



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to allow the Tenant to assign or sublet because the landlord's permission has been unreasonable withheld, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and acknowledged receipt of evidence submitted by the other. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be granted an Order to allow her to sublet her Manufactured Home?

Background and Evidence

The Tenant submitted 36 pages into evidence which included, among other things, copies of: an order of events from November 1, 2010 to August 3, 2012; the December 6, 2012 *Residential Tenancy Branch* decision; the January 05, 2011 *Residential Tenancy Branch* review decision; the February 22, 2011, *Residential Tenancy Branch* decision; the Landlord's letter dated August 23, 2011 advising of a change to the community rules; a June 12, 2012 request to sublet, and a notice to end residential tenancy dated 2012/08/01.

The Landlord submitted 13 pages of evidence which included, among other things, copies of: the manufactured home community rules and regulations; the Landlord's August 23, 2011 letter advising of a park rule change; and a June 12, 2012 request to sublet.

Counsel for the Tenant stated that on June 6, 2012 the Tenant submitted a written request to sublet her manufactured home and on June 20, 2012 the Landlord unreasonably denied the Tenant's request on grounds that the park rules do not permit subletting.

Counsel argued that the Landlord unilaterally changed a rule in a manner that does not comply with section 30 of the *regulations*. He asserted that section 30(3)(d) of the *regulations* allows a landlord to establish, change or repeal a rule only if it is reasonable and falls within one of the following four reasons: (1) promotes safety or convenience; (2) protects and preserves the condition of the park or property; (3) regulates access to or distributes a facility or service; or (4) regulates pets in common areas. Counsel continued his argument stating that the rule change was not within the requirements of section 30(3)(d) of the *regulations* because it changes a material term.

The Landlord submitted that his rule change to disallow subletting of manufactured homes conforms with section 30 of the *regulations* because the rule was changed as a result of numerous complaints from other park residents. He submitted that he has received numerous verbal complaints about the subtenants having parties, making loud noises, and bringing dogs into the park.

The Landlord refutes Counsel's argument that he contravened section 30(3)(d) of the regulation as he only changed the park rules and not a material term of a tenancy agreement.

The Landlord stated he was requesting an order of possession because the Tenant sublet the unit prior to gaining his consent. A discussion followed whereby the Landlord asserted that he was told he could request an order of possession simply because he issued the Tenant a notice to end tenancy. I clarified that the application before me was not to cancel or set aside a notice to end tenancy therefore his request for an order of possession was not relevant. I advised the Landlord that he was at liberty to file his own application for dispute resolution if he wished to seek an order of possession.

Following the discussion Counsel was provided an opportunity to submit his rebuttal and closing remarks at which time he advised of his involvement with this tenancy since before November 2010. He noted that he has no recollection of any complaints being lodged by other park residents or concerns being raised about the subtenants causing a disturbance or having dogs. He submitted that the manufactured home is clean and in very good condition and is a desirable place to live for prospective subtenants.

The Landlord had nothing further to submit.

Analysis

I have carefully considered the aforementioned and all documentary evidence that was before me in making the following determination.

The Tenant has sought an Order to allow her to sublet her manufactured home and set aside the Landlord's unreasonable refusal to sublet. The Landlord submits that in August 2011 the park rules were changed by the Landlord to prohibit sub-letting of manufactured homes; therefore, he is not unreasonably withholding permission, he is simply enforcing the park rules.

Section 32 of the *Act* provides that a landlord may establish, change or repeal park rules in accordance with the *regulations*. Section 30(3)(d) of the *regulations* stipulates that the effect of a change is enforceable only if the rule does not change a material term of the tenancy agreement.

In this case the Landlord submits that in August 2011 the park rules were changed, not the tenancy agreement, and therefore the change did not affect a material term of the tenancy agreement and cannot be a breach of the *regulations*.

Upon review of the "William's Manufactured Home Community LTD Rules and Regulations" submitted into evidence by the Landlord, I find this document to include both the tenancy agreement and the park rules.

I make the foregoing finding in part because the top portion of this document outlines the terms of a tenancy agreement as required pursuant to section 13 of the Act. These terms include the address of the rental unit, the names of the landlord and tenant, the start date of the tenancy, the amount of rent payable, the date rent is payable, the number of occupants, **standard terms** relating to sub-leasing and operation of a business, and both parties signature and date they agreed to these terms. The document continues underneath the party's signatures, outlining the park rules under the subtitle "RULES".

Section 12 of the *regulations* stipulates **standard terms** which are required in a tenancy agreement which are listed and defined in the *regulations schedule*. Terms relating to assignment or subletting of a tenancy agreement are specified as **standard terms** of a tenancy agreement under #6 of the *regulations schedule*.

Section 14(1) of the *Act* stipulates that a tenancy agreement may not be amended to change or remove a standard term.

As per the foregoing, I find the Landlord breached section 14 of the *Act* by singularly changing a standard term of the tenancy agreement by removing the Tenant's right to seek consent to sublet or assign her manufactured home.

The evidence supports the Tenant submitted a written request to sublet her manufactured home on June 12, 2012, in accordance with section 44 of the *regulations*. The Landlord denied the request on the grounds that "park rules (Aug 2011) do not permit sub-letting", which I find to be unreasonable as it is not a ground by which a landlord may withhold consent to assignment of a tenancy agreement pursuant to Section 48 of the Manufactured Home Park Tenancy Regulation.

Conclusion

I have made no findings of fact or law pertaining to matters relating to a notice to end tenancy dated August 2, 2012, as this matter was not before me.

The Tenant's application is upheld and I HEREBY ORDER that the Tenant is allowed to assign or sublet her manufactured home park site.

The Tenant may deduct the one time award of **\$50.00** from her next rent payment, as full satisfaction of recovery of the filing fee.

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: September 05, 2012.

Residential Tenancy Branch