

A. G. KEMP & ASSOCIATES INC.

Serving, Educating, and Assisting Rental Housing Providers since 1997

Kemp's Korner

Issue #

Kemp's Korner is intended to provide you with current information about the residential rental industry specific to manufactured home communities and tips to help you increase your success in this challenging business. Each issue will include:

Did you know . . .

Did You Know . . .

- . . . **whether a Tenant Can Withdraw a Notice to End Tenancy?**
- . . . **the Four Part Test for a Monetary Claim?**
- . . . **who Owns the Home? Who Cares!**

Can a Tenant Withdraw a Notice to End Tenancy?

The Hatfields and the McCoys had been feuding for years. Finally, Joe Hatfield said he and his wife couldn't take it anymore; they're leaving, ending their tenancy, and will be selling their home. They wrote a letter to Mary Spencer, the resident manager, stating they would be leaving the end of next month. Mary breathed a sigh of relief when she received the letter; an end was in sight to the continuous complaints about each other from these tenants.

Her relief was short lived. Two days later Rebecca and Joe Hatfield came to her office and sheepishly told her they acted too hastily and had changed their mind. They gave her a note signed by both, retracting the letter ending their tenancy.

Everyone thought that was the end of it. However, Mary phoned me and I confirmed that, not only could the Hatfields not withdraw their first letter, but also, she could ultimately use that letter to get an Order of Possession.

Residential Tenancy Branch Policy Guideline #11 states in part,

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant. It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

What is the Four Part Test?

If you plan to file to obtain a monetary order against a tenant or ex-tenant, the arbitrator will require you to satisfy the Four Part Test. Arbitrators use this to determine if compensation is

payable, and if so, what amount. This is not a requirement in the Act or Regulation; it is documented in an RTB Policy Guideline.

Even if it wasn't a requirement, it is a good test for you to determine if your claim is likely to succeed.

RTB Policy Guideline 16 reads:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- 1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- 2. loss or damage has resulted from this non-compliance;*
- 3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- 4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

#3 is particularly important, as "aggrieved" tenants (aka free money tenants) will often cite stress, anxiety, harassment, emotional upset, etc. caused by the landlord is worth XX thousand dollars. I've never seen this claim where the tenant had legitimate and convincing medical evidence.

If you can't satisfy all four tests to yourself, you need more evidence or probably should not apply for a monetary order.

Who Owns the Home? Who Cares!

A strange heading! It would seem you should care. I get a call or email almost every week asking what to do because ownership of a resident's home has changed hands. It's been sold; the tenant passed away – with or without a will, two siblings are squabbling over who has the right to inherit the home; an unknown "relative" has moved into the home without management consent – the list goes on.

My reply is always the same: who owns the home is irrelevant in most cases. You have a contract (tenancy agreement) to rent the site (land) to a person or persons who are named as tenants in that agreement.

The analogy I use is to compare a site with a suite in an apartment building. The tenant can't knock out a wall; it belongs to the landlord. The landlord can't require the tenant to replace a couch because the landlord doesn't like blue; the couch belongs to the tenant.

A home on a site is equivalent to a couch in a suite. Provided rent is paid for the site and the tenant complies with the tenancy agreement and park rules, it most often doesn't matter who owns the home. This is also why a landlord cannot enter a resident's home; it is not part of the tenancy agreement.

There is an exception to the couch comparison. You do have the right to require the exterior of the home to meet community standards, i.e., skirting in place, no tarp on the roof, no foil on the windows, and the deck in good condition. Unsightly homes negatively affect the property values of adjacent homes and the community.

Finally, if someone moves into a home without your prior consent – and you are using my tenancy agreement form – act as soon as you become aware. Issue a letter addressed to the tenant or to "the Estate of the Late <tenant's name>", that the person must either apply to become a tenant or occupant and be accepted, or leave the community by a specific date.ß

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