



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, AS, MNDC, FF

Introduction

This matter deal with an application by the Tenant for an Order requiring the Landlord not to withhold his consent unreasonably to the Tenant subletting his manufactured home, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Has the Landlord unreasonably withheld his permission to allow the Tenant to sublet the manufactured home on the manufactured home site?
2. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

The Tenant purchased this manufactured home in March 2010 from another tenant of the manufactured home park. At that time, the vendor made a written request (on the approved form) that the Landlord consent to him assigning a manufactured home site tenancy agreement. The Landlord did not grant his consent however, because he claimed (for one) that the proposed purchaser (the Tenant in this matter) did not intend to reside in the manufactured home on that site but instead intended to rent it. In a decision issued on May 18, 2010, the Dispute Resolution Officer found (for one) that that there was insufficient evidence to conclude the proposed purchaser did not intend to reside on the manufactured home site and therefore she found that the Landlord had unreasonably withheld his consent to the assignment of the vendor's tenancy agreement. The Landlord applied for a Judicial Review of that Decision however it was dismissed in Reasons for Judgement issued by the Honourable Mr. Justice Rogers on October 18, 2010.

Pad rent is \$400.40 per month. On August 22, 2011, the Tenant made a written request that the Landlord consent to him subletting the manufactured home site tenancy agreement. On August 26, 2011, the Landlord responded in writing and stated that he was withholding his consent for the following reason(s):

“Mr. [K] applied March 12, 2010 for consent to have this mobile assigned to him. This occurred. In the request for assignment from Mr. [K] states that this home is to be his residence. Furthermore he agrees that he does not intend to use the home for business purpose (ie. renting the home to others). Attached is a copy of the form with highlighted areas on page 4.”

The Landlord's agent said he was advised by the Landlord that the Tenant never resided in the manufactured home and that it has remained vacant to date. The Landlord's agent said the Tenant owns another manufactured home in the manufactured home park which he rents out. The Landlord's agent also said the Tenant has undertaken extensive renovations to this manufactured home without getting the prior consent of the Landlord (as required by the 2004 Park Rules). The Landlord's agent argued that this shows that the Tenant never had an intention of residing in the manufactured home but rather that he intended at all times to rent it out. Consequently, the Landlord's agent argued that the Landlord withheld his because the Tenant made a material representation on the assignment request form dated March 11, 2010 that he would be living in the manufactured home and would not rent it.

The Tenant argued that the statement he signed on the assignment request form was that he “*intended* to reside in the home” and that he did not “*intend* to use the home for a business purpose (eg. renting the home to others).” The Tenant claimed that at the time of the assignment it was his intention to reside in the manufactured home on the site in question because he was having marital difficulties and thought he would need another home to reside in. The Tenant said he used the manufactured home as his residence for 2 months in the summer of 2010 during which time he did extensive renovations to the manufactured home. The Tenant said there would have been periods during that time that he could not live in the manufactured home due to the renovations. The Tenant claimed that his domestic situation has now resolved and that he no longer needs the manufactured home as his residence and must either sell it or rent it.

The Tenant also argued that there is nothing in his tenancy agreement or the Park Rules that prohibits a tenant from subletting. The Tenant claimed that the Park Regulations dated 1995 formed the terms of his tenancy agreement because those terms applied to the previous tenant or vendor and his tenancy agreement was assigned to the Tenant. The Tenant admitted that there are no other documents setting out the terms of this tenancy such as a formal tenancy agreement. The Tenant relied on one of the 1995 regulations (which he claimed was a material term of his tenancy agreement) which states as follows:

“You have the privilege of selling or subletting your mobile home, however, if the new owners or occupants wish to remain in [G. B. M. H.] Park, they must have the management's approval. This regulation must be complied with in advance of anyone moving into the mobile home.”

The Landlord's agent argued that the Tenant was instead subject to the Park Rules instituted by the Landlord in 2004 shortly after he purchased the Manufactured Home Park. The Landlord's agent admitted, however that there was nothing in the copy of the Rules (which was submitted as evidence by the Landlord) that prohibited a tenant of the manufactured home Park from subletting.

Near the end of the hearing, the Landlord's agent noted that the Tenant's application to sublet was completed incorrectly in that the owner of the manufactured home was identified as the Tenant's spouse and signed by her. The Parties agree that the manufactured home is owned solely by the Tenant. The Landlord's agent said he believed that the Landlord probably did not notice this when he issued his response to the Tenant. The Landlord's agent also admitted that this would not have made a difference to the Tenant's application in that the Landlord would have withheld his consent to any subtenant proposed by the Tenant.

The Tenant claimed that as a result of the Landlord's withholding his consent unreasonably to his sublet application, he lost rental income for September and October 2011 in the amount of \$850.00 per month and incurred monthly expenses for gas and hydro in the estimated amounts of \$81.00 and \$23.00 respectively. Consequently, the Tenant sought compensation for lost rental income and utility expenses for September and October 2011 and for each month thereafter that the manufactured home site remained vacant.

The Parties agree that at the time the proposed subtenants signed a declaration on the Tenant's request to sublet form, the proposed sub-tenants were already residing in a manufactured home in the Park that they rented from the Landlord commencing August 1, 2011. The Landlord's agent said the Landlord sold this manufactured home shortly thereafter and these tenants agreed to move out at the end of August 2011 in return for compensation. The Landlord's agent said he advised the Tenant's proposed sub-tenants prior to August 26, 2011 that the Landlord likely would not respond to the Tenant's request to sublet until after September 1, 2011 and that he likely would not consent to that request in any event. The Landlord's agent said that that as a result of this information, the proposed sub-tenants looked for and found alternate accommodations prior to August 26, 2011. Consequently, the Landlord's agent said the Tenant did not lose rental income as a result of the Landlord withholding his consent to the Tenant's request to sublet but rather because the Tenant filed his application late and the proposed sub-tenants were not in a position to wait until September 1, 2011.

Analysis

Section 48 of the Regulations to the *Manufactured Home Park Tenancy Act* states as follows:

"For the purposes of section 28(2) of the Act [*Landlord's consent*], the landlord of the park may withhold consent to assign or sublet **only for one or more of the following reasons** (emphasis added):

- (a) the request is for consent to assign, and
 - (i) the landlord, on the basis of relevant information, has reasonable grounds to conclude that the purchaser is unlikely to comply with the tenancy agreement or applicable rules, or
 - (ii) the landlord, on the basis of credit information, has reasonable grounds to conclude that the proposed purchaser is unable or unlikely to pay the rent;
- (b) the request is for consent to sublet and the landlord, on the basis of relevant information, has reasonable grounds to conclude that the proposed sublease is likely to result in a breach of the home owner's obligations under the tenancy agreement and rules;
- (c) the request is for consent to sublet and the tenant has agreed in the tenancy agreement not to sublet;
- (d) there is not at least one proposed purchaser or subtenant in a proposed assignment or sublease who meets the age requirement in a park where every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the Human Rights Code [*permitted age requirements*];
- (e) the proposed purchaser or subtenant does not intend to reside in the manufactured home and
 - (i) intends to use the manufactured home for business purposes, or
 - (ii) has purchased more than one manufactured home in the landlord's manufactured home park;
- (f) the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed;
- (g) the landlord, as a result of being unable to contact one or more references provided under section 44 (3) (e), (f) or (g) [*required information*], has insufficient information to make a decision about the request, if the landlord
 - (i) promptly advised the home owner of his or her inability to contact one or more of those references, and
 - (ii) made every reasonable effort to contact those references and any references provided by the home owner in place of those references;
- (h) the home owner owes the landlord arrears of rent or an amount due under an order of the director;
- (i) the manufactured home does not comply with housing, health and safety standards required by law.

I find that the Landlord's reason for withholding his consent to the Tenant's request to sublet is not a reason that falls under s. 48 of the Regulations to the Act. Although the Landlord referred to subsection (e) in his written submissions, I find that this section does not apply to this matter because it applies only to a proposed sub-tenant or purchaser and not to the owner of the manufactured home. The Landlord's agent admitted that there was no evidence the proposed sub-tenants did not intend to reside in the manufactured home site, nor was there any evidence that they intended to use it

for a business purpose, nor did they own another manufactured home in the Park. In fact, the Parties agree that the Landlord had, only a month earlier approved the same persons as sub-tenants of a manufactured home in the Park owned by him. Furthermore, I find that there is no term of this tenancy (or any Park Rules) that restricts the Tenant from subletting his manufactured home site tenancy agreement. Consequently, I find that the Landlord unreasonably withheld his consent to the Tenant's request to sublet dated August 21, 2011.

The Parties agree that the proposed sub-tenants have now found other accommodations and no longer intend to reside in the manufactured home. Consequently, it is unnecessary for me to make an order requiring the Landlord to grant his consent to allow the Tenant to sublet to those proposed sub-tenants. However, I do Order that the Landlord may not withhold his consent to future requests by the Tenant to sublet for the same reasons he relied on in this matter. In other words, the Landlord may not withhold his consent to the Tenant sub-letting on the grounds that the Tenant made a written statement in support of the assignment of the tenancy agreement that he intended to reside in the manufactured home and that he did not intend to rent it.

I find that there is insufficient evidence to grant the Tenant's application for a loss of rental income as I find that the Tenant lost his proposed sub-tenants for reasons other than the Landlord withholding his consent to sublet. However, I do not give much weight to the argument of the Landlord's agent that the proposed sub-tenants did not have an intention of residing in the manufactured home. The proposed sub-tenants signed a declaration (that formed part of the request to sublet) on August 21, 2011 to that effect. I find that it was only after the Tenant submitted his application to sublet and after the Landlord's agent advised the proposed sub-tenants that it was unlikely that the Landlord would give his consent prior to September 1, 2011 (or at all) that the proposed sub-tenants made a decision to rent elsewhere.

The Parties agree that the Tenant gave his request to sublet to the Landlord's agent in person on August 22, 2011. Pursuant to section 45 of the Regulations to the Act, the Landlord had 10 days (or until September 1, 2011) to give his response to the Tenant. I accept the evidence of the Landlord's agent that the proposed sub-tenants had already agreed to vacate their residence by August 31, 2011, were anxious to secure other accommodations by that date and were unwilling to wait until September 1, 2011 to find out if they would be able to sublet from the Tenant. In the absence of any evidence to the contrary, I also accept the Landlord's agent's evidence that by August 26, 2011 when the Landlord gave his response to the Tenant, the proposed sub-tenants had already found other accommodations. Consequently, I find that it was the lateness of the Tenant's request to sublet that caused or largely contributed to the loss of the proposed sub-tenants and for that reason, his application for a loss of rental income and utility expenses for September and October 2011 is dismissed without leave to reapply. The Landlord's agent rightly noted that it would be premature to award the Tenant a loss of rental income for an indefinite period in any event, given that a loss of rental income claim always requires an examination by the director of the steps taken by a party to rent it and to mitigate their damages.

In his written submissions, the Landlord claimed that the Tenant was in breach of the 2004 Park Rules for completing renovations to the manufactured home without obtaining the prior consent of the Landlord. However, I find that this issue is not relevant to the dispute in this matter because it was not a reason the Landlord relied on in his written reasons dated August 26, 2011 for withholding his consent to the Tenant subletting.

The Landlord's agent also argued that the Tenant's application to sublet was invalid because his spouse signed that document as the owner of the manufactured home when she was not, in fact, the owner. I find on a balance of probabilities, however, that the Landlord believed that the application was submitted on behalf of the Tenant and there is no evidence that he was in any way prejudiced by the Tenant's spouse submitting that application on behalf of the Tenant. The Landlord's response to the Tenant's application makes it clear that he understood who the owner (or assignee) of the manufactured home and site was and that he was withholding his consent for that reason. The Landlord's agent admitted that the Landlord's response would have been the same had the Tenant signed the application on his own behalf. Consequently, I find that the Tenant's application was not invalidated by the fact that his spouse signed it on his behalf. The Tenant is now on notice, however that any further documents of this nature that are not executed under the authority of a Power of Attorney should be executed by him as the owner of the manufactured home and the Tenant of the tenancy agreement.

As the Tenant has been largely successful in this matter, he is entitled pursuant to s. 65(1) of the Act to recover from the Landlord the \$50.00 filing fee he paid for this proceeding and I Order pursuant to s. 65(2) of the Act that he may deduct that amount from his next rent payment when it is due and payable.

In summary, I Order pursuant to s. 58(1)(g) of the Act that the Landlord comply with the Act and the Regulations to the Act and in particular, ***I Order that the Landlord may not withhold his consent to the Tenant subletting on the ground that the Tenant (and owner of the manufactured home) signed a declaration on March 11, 2010 that he intended to reside in the manufactured home and intended not to rent it.***

Conclusion

The Tenant's application is granted in part. 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: October 20, 2011.

Residential Tenancy Branch