



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS

Introduction

This hearing was convened by way of conference call in response to the tenants' application to allow the tenant to assign or sublet because the landlords consent has been unreasonably withheld.

The tenants' agent, the landlord's agent and Council for the landlord attended the conference call hearing. The agents for the parties gave sworn testimony and the parties attending were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to assign or sublet?
- Has the landlords consent to assign or sublet been unreasonably withheld?

Background and Evidence

The parties agree that this tenancy started on February 17, 2004 for a fixed term which expires on January 01, 2016. Rent for this site increased to \$415.00 on January 01, 2013.

The tenant testifies that his parents own the manufactured home and have been renting the site from the landlord for many years. The tenants are now elderly and have moved to a home for the elderly and they wish to assign their tenancy to their son who is acting as their agent. The tenants' agent testifies that his parents are experiencing hardship as they cannot afford to pay two rents and have been unable to sell the manufactured home.

The tenants' agent testifies that he and his parents filled in the RTB #10 form requesting consent to assign a manufactured home site tenancy agreement and this was sent to the landlord by registered mail on November 05, 2012. A copy of the registered mail tracking information has been provided in evidence. The landlord had 10 days to respond to this request however the landlord did not respond until November 28, 2012 and then responded by saying the landlord will only consider a request for consent that complies with section 44 of the regulations made under the *Manufactured Home Park Tenancy Act (Act)*.

The tenants' agent testifies that as the landlord did not respond within 10 days the park owners consent is conclusively deemed to have been given and the home owner may assign the tenancy agreement to their son.

Council for the landlord questions the tenant's agent and asks if he entered into e-mail correspondence with the landlord's agent on November 20, 2012 concerning the registered mail package not being received by the landlord's agent. The tenants' agent replies that he did exchange e-mails but did not believe the landlord's agent had not received the registered mail. Council for the landlord asks the tenants' agent if the landlord's agent indicated that he would go to the post office to inquire about the mail. The tenants' agent replies that the landlord's agent may have indicated this. Council for the landlord asks the tenants' agent if there was further e-mail correspondence on November 21, 2012 informing the tenants' agent that the landlord's agent had gone to the post office and collected the package. The tenants' agent replies yes. Council for the landlord asks the tenants' agent if he received a response to the request from the

landlord's agent on November 28, 2012. The tenants' agent replies yes he did receive the response

Council for the landlord asks the tenants' agent if he for explanation. The tenants' agent replies yes he did and he received another response from the landlord's agent on November 29, 2012. The council for the landlord asks the tenant if he is saying the explanation is still not adequate. The tenants' agent replies the response referred to the *Act*.

Council for the landlord states that the landlord has neither refused nor consented to the application to assign the tenancy agreement as the tenants did not fill the form in with the correct details as specified under s. 44 of the regulations and did not set out a date for the assignment to take place.

The landlord's agent testifies that when the tenant gives the landlord a date that they wish the assignment to take place then the landlord will consider the request and give the tenant a response within 10 days. The landlord states the tenants request will be dealt with fairly and in accordance with the *Act*.

The landlord's agent testifies that he could not respond within 10 days of the tenant sending the first request as the landlords agent claims he did not receive a Notice from the Post Office that there was registered mail waiting for collection. The landlord's agent testifies he only found out about the registered mail after an e-mail from the tenants agent. Eventually the landlord's agent testifies he did get two registered mail notices both delivered on December 07, 2012 but by this time he had already collected the mail from these tenants and responded accordingly.

The tenant states that he wants the landlord to consider an effective date of February 01, 2013. The landlord accepts this date at the hearing today and will amend the request from the tenants with this date. The landlord's agent agrees that the request to

assign the tenancy agreement is now complete and a response will be sent by January 20, 2012 in a manner required under the *Act*.

The tenant agrees that he has seen the park rules and the tenancy agreement and agrees to abide by both documents.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I will address the issue with service of the registered mail containing the tenants request to assign the tenancy agreement. The tenants' agent argues that this was sent by registered mail and the landlord had 10 days to respond. The landlord did not respond within this time frame. The landlord's agent argues that he was not notified of the registered mail being at the post office until the tenant e-mailed the landlord's agent. The landlord's agent then went directly to the post office and claimed the registered mail to which he responded to within 10 days.

The landlord's agent argues that the form was not filled in correctly in accordance with s. 44 of the Manufactured Home Park regulations as the tenants had omitted some crucial information namely the date the assignment was to take place. Due to this the landlord did not either refuse or consent to the request from the tenants.

When a registered mail is sent to a party it is deemed to have been served five days after it was sent pursuant to s.83 of the *Act*. However, the term 'deemed' is a rebuttable assumption when this is contested by the other party. I am satisfied with the landlord's agent's explanation of events concerning the Post Offices failure to leave a card indicating that a registered mail was waiting to be collected by the landlord due to the documentary evidence provided in the form of e-mails between the parties. Therefore, I find the landlord did respond to the tenants request within 10 days of receiving the request.

I have also taken into account the request to assign the tenancy agreement document in which important information had been omitted which in accordance with section 44 of the regulations should have been included for the landlord to consider the request. Consequently, at this time the parties have agreed that as of today's date the tenants' agent has now provided the landlord with this omitted information and the date of February 01, 2013 will be added to the request form. The parties also agree that the landlord will provide the tenants with a decision on their request to assign the tenancy agreement to their son and agent by January 20, 2013.

As the landlord have not yet unreasonably withheld their consent to assign the tenancy agreement I find the tenants application is premature.

Conclusion

The tenant application, at this time, is dismissed with leave to reapply.

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: January 10, 2013

Residential Tenancy Branch

