



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, AS, FF

Introduction

This was the hearing of an application by the tenant for a monetary order, an order that the landlord comply with the Act, Regulation or Tenancy Agreement and an order allowing the tenant to assign or sublet. The application was heard on June 22, 2010, but it was adjourned to August 25, 2010 to allow the parties to provide additional evidence and make further submissions. I have been provided with a vast amount of disorganized documents and written materials from the tenant in support of this application and from the landlord in reply.

Issues(s) to be Decided

In the tenant's revised application for dispute resolution submitted on May 10, 2010 he requested a monetary order in the amount of \$9,743.51. He requested an order that the landlord comply with the Act, Regulation or tenancy agreement and allow the tenant to assign or sublet. As part of his evidence the tenant stated six questions that he requested be answered as part of his application. Some of those questions will be answered in the reasons that follow. Others, such as: "What are the defined boundaries of (the subject pad), and are they legitimately so defined?" are not answerable based on the evidence submitted.

Background and Evidence

The rental unit is a pad in the landlord's manufactured home park. The tenancy began October 1, 2006. The tenant has alleged that the landlord has interfered with his efforts to sell his manufactured home and that the landlord has unreasonably refused consent

to the assignment or subletting of the rental unit. The tenant said that when he considered purchasing the manufactured home on the subject pad the then owners told him that there was a possibility that a workshop on the northern edge of the pad might have to be relocated in the future. According to the tenant the landlord made some form of commitment that in the event that relocation was required, the landlord would bear some of the relocation costs.

When the tenant made an offer in September, 2006 to purchase the manufactured home on the landlord's pad, he requested a plan showing the boundaries of the subject pad as well as any proposed changes to the pad. According to the tenant he was not given information to establish the precise boundaries of the pad. The tenant complained that the pad boundaries have been unilaterally altered by the landlord during the course of his tenancy.

The applicant submitted documents, including communications between realtors, the landlord and prospective purchasers of the tenant's manufactured home. According to the records submitted the landlord's daughter told a prospective purchaser that: "there were issues with (the rental pad) regarding the garage/shop. She claims that the shop is on park property, but she did not know by how much. She wanted us to be aware that if ever that area of the park were to be developed, the shop would have to be moved or removed". According to the realtor an agent of the landlord told the prospective purchaser that when sewer comes to the area in 4 – 10 years the tenant's mobile home would have to be moved to face east/west rather than north/south and two more trailers would be moved onto newly formed pads to the west of it.

The landlord stated to the tenant in a e-mail dated October 5, 2009 that

The purpose of this e-mail is to provide greater clarity to you and any prospective purchaser of your premises in (the Manufactured Home Park (MHP)).

Your home and garage straddle two lots and part of a roadway in the park plan. Those lots and road were created in a re-structuring of the Park plan ten years

ago. There are no immediate plans to implement this plan nor are there any prospective plans to do so.

If the plan is implemented then the Park (that is the owners of the park should it be me or a holding company owned by me or my family) would bear the cost of moving the Garage, assuming it is moveable with no alterations to the structure itself, but not the cost of preparing the structure for moving or the cost of a new concrete pad to accommodate it. The Park would also bear the cost of moving the Mobile home itself, if that is necessary and if it is moveable, but not the cost of preparing the home for the move or the cost of any foundations required to hold the home once moved.

Nothing about this commitment should be interpreted to imply that the lease for the pad is anything more than a month to month lease which is in the nature of the standard practice for Manufactured Home Parks.

If you or any prospective purchaser would like to discuss this matter, please don't hesitate to be in touch.

The applicant's enquiries and the documents he submitted show that the plan referred to by the landlord in the passage quoted above date back some ten years and were not acted upon by the landlord.

The tenant submitted a copy of a contract of purchase and sale of his manufactured home. Pursuant to the contract the purchaser, "M.M." agreed to purchase the home from the tenant for the sum of \$60,000.00. I was not provided with the entire agreement which consisted of eight pages. The tenant submitted only two pages of the agreement. The prospective purchaser did make application to the landlord to be approved as a tenant. The tenant submitted an e-mail message from M.M. wherein she referred to the October letter from the landlord. M.M. said: "As to your letter from (the landlord) he states that they will pay to have the trailer moved but not the prep. work Will that concerns me, if they wont it moved than they should cover the whole cost. Another thing that concerns me is that trailer will be to old to move it, it will fall apart. As for the shop it may be able to be moved but where is there a trailer pad big enough to hold both the trailer and the shop, and as for the cement pad that it sits on that is a very big expense and one that I am not able to live with Bottom line is if they wont everything moved then they pay for every thing, but the trailer is to old to take a move. It looks like

they wont to make a profit at my expense not acceptable I hope this can be settled soon as I have to find a place to live ” (reproduced as written).

The tenant referred to a proposed subletting of his manufactured home to one “T.P.” His position is that the landlord has unreasonably withheld consent to a sublet of his manufactured home and pad. The landlord refused to approve a sublet to TP, but the landlord’s position is that TP was not a suitable tenant and the landlord will not unreasonably withhold consent to a suitable subtenant.

Analysis and conclusion

The tenant purchased his manufactured home and a shop on a pad of imprecisely defined dimensions whose area included within it the shop and the manufactured home. The landlord told the tenant and his prospective purchaser that: “Your home and garage straddle two lots and part of a roadway in the park plan.” He also said that if the landlord implemented the plan the landlord would bear only part of the cost of relocating the manufactured home and garage or shop. It was this information and the concern that, due to its age, the manufactured home could not be moved that apparently dissuaded the prospective purchaser from completing the transaction.

When the landlord referred to “the park plan” he was referring to a proposed plan, not to any existing plan to which the tenant's pad did not conform. The *Manufactured Home Park Tenancy Act* (the *Act*) does not contain provisions that allow a landlord to unilaterally alter the dimensions of a pad or to require a tenant to move his home so as to allow a landlord to redesign the layout of a manufactured home park or to change the dimensions of existing leased pads in order to increase the number of pads or for other purposes however laudable. The only mechanism to achieve such a redesign would be by way of a negotiated agreement with the affected tenant. Absent such an agreement a landlord would not be able to implement the proposed plan.

Section 42 of the *Act* allows a landlord to end a tenancy for landlord's use upon one year's notice to a tenant, but the only grounds for giving such a notice are if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park. A redesign of a park layout is not an available ground for ending a tenancy under section 42.

By referring to a park plan as though it was existing and by implying that he had some right to implement such a plan without the agreement of the tenant or prospective tenant the landlord misled the prospective purchaser and I find that the landlord's incorrect and misleading statements were the operative cause of the purchaser's withdrawal from the transaction.

The tenant has not stated any claim for damages arising out of the aborted sale. The evidence does not show that the landlord intended to induce the purchaser to breach her contract of purchase and sale, but if the landlord should in future repeat the misleading statements then the inference of intention would follow.

The tenant requested an order that the landlord comply with the *Act*, Regulation or tenancy agreement.

I direct the landlord to refrain from comment or interference with any proposed purchase and sale by the tenant by way of remarks, statements or information that would lead a prospective purchaser to conclude that the landlord has any right to alter the dimensions of the tenant's manufactured home site, to implement a plan to that end, or to require the removal or re-siting of the manufactured home or the shop/garage on the site apart from a change negotiated by way of mutual agreement of the parties.

The tenant has claimed damages that he claims to have suffered because the landlord refused permission to sublet. Having reviewed the landlord's evidence concerning the proposed tenant T.P. I find that the landlord had reasonable grounds to refuse to

approve a sublet to the proposed sub-tenant T.P. I deny the tenant's claim for loss of rental income. I caution the landlord that he may only withhold consent to the approval of a prospective sub-tenant for one or more of the grounds set out in section 48 of the Manufactured Home Park Tenancy Regulation.

The tenant is entitled to recover the \$50.00 filing paid for his application. He may deduct the said sum from a future installment of rent.