



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding UP COUNTRY MOBILE HOME PARK  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was set to deal with two One Month Notices to End Tenancy for Cause issued by the landlord to two different individuals, referred to by initials BA and DA, for the same rental site.

The landlord's shareholders appeared for the landlord. BA appeared on behalf of herself. I heard DA is not of sound mind and resides in a care home. DA was represented by her daughter who holds a Power of Attorney for DA (this daughter is herein referred to as POA).

The hearing was held over two dates and the Interim Decision should be read in conjunction with this decision.

### Issue(s) to be Decided

1. Is BA a tenant?
2. Is DA a tenant?
3. Assignment of the tenancy agreement.
4. Should the One Month Notices be upheld or cancelled?
5. Award of the filing fee.

### Background and Evidence

The landlord purchased the manufactured home park in 2015 or 2016 and inherited an existing tenancy for the subject rental site. There was no written tenancy agreement for the existing tenancy. Rather, the landlord was provided a document listing the names of the tenants by the former landlord (herein referred to as a "rent roll"). The rent roll

provided by the former landlord indicated the tenant was an individual with the initials FA.

After the landlord purchased the property, the landlord's agent attended the property and met FA along with his wife DA. The landlord's agent testified that he considered FA and DA to be tenants for the site since they both resided on the site. FA died in 2017 and had paid the rent up until he died.

FA and DA had three daughters, one of which is BA.

After FA died, the landlord believes BA started writing the rent cheques. However, both BA and POA testified that DA took over payment of the rent until she went to a care home in 2019. I asked the landlord's agent if they kept a deposit book that shows the name of the person writing the rent cheques in 2017, 2018 and 2019. The landlord's agent stated he only writes the amount of the rent cheque in the deposit book and then reflects payment on the rent roll. As of this date, the rent roll still reflects the tenant as being FA.

BA testified that in 2019 her mother DA went to live in a care home. The manufactured home was transferred into the name of DA's three daughters but because BA was began residing in the manufactured home, she paid the rent for the site.

BA testified that in 2019 she telephoned the landlord's office and spoke with landlord's agent CL. BA testified that she informed CL that she was now residing in the manufactured home and asked how to make the rent payments. BA testified that during that conversation CL did not mention that a new tenancy agreement or request for assignment of the tenancy agreement was required. CL testified that she did not recall such a conversation and if a person merely asked how to pay rent she would have told them to send post dated cheques to the landlord's office address.

It is undisputed that during 2019 through to 2022 BA paid the rent by cheque. The landlord's agent testified that he did not pay much attention to the name on the rent cheques and that he had assumed BA was the name of FA's wife.

BA testified that she spoke with the landlord's agent in person when he came to deliver a Notice of Rent Increase and another time when he was planting flowers in the manufactured home park. The landlord's agent did not deny that but explained he does not usually question why a person is on a site as they could be a tenant's guest.

BA testified that in 2022 she raised an issue with the landlord concerning the enforceability of a Notice of Rent Increase and after that the landlord started to insist she was not the tenant and proceeded to issue the subject One Month Notices.

The One Month Notices are dated November 25, 2022 and have a stated effective date of December 31, 2022. The stated reason for ending the tenancy, on both of the One Month Notices, is:

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

In the Details of Cause, the landlord wrote on both of the One Month Notices:

*I received a email from [BA] 17<sup>th</sup> of Nov telling me I had made mistakes in the Rent Increase notice. I saw this email came from a business whitch I thought strange I check into it the BA is the daughter of my tenant [DA]. I spoke with her and she told me mom moved out and she is my new tenant.*

[Reproduced as written except names are replaced with initials by me]

The landlord is of the position that DA is the tenant and DA sublet or tried to assign the tenancy agreement without written consent as is required in the Act since the manufactured home title has been transferred to DA's daughters. The landlord is of the position BA and her sisters conspired against the landlord in an attempt to conceal the fact that BA was not a tenant and cheat him out of the additional money he would have made by rent increases had a new tenancy agreement formed, or from sales income of a new manufactured home had the existing manufactured home not been up to his standard. The landlord's agent explains that when he receives a request for assignment, he inspects the manufactured home and it must meet a certain standard to get approval. If it does not he may sell the prospective new tenant another manufactured home.

The landlord's agent indicated that most of the time he is does not attend the manufactured home park as he lives in another city. There is a park manager; however, the landlord's agent stated the park manager only does yard work, snow clearing and garbage removal but he does not interact with tenants. BA indicated the park manager is aware she has been living on the site for years and that he is more involved with residents than merely grass cutting, garbage removal and snow clearing in the park.

In summary, the landlord is of the position that DA is the tenant since the landlord did not give written consent to assign the tenancy agreement to BA and the Act requires that written consent be given by the landlord to assign a tenancy agreement. DA and BA tried to assign the tenancy agreement which is grounds for ending the tenancy.

BA is of the position she is the tenant since she has been residing on the site for four years, paying rent all that time, and that the landlord did not have a written tenancy agreement with her parents, the landlord did not indicate an written consent to assign the tenancy agreement was required when she enquired about paying rent told the landlord's agent that her mother moved out and she moved in.

POA was of the position DA is no longer a tenant because she moved to a care home four years ago, DA has not paid rent in all that time, and DA no longer owns the manufactured home.

### Analysis

Under section 13 of the Act, in effect since 2004, the landlord has the burden to create a written tenancy agreement and present it to all parties for signature. It is unopposed that the former landlord did not create a written tenancy agreement for the subject site with either FA or DA. Rather, the former landlord created a document that appears consistent with a rent roll and gave that to the current landlord when the current landlord purchased the manufactured home park.

The current landlord points to the rent roll as being evidence of the identity of the tenant for the sites in the manufactured home park; however, the rent roll and the landlord's position are somewhat inconsistent. The rent roll identified only one tenant, FA, for the subject site. Yet, the landlord's agent testified that after purchasing the manufactured home park he considered FA and DA to be the tenants because they were both residing on the site. Also, after FA died, the landlord stated he considered DA to be the tenant, even though DA was not on the rent roll and there was no written tenancy agreement identifying DA as a tenant. According, I find the landlord has acted in such a way as to recognize a person as being a tenant based on their residency where there is no written tenancy agreement and even if that person is not named on the rent roll.

When a tenant seeks to sell or transfer title of the manufactured home but leave the manufactured home in place, a tenant may request the landlord's consent to assign their tenancy agreement to the prospective new home owner.

Section 28 of the Act provides for assigning a tenancy agreement:

**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.

In this case, it is undisputed that DA did not submit a written request to the landlord for consent to assign the tenancy to BA and the landlord did not provide written consent. However, I find it ironic that the landlord now seeks to evict a long term resident who has been paying rent to the landlord with rent cheques that have her name for lack of written consent considering the landlord's past conduct of recognizing a tenant based on residency when there is no written tenancy agreement and that person is not named on the rent roll.

Also of consideration is that the landlord had issued Notices of Rent Increase to BA which is evidence that the landlord must have either noticed BA's name on the rent cheques or was aware of her residency at the site despite his insistence that he did not pay much attention to the names on the rent cheques and did not have knowledge of BA residing at the site. Therefore, I find BA's version of events, that the landlord was aware of her residency on the subject site and was accepting rent from her for a significant period of time.

In light of the above, and under the principle of estoppel, I am of the view the landlord is estopped from trying to end the tenancy based on lack of written consent for assignment. Under the principle of estoppel, a person is prevented from asserting a right that contradicts what that person has said or done in the past. Therefore, **I order the assignment of the tenancy from DA to BA pursuant to the authority afforded**

**me under sections 28(1)(b) and 55(3) of the Act and I cancel the One Month Notice issued to BA.**

**I further order that any future assignment of the subject tenancy or sublet of the manufactured home must be accomplished in writing in accordance with section 28 of the Act.**

For added clarity, I find DA is no longer a tenant because I have ordered DA's tenancy has been assigned to BA and the One Month Notice issued to DA is of no effect.

Since the tenant was successful in this application, I award the tenant recovery of the \$100.00 filing fee from the landlord. The tenant is authorized to deduct \$100.00 from a subsequent month's rent payment in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

#### Conclusion

I have ordered the assignment of the tenancy agreement from DA to BA. BA is the current tenant and DA is no longer a tenant. I have also ordered that any future assignments of the subject tenancy or sublet of the manufactured home on the subject rental site must be accomplished in writing and in accordance with section 28 of the Act.

The One Month Notice issued to BA is cancelled. The One Month Notice issued to DA is moot.

The tenant BA is awarded recovery of the \$100.00 filing fee from the landlord. The tenant is authorized to deduct \$100.00 from a subsequent month's rent payment in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

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: June 08, 2023

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Residential Tenancy Branch