



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Tristar Communities Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, MNDC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the *Manufactured Home Park Tenancy Act (the "Act")* seeking to dispute an additional rent increase, for a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Has the landlord imposed an illegal rent increase?

Are the tenants entitled to monetary compensation and to recover the filing fee?

### Background and Evidence

Although both parties submitted evidence regarding another manufactured home site, formerly owned by the tenant, the tenant was informed that I would consider only the manufactured home site at issue listed in the tenants' application for dispute resolution.

In addition to marking his application for dispute resolution that he was disputing a rent increase, the tenant requested monetary compensation in the amount of \$4800.

As both issues are interrelated, an explanation is warranted. The tenants purchased another manufactured home in the park in question in 2008, which they later sold, and the tenant contended that they were encouraged by the park manager not to apply for a lease assignment as it would not be approved. Due to this, the tenant submitted that they were required to overpay monthly pad rent as to what the seller was paying.

As to the manufactured home site in question, the tenants purchased the manufactured home located on that site, which had an existing lease with that homeowner/tenant through January 1, 2016 with a monthly pad rent of \$326.63; despite this the tenants signed a new tenancy agreement with the landlord, on May 1, 2011, for a tenancy start date of May 1, 2011, and monthly pad rent of \$513.

The tenant argued that he was told by the park manager not to bother with requesting an assignment of the existing lease for the manufactured home site as the owners of the park were no longer accepting assignments.

The tenants continued to pay the monthly pad rent as agreed upon; however the tenant argued that he subsequently learned in 2012 there had been assignments of leases in the park.

Due to the above, the tenant contended that they are entitled reimbursement of the difference in monthly pad rent they have paid since May 2011, \$513, versus the monthly pad rent paid by the seller of their manufactured home, \$326.63, as he was not allowed to assume the lease of the seller. The tenant contended this was in approximate amount of \$4800, which is the basis of their monetary claim.

The above circumstances also form the basis of the tenants' request to dispute a rent increase.

I must also note that the landlord has issued the tenants Notice of Rent Increase-Manufactured Home Site on the approved Residential Tenancy Branch ("RTB") form, with an effective increase in rent for May 2012; however the tenant confirmed that he is not disputing that Notice.

In response, the landlord's legal counsel argued that the tenant had no standing to request an assignment of an existing lease, as the proper party to make such request was the original tenant/seller, not the purchaser, the tenants in this case.

Further the park manager in attendance at the hearing said that he had not received a request for an assignment of the lease for the manufactured home site in question here, and that if one had been received from the original tenant/seller, he would have passed it on to the owner.

The park manager further denied that he informed the tenant that an assignment of the existing lease would not be accepted.

The tenant's relevant documentary evidence included notes from a park committee and email transactions.

The landlord's relevant documentary evidence included the tenancy agreement between the parties. I note the landlord submitted many other documents, such as other tenancy agreements relating to the tenants' first manufactured home site and other tenants, and the Notice of Increase the tenants are not contesting, but I do not find these materials relevant to the issues of this application for dispute resolution.

### Analysis

After considering the relevant oral and written evidence in this case, I find the tenants have failed to present an actionable cause of action under the Act.

As to the tenants' request to dispute an additional rent increase, their dispute did not involve an actual rent increase, although they attempted to label the rent they agreed in the tenancy agreement to a rent increase simply because it was more than the amount the original tenant/seller was paying. I do not find this to be a rent increase.

Rather it appears from the tenants' submissions that they are seeking repudiation of the contract the parties signed on May 12, 2011, which set the monthly pad rent at \$513. As I do not have any evidence before me that the terms of the contract the parties signed are unconscionable under the Act or were agreed to at anything other than at an arm's length transaction, I do not have the authority to alter the terms of the contract the parties negotiated.

Although much mention was made at the hearing concerning whether an assignment of the existing lease for the manufactured home site on which the tenants' manufactured home is located when they purchased the home would be granted, there is no dispute that a request for an assignment was never made to the landlord.

Residential Tenancy Branch Policy Guideline 19 states that a request for an assignment of a tenancy agreement be made by the original tenant, the seller here, as the proposed new tenant, the purchaser, is not a party to the original tenancy agreement.

Section 44 of the Manufactured Home Park Tenancy Regulations requires that the request for the assignment of the lease be in written form.

As no such written request by the seller was made to the landlord, I cannot consider whether the landlord wrongfully withheld consent. Further I do not find this to be the issue.

As I have found that the tenants' dispute involved their contention that they should be paying the same rent as the seller of the manufactured home they purchased and thus not a rent increase as intended under the Act, I dismiss their application contesting a rent increase.

As to the tenants' request for monetary compensation, I find that the tenants have paid the rent they bargained for in the tenancy agreement and therefore there is no basis under the Act to award the tenants a monetary order. I therefore dismiss their application requesting \$4800.

As I have dismissed the tenants' application, I decline to award them recovery of their filing fee.

### Conclusion

The tenants' application is dismissed, without 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: July 04, 2013

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Residential Tenancy Branch