



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC,MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Manufactured Home Park Tenancy Act* (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on March 6, 2020.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to re-apply.

The tenant has listed CL as a tenant in their application. CL is not listed on the tenancy agreement. CL is not a tenant under the Act. Therefore, I have removed CL as a tenant from the style of cause.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued be cancelled?

Background and Evidence

The tenancy began under a licence to occupy. The parties entered into a fixed term tenancy which began on January 1, 2012 for term of one year, expiring on December 31, 2012. The parties did not enter into another fixed term. I find the tenancy currently is a month-to-month agreement, and the terms of the original agreement remain in effect.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the site on April 30, 2020.

The reason stated in the Notice was that the tenant has:

- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.
- Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

The landlord testified that the tenant was given consent to sublet the site; however, the tenant misled the property manager as the tenant was to keep their manufactured home on the site. The landlord stated that the tenant had their home removed and allowed another party to move their RV on the site and collected a higher pad rent.

The landlord testified that the tenant gave the subtenant false information when they entered into an improper tenancy agreement, who would otherwise have been the rightful tenant of the landlrod.

The tenant testified that their manufacture home was removed in July 2017, as that assest was her partners. The tenant stated that they rented out the site under a sublease agreement; however, that occupant left in December 2019. The tenant confirmed that they did not rent or have a manufacuted home on the site.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Act is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place of **primary residence**. In this case, the tenant is not using the site as a place of primary residence, in fact there is not a manufacture home on the site to reside.

The request for consent to sublet a manufactured site, which states as follows: If you are a manufacture home owner and you are requesting the park owner's consent to sublet your tenancy agreement to the **proposed tenant of your manufacture home**.

I accept the evidence of the landlord that the tenant misrepresented the terms of the sublease agreement as there was never an intent for the proposed tenant to occupy the tenants manufacture home. I find the tenant breached the sublease agreement.

However, the occupant vacated the site and removed their RV sometime in December 2019, and the Notice was issued on March 6, 2020. I find the tenant was not in violation of the tenancy agreement at the time the Notice was issued. The site currently remains empty and the tenant has continued to pay the rent.

While the tenant may have given false or misleading evidence to the subtenant, at the time they agreed to rent; however, this was not someone that was looking at other sites and was not a potential renter of the landlord at that time. As an example, if the landlord was showing sites to a potential renter and the tenant interfered by give false information to stop the potential renter from renting the site, that would be grounds to end the tenancy. However, there was not such evidence given. Therefore, I cannot find a breach of the Act.

In light of the above, I find I must cancel the Notice.

However, I find that the following comments and finding are required to bring the intent of the Act and the tenancy agreement back into full force and effect.

In this case, there is no manufacture home on site. The tenant is entitled to have a manufacture home placed on the site, so long as it complies with the Act, Regulations, and the **current park rules**. This includes any bonding that is necessary. I find any pre-

existing rules that are specifically relate to the manufacture home requirements, would not apply since there is no home on the site and must conform to the existing current rules.

Further, unlike an assignment, a sublet is temporary and must be a shorter period of time than the fixed term agreement. However, as I have found that the tenant is currently on a month to month tenancy. The Act does not contemplate a sublease agreement when the tenancy is a month-to-month agreement, such as in this case. As there must be a date in which the sublease agreements end.

Furthermore, the tenant would have to seek the written permission of the landlord to sublet, this includes for any family members. While the Act does not contemplate a sublease on a month-to-month agreement. Any agreement to sublet with the proposed tenant would need to be one day less, than the monthly agreement in order to preserve the original tenant's interest. In other words, the tenant could not enter into any fixed term agreement to rent the manufacture home for more than 28 days, I have used 28 days as there are months that only have 29 days and the tenant would be required to seek written permission to sublet prior to the expiry of the agreement. This may be reasonable grounds to deny a sublet as that was not the intent of the Act. However, I make no findings on that issue at today's hearing.

I would suggest to the tenant that they should speak to the landlord about negotiating a new fixed term agreement if they want to sublet the subject site. However, I find the tenant must have their own manufacture home on site, and it must be in their own name prior to making any request to sublet. I find the landlord is entitled to see proof of ownership for any manufacture home prior to placement on the subject site. The landlord is entitled to screen any potential subtenant and request any information they determined necessary, such as credit reports, criminal record checks to determine their suitability.

As the tenant was in violation of the sublease agreement and the Notice would have been valid if issue at the time the site was still occupied by an unauthorized manufacture home, I decline to award the filing fee.

Conclusion

The tenant's application to cancel the Notice, issued granted.

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: May 13, 2020

Residential Tenancy Branch