



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* ("MHPTA") for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 59;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issue

As part of the tenants' application, he sought to have an extension of time to cancel the notice. Both parties participated in the teleconference and advised that they had exchanged their documentary evidence. Both parties indicated that they were ready and wished to proceed, accordingly; no further time extensions are required or applicable, the hearing proceeded and completed on that basis.

Issues to be Decided

Is the tenant entitled to have the One Month Notice cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about October 1, 2013. Rent in the amount of \$223.00 is payable in advance on the first day of each month for the rental of the pad. The landlord testified that in early August of 2017 he discovered a woman named "Angie" living in the subject home. The landlord testified that tenants were not allowed to sublet their homes without prior written permission from the landlord as part of their tenancy agreement. The landlord issued a One Month Notice to End Tenancy for Cause on the basis that the:

"The tenant has assigned or sublet the rental unit/site without the landlords' written consent."

The landlord testified that the tenant did not get his authorization and now seeks an order of possession.

The tenant gave the following testimony. The tenant testified that he takes on a house sitter/ roommate for two to three months a year when he is travelling. The tenant testified that he did not sublet the unit as he was still in possession of the home and still accesses and stays at the home while his house sitter is there. The tenant testified that he resided in the home at times along with "Angie". The tenant testified that she is a family friend and the reason he didn't ask the landlord for permission is because he has not sublet the home. The tenant wishes to continue living in the park.

Analysis

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 arguments are reproduced here. The principal aspects of the landlord's claim are set out below.

It was explained to both parties that when a landlord issues a notice to end tenancy under section 40 of the MHPTA, they bear the responsibility of providing sufficient evidence to support the issuance of that notice. The landlord testified that the party known as "Angie" no longer lives in the manufactured home and that he's not aware of anyone else living in the home except the subject tenant. The tenant testified that he at no point sublet the unit and never has. The landlord gave testimony that he had no issues with additional roommates. The landlord has not satisfied me that the tenant sublet the unit. Based on the insufficient evidence before me, the landlord has not provided sufficient evidence to support the issuance of the notice, accordingly; I dismiss the notice. The notice is of no effect or force.

As the tenant has been successful in this application, they are entitled to the recovery of the \$100.00 filing fee. The tenant is entitled to a onetime rent reduction in that amount for the rent due January 2018.

Conclusion

The notice to end tenancy is dismissed. The tenancy continues.

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: November 27, 2017

Residential Tenancy Branch