Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On January 5, 2021, the Tenant filed an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* ("the *Act*") to cancel a One-Month to End Tenancy for Cause (the "Notice") issued on January 2, 2021. The matter was set for a conference call.

The Tenant and both Landlords attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires 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 oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice issued on January 2, 2021, be cancelled?
- If not, are the Landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that the tenancy began on February 1, 2018, with recorded rent in the amount of $400.00 per month due on the first day of each month. The Landlords submitted a copy of the tenancy agreement into documentary evidence.

The Notice shows that the Landlords served the Notice to end tenancy to the Tenant on January 2, 2021, by attaching a copy of the Notice to the front door of the rental unit and by leaving another copy of the Notice in the mailbox. Both the Tenant and the Landlords submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

The Notice states that the Tenant must move out of the rental unit by February 3, 2021. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlords testified that they discovered that the Tenant had sublet their rental on December 27, 2020, without the Landlord's knowledge or consent, and that they issued this Notice to end tenancy due to this breach of the Act, the Tenancy Agreement and the park rules.

The Landlords testified that the Tenant had approached them requesting permission to sublet in September 2020, but that the Tenant was advised that their request to sublet would not be approved as there is an "Owner only Occupation" rule in the Park Rules. The Landlords' submitted a copy of the Park Rules into documentary evidence. The Landlords confirmed that they had refused the Tenant's request to sublet due to this rule.

The Tenant agreed that they did request permission to sublet the rental and that the Landlords had denied them permission to sublet. The Tenant testified that they had a

verbal agreement with the previous owner that provided them with permission to sublet the rental unit.

The Tenant testified that they had been rent out their Manufactured Home to this renter since June 2019. When asked, by this arbitrator, to provided confirmation of the length of this sub-tenancy or the written permission from the previous owner to have a sublet, the Tenant testified that they could not provide either as their renter was refusing to speak to them and that the previous owner had refused to provide them with a written statement.

The Landlords testified that they had visited the Tenant's Manufactured Home several times between September 2020 and December 2020, including a visit to conduct an inspection of the Manufactured Home, at the request of the Tenant, due to a possible sale of the home, and that they could confirm that the Tenant's Manufactured Home had been vacant and unoccupied unit the end of December 2020.

The Tenant testified that the Landlord's refusal to allow renters in the park has caused the sale of the Tenant Manufactured Home to fall through twice. The Tenant testified that in October 2020, they attempted to enter into a rent-to-own agreement with one buyer but that the Landlords' Park Rules of owner-occupied units only caused that deal to fall apart. The Tenant then testified that they had secured another buyer, a real estate agent, but that this deal also fell apart due to the Landlords' Park Rules of owner-occupied units only. The Tenant testified that the Landlord's Park Rules of owner-occupied units only was interfering with the sale of their Manufactured Home.

The Landlords testified that there were no written Park Rules in place when they purchased the property in April 2020, but that when they took over, Park Rules were created and were hand-delivered to all the renters in the park, including this Tenant, in late June/early July 2020. The Landlords testified that if a renter was not home during their attempt to hand deliver the Park Rules, a copy was left in the renters mailbox.

The Landlords testified that in September 2020, when the Tenant approached them for permission to rent their Manufactured Home out, another copy of the Park Rules was supplied to the Tenant at that time.

The Tenant then again testified that their current renter had been there since June 2019, under a rent-to-own agreement, when this Arbitrator challenged the Tenant's testimony as to why they would attempt to enter into a new rent-to-own agreement in October 2020, with the previously mentioned "buyer", if they were already in a rent-to-

own agreement with their current renter. The Tenant testified that the current rental agreement had broken down in the fall of 2020 and that this renter had moved out on January 30, 2021.

The Tenant also testified, when asked by the Arbitrator, that they had not filed an application with the Residential Tenancy Branch to request the review of the Landlord's decision to refuse the Tenant's request to sublet the rental property.

Analysis

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

I find that the Tenant was deemed to have received the Notice to End Tenancy on January 5, 2021, three days after is was posted to the front door of the rental unit. Pursuant to section 40 of the *Act,* the Tenant had ten days to dispute the Notice. Section 40 of the *Act* states the following:

> ***Landlord's notice: cause***
>
> *40 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
>
> *(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
>
> *(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
>
> *(b) must vacate the rental unit by that date.*

Pursuant to section 40 of the *Act*, I find the Tenant had until January 15, 2021, to file their application to dispute this Notice. I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed her application on January 5, 2021, within the legislated timeline.

In this case, the Landlords are claiming that the Tenant breached the *Act* and their tenancy agreement by entering into a subletting agreement without the Landlord's written consent. Section 28 of the *Act* states the following regarding subletting during a tenancy:

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.

(2) A landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulations.

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

Additionally, I have reviewed the Park Rules and the tenancy agreement for this tenancy, and I find that both of these documents clearly recorded that the Tenant must obtain written permission from the Landlords before they enter into a sub-tenancy for this pad rental.

I accept the agreed-upon testimony of these parties that the Tenant did, in fact, enter into a sub-tenancy without the written permission of the Landlords. Therefore, I find that the Tenant was in breach of their tenancy agreement, the Park Rules and section 28(1a) of the *Act* when they entered into a subletting agreement without the written consent of the Landlords.

Overall, I find that the Tenant has assigned or sublet the rental unit/site/property/park without the Landlord's written consent. Therefore, I dismiss the Tenant's application to cancel the Notice issued January 2, 2021.

Section 48(1) of the Act states:

Order of possession for the landlord

48(1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 45 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 48 of the *Act*, I must grant the Landlords an order of possession to the rental unit.

Therefore, I find that the Landlords are entitled to an order of possession, pursuant to section 48 of the *Act*, effective two days after service of this Order on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's application to cancel the Notice, issued January 2, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlords effective **two days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 1, 2021

Residential Tenancy Branch