



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, AS, O, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to dispute an additional rent increase, for an order to allow the Tenant to assign or sublet the tenancy agreement because the Landlord permission has been unreasonably withheld, for other relief under the Act or tenancy agreement, 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. The Tenant was represented by legal counsel at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that at the outset of the hearing, legal counsel for the Tenant explained that the issue of disputing the additional rent increase had been resolved, and therefore, this matter has been withdrawn from the Application.

Issues(s) to be Decided

Has the Landlord's permission to assign or sublet the tenancy agreement been unreasonably withheld?

Is the Tenant entitled to the other relief sought in her Application?

Background and Evidence

This tenancy began on July 1, 1996, with the parties entering into a written tenancy agreement for the subject rental site located in a manufactured home park. The Tenant has listed the manufactured home for sale and has issues with the Landlord allegedly withholding, or pre-emptively withholding, consent for the Tenant to assign the tenancy agreement to prospective purchasers.

The Tenant submitted evidence and testimony that the Landlord has been communicating with her realtor and making changes to the tenancy agreement or imposing new terms in the tenancy agreement that would have a negative effect on attracting potential purchasers of the manufactured home. The Tenant also provided evidence that the Landlord itself has several manufactured homes for sale in the park and is competing with her sale.

The Tenant submits in evidence a letter dated July 13, 2010, from the Landlord to her realtor which lists several requirements that the Landlord is insisting on enforcing for new purchasers in the property. The Tenant alleges the requirements are in breach of the Act.

In the letter the Landlord is insisting that the Tenant must sign a form "surrendering" her current tenancy agreement and the purchaser must enter into a new tenancy agreement with the Landlord.

The Landlord is also insisting that potential purchasers be informed that the park is a seniors only park, and that one person must be 55 years old and the home must be registered in that person's name, and that no rentals are allowed.

The Landlord limits the amount of occupants who can live in the home at two people, due to an "antiquated sewer system".

The potential purchasers must also provide a criminal records and a credit check, at their own expense. The Landlord is also requiring a copy of the purchase and sale agreement, and a private interview with the potential purchasers prior to approval.

The Landlord is also requiring every potential purchaser to agree they will replace at least one electric appliance with a natural gas appliance, that they will repaint and lower the height of a fence and remove a gazebo which was constructed at the front of the rental site some nine years ago.

In written submissions the Tenant also requests the return of a \$10.00 charge the Landlord required to provide her with a copy of the original tenancy agreement from 1996.

The Agent for the Landlord provided little testimony and relied on written submissions supplied in evidence to present the Landlord's arguments against the Tenant's claims. The Agent did testify that he thought the Application of the Tenant should be dismissed as being premature, as the Landlord has actually not received any formal request to assign the tenancy agreement to a purchaser. The Agent also testified that no park committee has been established.

In the written submissions of the Landlord, the Landlord has attached a notarized statement of the former husband of the Tenant. In this statement the former husband declares that he promised the Landlord to take the gazebo down when the home was

put up for sale. He further declares that his former wife, the Tenant here, was aware of this agreement. The Landlord further recounts the events surrounding the building of the gazebo in April of 2001, and submits the Tenant has known all along the gazebo would have to be removed upon sale of the home.

The Landlord submits that there has not been any application from the realtor or potential purchaser to become a resident of the park.

The Landlord submits that many of the other residents of the park do not wish it to become a family park as it used to be many years ago and have requested the Landlord designate the park as adults only, or for seniors only.

The Landlord submits that the park electric system has only seen a minor upgrade since 1965, and that the cost to upgrade the system is prohibitive. Therefore, the Landlord is requiring new residents who purchase a home to install at their cost a natural gas appliance to offset increasing electrical demand.

The Landlord also makes requests for several orders against the Tenant, including an immediate termination of her tenancy agreement if she refuses to remove the gazebo. The Landlord also requests an order for her to replace an electrical appliance with a natural gas appliance.

Analysis

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

I allow the Tenant's Application, as I find the Landlord has breached several portions of the Act. I find the Landlord is prohibited from enforcing any of the provisions they seek to impose on the Tenant or prospective purchasers, as described above.

In particular, the Landlord is prohibited under the Act from:

- a. Requiring the Tenant to surrender her tenancy agreement;
- b. Requiring a purchaser to enter into a new tenancy agreement;
- c. Insisting that potential purchasers be informed that the park is a seniors only park and that one person must be 55 years old and the home must be registered in that person's name;
- d. Requiring potential purchasers to pay for a criminal records or a credit check;
- e. Insisting on setting terms for an interview with the potential purchasers prior to approval;
- f. Requiring every potential purchaser to agree they will replace at least one electric appliance with a natural gas appliance or that they will repaint and lower the height of a fence or remove a gazebo which was constructed at the front of the rental site some nine years ago; and

- g. Requiring the Tenant to pay a \$10.00 charge to provide her with a copy of the original tenancy agreement.

Therefore, I order the Landlord to adhere to all the provisions of the Act and regulations.

In particular, regarding the assignment of the tenancy agreement, the Landlord must adhere to the provisions of section 28 of the Act and Part 7 of the regulations which deal with the rights and obligations of both parties and a potential purchaser.

I find the Landlord has breached section 14 of the Act by trying to amend or change a standard term of the original tenancy agreement. I do not accept the testimony of the Agent that the Landlord simply wants to update the tenancy agreement so that it complies with current legislation. It appears more likely the Landlord is attempting to change the standard terms of the original agreement. Regardless of the age of the current tenancy agreement, it may only be amended or altered, other than a standard term, only if both the Tenant and the Landlord agree to the change. The Landlord must not unilaterally impose such a change.

For example, the Landlord must not limit the amount of occupants who can live in the home to two people, as four people are allowed under the original tenancy agreement.

In regard to the requirement that the Tenant or prospective purchaser install a natural gas appliance, I find the Landlord is attempting to avoid its duty to maintain the park, and/or is attempting to terminate a service or facility without adequate compensation to the Tenant, and has therefore has breached sections 21 and 26 of the Act. The Landlord must not require such a change, unless for example, notice in accordance with the Act is given and all residents are required to do this and there is a commensurate reduction in rent for the loss of the service of the electrical system. The Landlord had insufficient evidence that it had followed section 21 of the Act, and therefore, I order that the Landlord may not require a gas appliance replacement in the rental unit.

The Landlord has also breached section 15 of the Act by requiring the person being investigated for suitability as a tenant to pay a fee for a credit check or criminal records check. While the Landlord may request such information be provided, it must do so at its own expense.

Likewise, the Landlord must not charge the Tenant a fee for providing a copy of the original tenancy agreement, as the Tenant is entitled to a copy under the Act. **I order the Landlord to repay the Tenant \$10.00 for this, as described below.**

I do not accept the evidence of the Landlord in regard to the gazebo. While there may have been an oral agreement with the Tenant's former husband, this would only be enforceable between the former husband and the Landlord. There is insufficient evidence this agreement included the Tenant herself as a party. Furthermore, I find that had the Landlord considered the gazebo to be a breach of the tenancy agreement it

should have acted many years ago to address this issue. Therefore, I find the Landlord is estopped from requiring that the gazebo to be removed as a condition of sale.

The Landlord also provided insufficient evidence to support the position that this was a seniors only park, enacted as a park rule in accordance with the Act. Therefore, I find the Landlord must not place restrictions on the age of the persons who may purchase the Tenant's home.

While the parties did make some submissions on the issue of the Tenant's pets, I find this issue would most appropriately be dealt with by an Application for Dispute Resolution by the Landlord and therefore, I make no determinations on the pet issue.

Having found the Tenant to be successful in her Application, I order the Landlord to pay the cost of the Tenant's filing fee for the Application, along with the refund of the \$10.00 charge for a copy of the agreement as described above. **Therefore, I order that the Tenant may deduct \$60.00 from one month of rent in compensation.**

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 10, 2010.

Dispute Resolution Officer