



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APPLE VALLY MOBILE HOME PARK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, CNC, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 58; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was represented by legal counsel. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy for Cause set aside, if not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order to allow him to sublet as a result of the landlords' permission being unreasonably withheld?

Is the tenant entitled to the recovery of the filing fee for this hearing from the landlord?

Background and Evidence

The landlord gave the following testimony. JS testified that the tenancy began on September 1, 1997. JS testified that the monthly pad rental is \$426.05. JS testified that a

One Month Notice to End Tenancy for Cause was issued on April 24, 2018 with an effective date of May 31, 2018 on the basis that:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

JS testified that the tenant left his utility trailer unhooked and unattended for three hours despite it being prohibited by the park rules. JS testified that the tenant was put on notice by an Arbitrator in October 2017 pursuant to their decision, which the tenant must abide by all park rules including parking. JS testified that the tenant has clearly ignored the Arbitrators order to comply and that the tenancy should end. JS testified that as per the park rules' subletting is prohibited. JS testified that the issue of subletting was just brought to her attention as the tenant has not been in direct communication with her for over six months. LL testified that the tenant has disregarded the previous Arbitrators decision on numerous occasions in regards to parking, not just the one incident that is submitted as part of this hearing.

The tenants counsel made the following submissions. Counsel submits that the alleged breach was a small utility trailer left unhooked so that the tenant could move some of his belongings. Counsel submits that the landlord has this one and only example of the tenant not abiding by the arbitrators decision as evidence for this hearing, and not the numerous incidents that they allege. Counsel submits that the landlord is unreasonably withholding permission to sublet the trailer. Counsel submits that the original tenancy agreement signed by both parties twenty years ago allowed subletting with the landlords' permission and that clause should be grandfathered in despite the park rules changing in 2013 to prohibit any rentals.

Analysis

When a landlord issues a notice to end tenancy pursuant to section 40 of the MHPTA they bear the responsibility of providing sufficient evidence to support the issuance of the notice. Although the landlords testified that the tenant's behaviour has not changed since the arbitration hearing in October 2017, they have only provided one example where the tenant did not abide by the parking rules over a three hour period. In addition, the landlords have not provided sufficient evidence to show how this was such an adverse and significant breach that the tenancy must end. Based on the insufficient evidence before me, and on a balance of probabilities, the landlords have not provided sufficient evidence to have this tenancy end, accordingly; the One Month Notice to End Tenancy for Cause is set aside.

I address the tenant's request to sublet the unit as follows. Counsel submits that the tenant has made his request in accordance with his tenancy agreement and that of the MHPTA; however none of those requests or documents was submitted for this hearing. Counsel submits that the landlord has unreasonably withheld permission to sublet. Section 32 of the MHPTA addresses the issue before me as follows:

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.**

Based on the tenancy agreement, the addendum and the park rules submitted to me by the landlord, I find that section 32 applies and that the tenant is not entitled to sublet the unit and therefore this portion of his application is dismissed.

As the tenant has had some success in this application, they are entitled to the recovery of the \$100.00 filing fee. The tenant is entitled to a one time rent reduction of \$100.00 for the rent due on July 1, 2018 in full satisfaction of this claim.

Conclusion

The One Month Notice to End Tenancy for Cause dated April 24, 2018 with an effective date of May 31, 2018 is set aside, it is of no force or effect, 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: June 20, 2018

Residential Tenancy Branch