K. operated the park in a different manner and that at this time she requires written consent of the landlord to permit the tenant to continue renting the rental property. Both parties confirmed that the signed tenancy agreement does not provide for a clause requiring the tenant to obtain the written consent of the landlord.

Analysis

Section 40(1)(h) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant purports to have assigned the tenancy agreement or sublet the manufactured home site without first obtaining the landlord's written consent.

In this case both parties have provided undisputed affirmed evidence that the tenant purchased the manufactured home as a rental property in 2008 and has since rented

the rental property to 5 different tenants without requiring the written consent of the landlord. Both parties agreed that a verbal agreement was made with the landlord's late husband, J.K. that the tenant may rent the property. The landlord confirmed that there was no such clause in the signed tenancy agreement which would prevent the tenant from renting the property which would require the written consent of the landlord. I find that the landlord has failed to justify her reason for cause on the 1 Month Notice dated September 20, 2016 and as such the 1 Month Notice is set aside and is of no effect. The tenant's application to cancel the 1 Month Notice is granted.

The tenant having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The 1 Month Notice dated September 20, 2016 is set aside. The tenancy shall continue.

The tenant is granted a monetary order for \$100.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order the order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 2, 2016

Residential Tenancy Branch