



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PINE RIDGE SENIORS PARK, a division of KAHANA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ASS

Introduction

The applicant Mr. A.P. is the executor of the will of the late Ms. N.P., the tenant, who passed away in March 2018. He seeks an order compelling the landlord to permit an assignment or subletting of the manufactured home site (the “site”) and he seeks to challenge a one month Notice to End Tenancy given by the landlord. The Notice alleges that the tenant has assigned or sublet the site without the written consent of the landlord.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

At the start of the hearing it was apparent that the applicant Mr. A.P. had not gone through the steps necessary to request an assignment or sublet and as set out in s. 28 of the *Manufactured Home Park Tenancy Act* (the *Act*) and Part 7 of the Regulation. The parties were informed that an assignment or subletting need not be considered by the landlord and any refusal challenged at arbitration until those steps had been taken. Therefore there will be no consideration at this hearing of the request to compel the landlord to consent to an assignment or subletting.

It was also apparent that though Mr. C.M. is the park manager and was named as the landlord, the true landlord, as disclosed by the tenancy agreement, was in fact a limited liability company operating under a park name. The style of cause was amended accordingly, with the agreement of the parties.

Issue(s) to be Decided

Has the tenant or the tenant's estate assigned or sublet the site?

Background and Evidence

The late tenant began renting the site in November 2008. In 2018, due to illness, the tenant had her daughter Ms. M.P., who attended the hearing, living in tenant's manufactured home on the site. The tenant passed away on March 13. Her daughter has remained in the home until recently. I understand the home to be vacant now.

The applicant Mr. A.P. is the executor of the will of the late Ms. N.P. The daughter Ms. M.P. will inherit the home. It has not yet been legally transferred to her from the estate.

Mr. C.M., the park manager points to a clause in the landlord's standard tenancy agreement which says that permission of the management must be obtained for a tenant to have a guest stay more than 30 days. He says there was an identical provision in this tenancy agreement and that the tenant's daughter stayed more than 30 days without permission.

Analysis

This decision was rendered orally at hearing.

Having or permitting a guest is a very different thing from a tenant assigning or subletting a site.

Residential Tenancy Policy Guideline 19 "Assignment and Sublet" defines "assignment" as the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. "Subletting" is defined as being when the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

In this case there is no evidence from the landlord that there has been any transfer of legal rights, specifically the right to exclusive possession of the site, from the late tenant to her daughter, either by way of assignment.

It would appear that the tenant has been a mere guest.

As the Notice was given based on the assertion that the tenant had wrongfully assigned or sublet the site, and as it has not, the Notice must be cancelled.

The landlord could have given a one month Notice to End Tenancy on the basis that the tenant has breached a material term of the tenancy agreement by having a guest for more than 30 days without the permission of management. However, and as stated at the hearing, that term, if it is contained in this tenant's tenancy agreement, is not in my view a material or fundamental term of the tenancy agreement. In that regard I would refer the parties to Policy Guideline 8, "Unconscionable and Material Terms."

Conclusion

The application is allowed. The Notice to End Tenancy dated April 9, 2018 is hereby cancelled. The applicant is entitled to recover the \$100.00 filing fee for this application and I direct that the next rent due be reduced by \$100.00 in full satisfaction of the fee.

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: June 14, 2018

Residential Tenancy Branch