

DECISION

Dispute Codes AS, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to allow the Tenant to assign or sublet the rental site, because the Landlord's permission has been unreasonably withheld, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the Tenant entitled to an order to allow the Tenant to assign or sublet the rental site, because the Landlord's permission has been unreasonably withheld?

Background and Evidence

The Tenant has a manufactured home on rental site 47, in a park owned by the Landlord. The tenancy agreement for the site apparently began April 15, of 1992.

The Landlord and the Tenant entered a second written agreement on May 23, 1992, which allowed the Tenant to rent a vacant site, 47 'A', adjacent to the site on which the home is located. The vacant site, 47 'A', provides an unobstructed ocean view for site 47. A term of this agreement states, "... that the said lot [47 'A'] does not automatically go with our trailer in the event [the Tenant] should sell."

The Tenant has the manufactured home on site 47 listed for sale. In an email between the realtor representing the Tenant and the Agent for the Landlord, the Agent explains that site 47 'A' is not assignable under the May 23, 1992, agreement.

The Tenant claims the two sites have now been "conjoined" due to the length of time the site has been rented by the Tenant. She further claims the Landlord is unable to put another manufactured home on site 47 'A', as the site does not comply with the applicable municipal bylaws.

The Agent for the Landlord submitted that the Landlord has not received a request from the Tenant to assign the site, and therefore, the Landlord has not refused to assign the site.

The Tenant replied to this saying she wanted a decision on whether or not the lot was assignable in order to better market the home for sale.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Application for Dispute Resolution of the Tenant is premature, and I dismiss the claim of the Tenant with leave to reapply.

The Tenant has failed to follow the regulation to the Act, in particular part 7, section 44. The Tenant has not made a request to the Landlord to assign the site in accordance with the requirements of the Act and regulation in the form approved by the Director, and therefore, the Landlord cannot be said to have unreasonably withheld permission.

The assignment and sublease provisions of the regulation part 7, sections 42 to 52, must be used by both the parties when a sublease or assignment is requested. This legislation is not intended to assist the Tenant in marketing the home.

Conclusion

The Tenant's Application for Dispute Resolution is premature, as the Tenant has not made a request to assign or sublet the lot in the form approved by the Director. The Tenant's Application is dismissed, with leave to reapply. The filing fee is not awarded to the Tenant, as she has been unsuccessful in this Application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9 of the *Act*.

Dated: January 05, 2010.

Dispute Resolution Officer