



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, AS, OLC

Introduction

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

- the cancellation of the One Month Notice to End Tenancy for Cause (the "**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
- more time to make an application to cancel the Notice pursuant to section 59.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:32 am in order to enable the landlord to call into the hearing scheduled to start at 11:00 am. The tenant and his wife ("**KW**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenant, KW, and I were the only ones who had called into the hearing.

KW testified that she served that the landlord with the notice of dispute resolution package and supporting documentary evidence via registered mail to the mailing address provided by the landlord on October 20, 2022. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with these documents on October 25, 2022, five days after KS mailed them, in accordance with sections 81, 82, and 83 of the Act.

Preliminary Issue – Withdrawal of Portion of Tenant's Application

During the hearing, the tenant asked to withdraw his application for an order that the landlord comply with the Act. He stated that he needed to gather additional evidence to support this portion of his claim. In light of this request, and the landlord's non-attendance, I granted this request. I dismiss this portion of the tenant's application with leave to reapply.

Issues to be Decided

Is the tenant entitled to:

- 1) an extension of time in which to file an application to cancel the Notice;
- 2) an order cancelling the Notice; and
- 3) an order that he be permitted to sublet the manufactured home park site?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and the first owner of the manufactured home park (the "**Park**") entered into a verbal tenancy to rent the manufactured home site starting May 1, 2008. Monthly rent is \$350 and is payable on the first of each month. The landlord's brother purchased the Park some time after the tenancy started. Roughly two years ago, the landlord's brother passed away, and the landlord took over the administration of the Park. The tenant pays monthly rent via to an email address controlled by the landlord.

The tenant testified that he resided in the Park until 2018, when he moved to Vancouver Island. He sublet the manufacture home site (the "**Site**"). Roughly a year ago, the tenant moved again to the Kootenays. He continued to sublet the Site.

The landlord mailed the Notice to the tenant at the Vancouver Island address. It was dated August 31, 2022 and specified an effective date of October 5, 2022. It listed the reason for ending the tenancy as "tenant has assigned or sublet the rental unit slash site without landlords written consent." I note that the form of notice to end tenancy used by the landlord is 16 years out of date, and is materially different than the current form the Act requires the landlord to use.

The tenant testified that he did not become aware of the notice until October 1, 2022, when his former neighbor on Vancouver Island forwarded it to him. He disputed the Notice the next day (October 2, 2022).

The tenant testified that on September 1, 2022, a new subtenant moved into the tenant's manufactured home located on the Site. The tenant did not obtain written approval from the landlord prior to the subtenant moving onto the Site. After the tenant received the Notice, he emailed the landlord a Request for Consent to Sublet a Manufactured Home Site (form #RTB-25) on October 4, 2022. A copy of this email was submitted into evidence.

He testified that the landlord replied to him that he considered the request invalid, as the tenant did not sign it. The tenant testified that he signed the request, and re-sent it to the landlord, via regular mail. He did not provide confirmation of this mailing. The tenant testified that the landlord did not respond to this subsequent mailing.

Analysis

1. Validity of the Notice

Section 81 of the Act sets out how documents may be served. In part, it states:

How to give or serve documents generally

81 All documents, other than those referred to in section 82 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

[...]

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

The tenant did not reside at the Vancouver Island address at the time the Notice was sent to it. There is no evidence before me to show that the Vancouver Island address was provided as a forwarding address to the landlord where the tenant could receive mail. For these reasons, I do not find that the Notice was served in accordance with the Act.

Additionally, section 45 of the Act states:

Form and content of notice to end tenancy

45 In order to be effective, a notice to end a tenancy must be in writing and must [...]

(e) when given by a landlord, be in the approved form

The Notice is not in the approved form. The form used is 16 years out of date. As such, I do not find that, even if it had been served in accordance with the Act, that it could be effective. For this, I find that the Notice is invalid and of no force or effect.

2. Subletting

Section 28 of the Act, in part, states:

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;

Section 44 of the *Manufactured Home Park Tenancy Regulation* (the “**Regulation**”), in part, states:

Written request for consent to assign or sublet

44(1) Sections 45 [*response within 10 days*] and 46 [*deemed consent*] apply to a home owner's request for consent to assign or sublet only if the home owner requests the consent of the landlord of the park to assign or sublet in writing in the form approved by the director.

- (2) The home owner must serve the request on the landlord
 - (a) in accordance with section 81 of the Act [*service of documents*], and
 - (b) within sufficient time prior to the effective date of the proposed assignment or sublease to allow the landlord to respond under section 45 (1) (c) [*response within 10 days*].
- (3) The written request under subsection (1) must be signed by the home owner

I accept the tenant's testimony that, after the landlord rejected their initial request to sublet due to the lack of signature (which he is entitled to due pursuant to section 47(1)(b) of the Regulation), the tenant signed the request and mailed it to the landlord.

Section 81 of the Act permits service of such a request by ordinary mail.

Section 46 of the Regulation states:

Deemed consent if no response within 10 days

46(1) The landlord's consent to a request under section 44 [*written request for consent*] is conclusively deemed to have been given and the home owner may assign or sublet to the proposed purchaser or subtenant identified in the written request if the home owner has not received the landlord's response

- (a) by the end of the 10th day after the day the landlord received the home owner's request, or
 - (b) if the time for response has been extended under section 45 (3) [*agreement to extend*] to a specific date, by that date.
- (2) The home owner is entitled to consider that consent is deemed to have been given under paragraph (1)(a) if the home owner can demonstrate that the request on the landlord was served in accordance with section 81 of the Act [*service of documents*].

I accept the tenant's undisputed testimony that the landlord did not reply to the request to sublet within 10 days of receiving it, or at all.

Accordingly, pursuant to section 46(2) of the Regulation, I find that the landlord is deemed to have given his consent to the tenant's request to sublet.

As such, I order that the tenant may sublet the Site to the individual specified on the request to sublet form.

Conclusion

The tenant has been successful in this application.

I order the Notice is cancelled and of no effect.

I order that the tenant may sublet the Site.

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 15, 2023

Residential Tenancy Branch