

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

## **DECISION**

### **Dispute Codes:**

MNDC

### **Introduction**

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### **Issue(s) to be Decided**

Has the Tenant paid an excessive amount of rent and, if so, is she entitled to recover the overpayment?

### **Background and Evidence**

The Landlord and the Tenant agree that the Tenant purchased the manufactured home on this site in December of 2008; that the previous owner had a tenancy agreement which required her to pay pad rent of \$328.62; that the previous owner and the landlord signed a mutual agreement which ended the tenancy on June 30, 2009 or upon transfer of the title of the manufactured home; and that the Tenant entered into a tenancy agreement with the Landlord, effective January 01, 2009, which required her to pay \$475.00 in rent.

The Tenant is seeking a rent refund of the difference between the amount she has actually paid in rent since 2009 and the amount that she would have paid if the rent had stated at \$328.32.

The Tenant bases this claim on her belief that the Landlord misled the previous owner regarding her right to assign this tenancy. The Tenant stated that when she made an offer to purchase this manufactured home she, nor the seller, understood that the tenancy agreement could be assigned. She stated that she met with an Agent for the Landlord on August 01, 2008 to apply for a tenancy, at which time she asked if the previous tenancy agreement could

be assigned to her; that the Agent for the Landlord advised her that the “old leases were null and void”; that if she applied for an assignment her application would be turned down; that the Landlord would “find a way” to deny the application; and that if the matter was disputed it could delay the sale of the property.

The Tenant stated that she relayed the information about assigning a tenancy agreement to the previous owner; that the previous owner did not apply to have her tenancy agreement assigned to the Tenant because she did not wish to become involved in a dispute resolution proceeding; and that the previous owner subsequently signed the mutual agreement to end her tenancy.

The Tenant stated that she has subsequently discussed this matter with the Agent for the Landlord and asked him why he provided the aforementioned information to her and he replied that “his hands were tied”. She interpreted this to mean that he was acting on behalf of the Landlord and that he was acting on their instructions.

Legal Counsel for the Landlord stated that the Agent for the Landlord is on vacation and was not available to participate in these proceedings. The Landlord does not dispute that the Agent for the Landlord advised the Tenant that an application for assignment would likely be turned down. Legal Counsel argued that although a landlord may only withhold consent to assign a tenancy for specific reasons, a landlord is not prohibited from discouraging a tenant from applying to have their tenancy assigned.

The Landlord and the Tenant agree that in 2010 the Landlord informed tenants that applications to assign a tenancy would be considered in accordance with the *Manufactured Home Park Tenancy Act (Act)*.

Legal Counsel for the Landlord argued that the Tenant’s claim has not been made within the time limit established by section 53 of the *Act*. For the sake of providing the Tenant with clarity, the Landlord agreed that this issue should only be considered if it is determined there is any merit to the claim being made by the Tenant.

### Analysis

Section 28(1) of the *Act* stipulates that a tenant may assign a tenancy agreement only if the tenant has the prior written consent of the landlord; the tenant has obtained an order of the director authorizing the assignment; or the tenancy agreement authorizes the assignment. The undisputed evidence is that the previous owner ended her tenancy agreement by mutual consent and that the owner did not assign this tenancy agreement to the Tenant.

Section 44(1) of the *Manufactured Home Park Tenancy Regulation (Regulation)* stipulates that a home owner must make a request to assign a tenancy in writing. The undisputed evidence is that the previous owner did not make a written request to assign this tenancy agreement.

As there is no evidence that the previous owner applied to assign this tenancy to the Tenant, I find that the Landlord was under no obligation to assign this tenancy to the

Tenant. The Tenant, therefore, does not assume any of the rights or obligations of that tenancy agreement, including the amount of rent that was due.

While a landlord is obligated to comply with the *Act* and to inform a tenant about the terms of the tenancy agreement and park rules, they do not have an obligation to educate or inform a tenant about all of their rights under the *Act*. I cannot, therefore, conclude that the Landlord had a legal or ethical obligation to seek out the former owner and inform her of her right to apply to have her tenancy agreement assigned.

In the absence of evidence to the contrary, I find that the Agent for the Landlord did not clearly explain the rules regarding assigning a tenancy agreement to the Tenant. As the Tenant was not yet a tenant when she discussed this matter with the Agent for the Landlord, I can find no reason to conclude that he was under any obligation to educate her regarding the *Act*.

As the previous owner's tenancy agreement was not assigned to the Tenant, I find that she is obligated to comply with the terms of the tenancy agreement that she signed, including the obligation to pay monthly rent of \$475.00. As she was obligated to pay monthly rent of \$475.00 at the start of the tenancy, I dismiss her claim for a rent refund arising from her belief that she should have paid \$328.61 at the start of the tenancy.

### Conclusion

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 16, 2013

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Residential Tenancy Branch