



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, AAT, OLC, AS, O

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("the Act")

On August 21, 2018, the Landlord submitted an Application for Dispute Resolution asking for an order that the Tenant comply with the park rules and the tenancy agreement. The Landlord also requests to recover the filing fee for the Application.

On August 21, 2018, the Tenant filed an application seeking the following relief:

- To be allowed to assign or sublet and the Landlords permission has been unreasonably withheld
- For the Landlord to allow access to the unit to the tenant and or guests
- For the Landlord to comply with the Act, regulation or tenancy agreement
- For the Landlord to make emergency repairs for health or safety reasons

On August 22, 2018, the Tenant amended the application to include a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was scheduled as a conference call hearing. Both parties appeared at the hearing. The Tenant was assisted by a legal advocate. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. Both parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

In this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary and Procedural Matters

The Tenant withdrew the portion of his application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord testified that a 10 Day Notice was never issued to the Tenant. The Tenants request to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the Landlord or Tenant must comply with a term or condition within the tenancy agreement regarding additional occupants living in the Tenants home located on the manufactured home park property.

Issue to be Decided

- Is there a requirement that the Tenant must receive approval from the Landlord prior to permitting additional occupants in the home?

Background and Evidence

The parties testified that the manufactured home site tenancy began on October 17, 2003. The Tenant currently pays pad rent in the amount of \$367.00 per month on a month to month basis. Rent is due on or before the first day of each month.

Neither party provided a copy of the tenancy agreement.

The Landlord testified that the Tenant's son is not listed as a Tenant on the tenancy agreement and due to some recent problems on the property; the Landlord does not want to add the Tenant's son to the tenancy agreement and wants him to move off the property. The Landlord testified that he has been the manager of the manufactured home park for five years.

On August 14, 2018, the Landlord wrote to the Tenant and informed him that his son is not an approved occupant of the manufactured home park.

The Landlord's letter provides that because of disturbances involving the Tenant's son, visitation is limited to 4 days per month between the hours of 9:00 am to 5:00 pm with no overnight stays.

The Landlord's letter provides an excerpt of the park rules regarding responsibility for guest conduct and provides:

No person not named in the Lease as Tenant may reside in a home for more than two weeks unless having prior written approval of the Landlord/ Manager for this purpose and must be formally registered.

In reply, the Tenant's son testified that his father is elderly and lives alone in the three bedroom unit and he has been taking care of his father since 2015. The Tenant's son testified that he has been living in the unit since 2009 and he does not have another residence.

The Tenant's son testified that his father is 81 years old and requires his assistance. He testified that his father wants to transfer the ownership of the home to him at some point.

The Tenant wants the Landlord to comply with the owner's right to have his son live in the park.

The Tenant's advocate submitted that the Landlord cannot evict the Tenant's son because he has lived there for 10 years and the legal principle of estoppel applies to the situation. The Tenants advocate submitted that the since the Landlord has known that his son has been living with him for a number of years and has taken no action, the Landlord cannot now try to enforce the park rule of requiring written approval. The Tenants advocate provided a copy of a Residential Tenancy Branch Arbitration decision in support of her submission.

The Tenant's advocate also submitted that section 24 of the Act states the Landlord cannot unreasonably restrict access to the home park.

Analysis

The MHPT Regulation provides the definition of assign and sublet as follows:

"assign" means to assign a home owner's tenancy agreement to a purchaser under section 28 (1) of the Act [*assignment and subletting*];

"sublet" means to sublet the manufactured home site on which the home owner's manufactured home is situated to a subtenant under section 28 (1) of the Act.

Section 32 of the Act states:

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.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

*(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, **the park rule prevails to the extent of the inconsistency or conflict.***
[my emphasis]

Based on the above, and the testimony and evidence of the parties, I make the following findings:

The Tenant applied for the right to assign or sublet the tenancy; however, it is not the Tenant's intention to move out of the manufactured home. The portion of the Tenant's application for permission to sublet or assign the tenancy is dismissed. I find that the Tenant's application is to be permitted to have his son live with him, as a co-tenant or roommate.

While neither party provided a copy of the tenancy agreement which may have contained a term regarding additional occupants; I find that the Landlord has the authority to establish park rules which prevail over the existence of any such term within a tenancy agreement.

I find that the Landlord has established that there is a park rule that *"No person not named in the Lease as Tenant may reside in a home for more than two weeks unless having prior written approval of the Landlord/ Manager for this purpose and must be formally registered."*

I find that the Landlord has the authority to approve of occupants living in the manufactured home park.

With respect to estoppel, I find that the Landlord did not provide the entire park rules and there is no evidence from the Landlord whether the park rule regarding occupants took effect before or after the Tenant's son started living in the park. I accept the testimony that the Tenant's son has lived in the park for a number of years. I find that the Landlord has managed the park for five years and was aware that the Tenant's son was living in the park, and he took no action to enforce the park rule until August 2018.

I find that the Landlord is estopped from enforcing the park rule against the Tenant. The Tenant's roommate / son may continue to live in the home. However; the Tenant is cautioned that the Landlord has the right to issue a notice to end tenancy for any interference or disturbances caused by the Tenant or a person permitted in the manufactured home park by the Tenant.

In addition, the Tenant is now aware of the park rule requiring prior written approval for any occupants of the home and must obtain prior written approval from the Landlord for any future occupants.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties had had some success, I decline an award to recover the filing fees.

The Tenant has leave to reapply on the repair issue that was severed and not heard.

Conclusion

The Landlord is estopped from enforcing the park rule regarding additional occupants against the Tenant regarding his son.

The Tenant must comply with the park rules regarding future occupants living in the unit within the park.

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 10, 2018

Residential Tenancy Branch