



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 40;
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

The tenant’s application was filed within the time period required under the Act.

Issues

Should the One Month Notice be cancelled? If no, is the landlord entitled to an order of possession for cause?

Is the tenant entitled to recover the filing fee?

Background and Evidence

This Manufactured Home Park tenancy began over 6 years ago. The tenancy was in place when the landlord purchased the park in November 2016. The landlord submits they did not receive a copy of the original tenancy agreement when they purchased the park nor were they able to get the tenants to sign a new agreement. The landlord submits the original tenants were L.G. and E.B. The landlord submits that L.G.’s daughter C.H., who is named as a tenant in this application was never a tenant. L.G. and E.B. have been paying the rent since the landlord purchased the park.

The landlord served the tenants with a One Month Notice on January 6, 2023 on the grounds that the tenants assigned or sublet the rental unit/site without the landlord's consent.

The landlord submits the tenants moved to Salmon Arm in the summer of 2022 and have sublet the rental site to their adult daughter without the landlord's consent. The landlord submitted a copy of the park rules issued to all tenants in 2017. Section B.2 of the park rules state that a tenant is not permitted to sublet the manufactured home pad to another person and that all homes in the park must be the tenant's principal residence. The landlord submitted written statements from other tenants in the park stating that the tenants had moved to Salmon Arm and that the tenants' daughter had moved in with them just prior to them moving.

The tenant L.G. did not dispute that they have moved to Salmon Arm. Rather, L.G. submits that she has not sublet the rental site as she is still there every weekend. L.G. submits that she pays all the rent and that her daughter has resided with them off and on since 2016.

Analysis

Section 40 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 40(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

In this case, the landlord issued the One Month Notice pursuant to paragraph 40(1)(h) of the Act, which permits a landlord to terminate a tenancy if the tenant purports to assign the tenancy agreement or sublet the rental site without consent from the landlord.

I accept the landlord's submission that the original tenants party to this tenancy were L.G. and E.B. This is supported by a previous notice of rent increase on file issued to them as tenants as well as the One Month Notice which identifies them as the tenants. The tenants application has been amended to reflect this and C.H. has been removed as a party to this dispute.

I find the park rules are very clear that a tenant is not permitted to sublet the manufactured home pad to another person and that all homes in the park must be the tenant's principal residence. I find the landlord has submitted sufficient evidence that the manufactured home park is no longer the tenants principal residence. This fact was not disputed by the tenant L.G. who's own testimony was that she still was there only on the weekends. Additionally, L.G. provided no supporting evidence to demonstrate the length of time she resided in Salmon Arm versus the park. I find the tenants can only have one principal residence and that is their new residence in Salmon Arm. I find the tenants are no longer residing at the park and have sublet the rental site to their adult daughter without the landlord's prior knowledge or consent.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds that the tenants have sublet the rental site.

The tenants application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 48 of the Act.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants 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: February 06, 2023

Residential Tenancy Branch