



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFT, CNC, AS, OT, DRI, MNDCT**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month to End Tenancy for Cause, (the "Notice") issued on October 25, 2020, to be allowed to assign or sublet the site, for a monetary order for money owed and to recover the filing fee.

Both parties appeared, gave 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. The balance of the tenant's application is dismissed, with leave to re-apply.

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.

### **Issue to be Decided**

Should the Notice be cancelled?

### Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental site on November 26, 2020.

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

- The tenant has assigned or sublet the site without the landlord's written consent;
- Tenant is repeatedly late paying rent;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental site.

The landlord testified that on October 23, 2020, they received a complaint about a moving truck blocking the road. The landlord stated that upon investigation they found the tenant had sublet the site, without their written consent. The landlord stated that they have never allowed rentals in the manufactured home park.

The tenant's counsel/son testified that their father knew of the rules; however, there father had a meeting at a local eating establishment and the landlord gave his verbal consent to rent the site. The tenant's counsel/son stated that the current subtenant wants to purchase the manufacture home

The tenant testified that they purchased the manufacture home with the intent to resale it. The tenant stated that they informed the landlord that they would be away for an extended period of time and wanted someone to stay there. The tenant stated that the landlord gave them permission to sublet the site when they met at a local eating establishment.

The landlord argued that originally the tenant purchased the manufacture home, and it was to be removed from the manufacture home park to another location as the previous owner's tenancy had ended, and the tenancy was not assigned to the tenant. However, they decided that the manufacture home could stay, and they met with the tenant on October 9, 2019, and gave the tenant a copy of the Park Rules and a copy of the tenancy agreement and the tenant was to bring the signed documents back later that day. The landlord stated that the tenant never returned the documents and never payed the agreed upon rent.

The landlord stated that they never agreed or would agree to sublet the site as that is contrary to the rules that have been in place in the park for over a decade. The landlord stated they would never have agreed to rent to the tenant if the sole purpose was to rent the site out and that is not consistent when the tenant told them that they were looking forward to living in the park when they return from India.

ES for the landlord testified that they were at the meeting and not particular listen as they were just their to have a drink; however, it was just the basics of going over the tenancy agreement, park rules and there was no conversation allowing the tenant to use the site simply to sublet.

### Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- The tenant has assigned or sublet the site without the landlord's written consent

In this case, I am not satisfied that the landlord gave the tenant permission to sublet the site when the tenancy commenced. If the sole reason for purchasing the manufacture home was to resell the home, it would make no sense to be subletting the site or renting out the manufactured home. I find the tenant's version does not have the "right of truth".

Further, Section 28 of the Act, states the following

### **Assignment and subletting**

**28** (1)A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies:

- (a)the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;
- (b)the tenant has obtained an order of the director authorizing the assignment or sublease;

(c)the tenancy agreement authorizes the assignment or sublease.

I am not satisfied that the tenant had obtained the prior written consent of the landlord before they allowed the occupant to move onto the site on October 23, 2020 or that they were deemed to have obtained that consent in accordance with the regulations. The tenant presented no evidence that they comply with section 44 of the Regulations, which sets out the requirements of a subtenant. This must be done every time a tenant wants to sublet the site. This allows the landlord to determine if the potential subtenant is suitable before approval is given.

In this case, the evidence of the landlord was that they had no idea, who this occupant was or that they were moving onto the site until they received a complaint from another occupant. The evidence of the landlord was they would never have rented the site to the tenant, if the tenant had no intentions of living on the site and wanted to use the site to simply rent out their manufacture home. I find this has the “ring of truth” and is consistent with the park rules.

Further, I find the letter date June 9, 2021 from the tenant’s counsel/son states the following,

“ [tenant’s name removed] has assured me that if, in the future, he decides to assign the tenancy at the park to anyone, he will do so in full compliance of any applicable rule and regulation”

[Reproduced as written]

This further leads me to believe that the tenant did not comply with the rule or the Act and did not have the landlord consent to sublet.

I find the tenant has failed to prove they had the consent of the landlord to sublet the site. Therefore, I find the Notice is valid and remains in full force and effect.

As the effective date in the Notice has past, the landlord at the hearing agreed to give the tenant an extension of time to vacate the site no later than April 30, 2021. I find that the landlord is entitled to an order of possession effective **April 30, 2021, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

The tenant must ensure they give the landlord a copy of moving insurance or bond prior to moving the manufacture home, as this was requested by the landlord at the hearing.

As I have ended the tenancy on the above reason, I find it not necessary to consider the other reasons stated in the Notice.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: February 02, 2021

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Residential Tenancy Branch