



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding E.K. Smith Construction Company Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

AAT, OLC, PSF, RP, O, and FF

### Introduction

This hearing was scheduled in response to an Application for Dispute Resolution, in which the Applicant applied for access to the unit/site for the Applicant and her guests; for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to provide services or facilities required by law; for an Order requiring the Landlord to make repairs to the rental unit; to recover the fee for filing this Application for Dispute Resolution; and for "other". It is readily apparent from details provided with the Application for Dispute Resolution that the Applicant is seeking a tenancy agreement.

The Agent for the Applicant stated that on December 12, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Applicant wishes to rely upon as evidence were sent to the Respondent, via registered mail. The male Agent for the Respondent acknowledged receiving these documents on December 27, 2014 and they were accepted as evidence for these proceedings.

On January 05, 2014 the Respondent submitted evidence to the Residential Tenancy Branch. The male Agent for the Respondent stated that these documents were sent to the Applicant, by fax, on January 05, 2014. Legal Counsel for the Applicant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

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

### Issue(s) to be Decided

Is there a need to issue an Order requiring the Respondent to comply with the *Act* or the tenancy agreement?

Is there a need to issue an Order requiring the Respondent to provide services or facilities?

Is there a need to issue an Order requiring the Landlord to make repairs to the site?

Is there a need to issue an Order requiring the Landlord to provide access to the site?

### Background and Evidence

The Applicant and the Respondent agree that the Applicant is a tenant of a site in this manufactured home park that is not the subject of this dispute resolution proceeding. The parties agree that there is a park rule that prohibits a tenant from renting two sites in the manufactured home park.

The Applicant and the Respondent agree that the male Agent for the Respondent provided the Applicant with a document, dated May 31, 2014, in which the male Agent for the Respondent informed the Applicant that the Respondent had “no issues with” the Applicant’s request to apply “for a new tenancy in our facility”. A copy of the document was submitted as evidence. In the document the male Agent for the Respondent directs the Applicant to call the office “so that we can prepare the tenancy agreement” in the event the purchase is completed.

The parties agree that the park rule regarding dual tenancies was in place on May 31, 2014, when the aforementioned document was written. Legal Counsel for the Applicant argued that the document of May 31, 2014 served to waive the restriction regarding dual tenancies.

The Agent for the Applicant stated that the mobile home was purchased on July 16, 2014, which is not disputed.

The Agent for the Applicant stated that there was a previous dispute resolution proceeding on September 22, 2014, at which time the Respondent agreed to provide the Applicant with an application for a tenancy agreement. The male Agent for the Respondent stated that he did not agree to provide the Applicant with an application for a tenancy agreement at the hearing on September 22, 2014. He contends that he merely agreed to “consider it”.

The Applicant provided a file number for the proceedings of September 22, 2014, which is referenced on the first page of this decision. The Respondent provided the last page of the decision relating to the hearing on September 22, 2014, in which the Arbitrator recorded the “terms of the settlement agreement reached by the parties”. One of the terms of that settlement agreement recorded by the Arbitrator is that the Respondent will “send the Applicants a copy of the landlord’s application for the rental of a manufactured home park rental site by email as soon as possible”.

The Respondent and the Applicant agree that the Respondent did not provide the Applicant with an application for tenancy at this site.

The Applicant submitted a copy of a document, dated October 28, 2014, in which the Applicant and the Agent for the Applicant declare:

- that the Applicant has purchased the mobile home on the site that is the subject of these proceedings
- that this document serves as an application for tenancy, as the Respondent has not provided them with an application for a tenancy
- that both the Applicant and the Agent for the Applicant wish to be named on the tenancy agreement.

Legal Counsel for the Applicant stated that the document dated October 28, 2014 was sent to the Respondent, via email, by her office. The male Agent for the Respondent stated that he does not recall receiving this document until it was served to him as evidence for these proceedings.

As this is a critical issue, the Applicant was given until January 17, 2015 to provide evidence to the Respondent and the Residential Tenancy Branch that shows the document dated October 28, 2014 was sent to the Respondent. The Respondent asked that the evidence be mailed to him at his mailing address in the United States.

The Respondent was given until January 24, 2015 to provide evidence to the Applicant and the Residential Tenancy Branch that shows the document dated October 28, 2014 was not sent to the Respondent.

On January 13, 2015 the Applicant submitted documents that show the document dated October 28, 2014 was sent to the Respondent by Legal Counsel for the Applicant, via email, on October 29, 2014.

On January 22, 2015 the Respondent faxed a document to the Residential Tenancy Branch, in which the male Agent for the Respondent declared that he has not yet received any evidence from the Applicant and that he understands that it takes about 15 days for mail to arrive at his address in the United States. By the time this decision was rendered on January 26, 2015, the Respondent had submitted no evidence to refute the evidence that shows the document dated October 28, 2014 was sent to the Respondent, via email, on October 29, 2014.

### Analysis

Before considering the merits of the Application for Dispute Resolution I must determine whether the Application falls under the jurisdiction of the *Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. The *Act* governs relationships between landlords and tenants.

The undisputed evidence is that the Applicant and the Respondent have never entered into a tenancy agreement for this site. As the parties have not entered into a tenancy agreement, I find that I do not have jurisdiction over this matter. In the event the Applicant and Respondent are unable to resolve this dispute, the Applicant retains the right to seek redress from a court of proper jurisdiction.

Although the Applicant has clearly informed the Respondent of her desire to enter into a tenancy agreement, there is nothing in the *Act* that requires a landlord to enter into a tenancy agreement.

Section 28(1) of the *Act* authorizes a tenant to assign a tenancy agreement if the tenant has obtained the prior written consent of the landlord to the assignment; if the tenant is deemed to have obtained that consent, in accordance with the regulations; if the tenant has obtained an order of the director authorizing the assignment or sublease; or if the tenancy agreement authorizes an assignment. Section 28(2) of the *Act* specifies that a landlord may withhold consent to assign a tenancy agreement only in the circumstances prescribed in the *Manufactured Home Park Regulations*.

I find that section 28 does not apply to these circumstances, as the Applicant is not applying to assign her tenancy agreement. Rather, it appears she is asking that the tenancy of the former owner of the manufactured home be assigned to her. The Applicant does not have the right to make this request. The former owner of the manufactured home retains the right to assign the tenancy to the Applicant in accordance with section 28 of the *Act*.

I note that I rendered a decision in this matter prior to receiving a response from the Respondent in regards to the document dated October 28, 2014 was appears to have been sent to the Respondent, via email, on October 29, 2014. I find it reasonable to render this decision without waiting for a response from the Respondent on this issue, even if the delay was the result of delayed mail delivery, as this issue has no bearing on my decision regarding jurisdiction.

### Conclusion

I decline jurisdiction in this matter.

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: January 26, 2015

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Residential Tenancy Branch

