



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC, MNDC, FF

Introduction

This was the reconvened hearing dealing with the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* ("Act"). The tenant applied for an order requiring the landlord to comply with the Act, the Manufactured Home Park Tenancy Regulation, or tenancy agreement, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

This hearing began on March 3, 2015, was attended by the tenant, her advocate, her witness, the landlord, and the landlord's legal counsel, and dealt only with the tenant's advocate's submissions and the testimony of the tenant's witness.

An Interim Decision which was entered on March 6, 2015, should be read in conjunction with this Decision and is incorporated herein by reference.

The parties were informed at the original hearing that the hearing would be adjourned in order to allow the tenant to provide brief testimony apart from the advocate's lengthy submissions, and to allow the landlord and their legal counsel the opportunity to provide rebuttal to the tenant's application and evidence. In this Decision, the owner, "LAW" will be referred to as landlord.

The parties were advised that I would not accept or consider any further evidence submitted during the period of adjournment.

This hearing proceeded on the remaining portion of evidence submissions as noted. During both the original and reconvened hearings, all parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, respond to the other, and make submissions to me.

Preliminary Matter:

I note the two combined hearings were quite lengthy and the written submissions of the tenant quite long and detailed. Despite being cautioned several times that a reading of the evidentiary submissions was not required, the tenant's advocate continued to read from the written submissions throughout the initial hearing. While I allowed the tenant's advocate to continue reading from the submissions, it is further noted that I have given careful consideration of all oral and written evidence before me; however, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act, the Manufactured Home Park Tenancy Regulation, or tenancy agreement, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

It must be noted that these same parties have been in prior dispute resolution proceedings, the Decisions for which were submitted into evidence by the tenant. The tenant also submitted a written summary of the Decisions.

In a Decision dated October 28, 2014, resulting from the tenant's application seeking monetary compensation and an order requiring the landlord to comply with the Act, the Manufactured Home Park Tenancy Regulation, or tenancy agreement, another Arbitrator found that the landlord had unreasonably withheld their consent to the tenant's request for an assignment of the tenancy. In that Decision, the other Arbitrator also determined that one of the park rules, #11, was unenforceable and that the tenant was entitled to monetary compensation equal to 1 month's rent, or \$450.00. I note that I find the wording in that Decision was unclear, as the other Arbitrator stated that the tenant was "obligated to pay rent for October 2014 which is a direct result of the landlord's unreasonable withholding of consent".

In a Decision dated December 19, 2014, resulting from the tenant's application seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, monetary compensation, and for an order requiring the landlord to comply with the Act, the Manufactured Home Park Tenancy Regulation, or tenancy agreement, another

Arbitrator granted the tenant's request seeking cancellation of the Notice and dismissing the remaining requests of the tenant.

In this case, the evidence was that this tenancy on the manufactured home site began in April 2013 and that current monthly rent is \$463.00. Other Decisions mentioned that the tenancy began in March 2013.

Through this application, the tenant has claimed for \$24,964.24 against the landlord, which is comprised of \$8000.00 for a financial loss in that amount for a drop in value of the sale of her manufactured home, \$900.00 for having to pay pad rent for November and December 2014, due to the landlord's alleged first unreasonable refusal of the request to reassign, \$64.24 for the hydro bill for October, November, and December 2014, and \$15,000.00 for compensation of the tenant's loss of quiet enjoyment.

In addition to her monetary claim, the tenant has also applied seeking an order for the landlord's compliance with the Act, and in particular section 22 dealing with a tenant's right to quiet enjoyment and section 28 for attempting to withhold their consent to the tenant's assignment of her tenancy agreement.

It is clear from the parties' evidence that the parties communicated through email correspondence, due to the tenant now residing on the East Coast. As such, the tenant submitted that on November 21, 2014, in an email with attachment, she sent the landlord a request for an assignment of her tenancy as she had obtained another potential purchaser for her manufactured home. This potential purchaser is the tenant's witness, DW, and the tenant supplied a copy of the email to the landlord and the attached "Request for Consent to ASSIGN a Manufactured Home Site Tenancy Agreement," ("Request") on the official form offered by the Residential Tenancy Branch ("RTB") on its website. Noted is that the offer to purchase was a verbal offer.

The tenant submitted further that the evidence shows that the landlord received this request on the same date as transmission, and within three days had sent an email to the tenant asking for the potential purchaser's phone number. The evidence shows that the landlord eventually began communicating with the potential purchaser to inquire if the potential purchaser was aware that the park rules did not allow dogs and to obtain her credit information to perform a credit check.

The tenant argued that the landlord finally recognized that the park rule applied to new tenants only, and further that it was challenging to keep up with the “ever-changing” park rules.

The tenant submitted further that the landlord did not require the potential purchaser's credit and SIN information in order to give consent, but made several requests of the potential purchaser for the same anyway. The tenant submitted further that the potential purchaser finally informed the landlord that she did not know why the landlord would proceed with email contact as she, the potential purchaser, would not be going through with the sale if her dog was not allowed. The tenant submitted that through many communications with the potential purchaser requesting certain personal information not required of a purchaser, the landlord in effect caused the purchase to collapse.

In her written submissions, in several instances, the tenant pointed out that landlord's consent was conclusively deemed to have been given, as she failed to respond within 10 days of receipt of the request, (the application, and pages 7 and 31). At the hearing, the tenant, through her advocate, further submitted and confirmed that the landlord has never responded to the tenant's Request for Consent to ASSIGN a Manufactured Home Site Tenancy Agreement, and with her actions, illegally withheld consent.

As to the tenant's request for monetary compensation of \$8000.00, the tenant submitted that due to the actions of the landlord, or attempting to withhold consent through the many emails to the potential purchaser requesting information not required or allowed, the landlord caused the tenant to suffer a loss of value of that amount, citing the landlord's two unreasonable refusals of the tenant's request for assignment.

As to the tenant's request for pad rent for November and December 2014 and hydro paid for October, November and December, 2014, the tenant cited that due to the landlord's first unreasonable refusal of the tenant's request of an assignment, as dealt with in the October 28, 2014, Decision of another Arbitrator, the tenant was entitled to reimbursement of \$900.00 and \$64.24.

As to the tenant's claim of \$15,000.00, the tenant cited a loss of quiet enjoyment due to stress caused by the landlord's actions in causing another sale of her home to collapse.

Tenant's witness-

In questioning by the landlord's legal counsel, the tenant's witness, when asked if she had been provided a copy of the park rules by the tenant, the witness said she was not sure.

When responding to the question of whether the witness had signed a purchase agreement with the tenant, the witness said her offer was made verbally in a phone conversation.

Tenant's testimony-

In explaining her request for \$15,000.00, the tenant submitted that due to the actions of the landlord, she has lost self-confidence and has suffered physical inconvenience and pain and suffering. The tenant submitted further that when returning to the province, her real estate agent informed her no one was interested in purchasing her home when they find out where it is located and the landlord's reputation.

Cross-examination of the tenant by the landlord's legal counsel-

When asking the tenant if she had supplied the tenancy agreement or park rules to the potential purchaser as the Request form did not indicate that she had, the tenant confirmed she had not. The tenant did additionally say that she was not sure which park rules she should send, due to the prior dispute resolution ruling section 11 unenforceable.

The tenant confirmed that the offer for the purchase of her manufactured home was verbal and that she had not received a denial of her Request from the landlord.

When asked about the breakdown of her claim for \$15,000.00, the tenant stated she believed this was the maximum amount she could claim.

Cross-examination of the tenant's advocate by the landlord's legal counsel-

The tenant's advocate stated that he informed the tenant that the Request was rejected through the landlord's emails to the potential purchaser. When asked if the advocate informed the tenant that the landlord's attempt to reject the sale was ineffective, the advocate replied "yes".

In final submissions, the landlord's legal counsel submitted that before a tenant can request an assignment of a tenancy, the tenant is required to provide the park rules and tenancy agreement to the potential purchaser, and in this instance, the tenant did not. The legal counsel argued that the sale of the manufactured home collapsed not due to the landlord's actions, but due to the potential purchaser not being aware of the park rules concerning dogs.

The legal counsel submitted further that an oral agreement is not a valid contract for sale.

The legal counsel submitted further that the tenant's monetary claim of \$8000.00 was premature and speculative as there has been no loss of value. As to the claim for \$900.00, the legal counsel submitted that any sale would not have been effective until January 2015, and that the tenant was awarded monetary compensation in the October 28, 2014, Decision of another Arbitrator.

The landlord's legal counsel submitted further that it was only at the hearing that it became clear the tenant's claim for \$15,000.00 was not for aggravated damages, but rather for loss of quiet enjoyment.

Tenant's final oral submissions-

The tenant submitted that she was tired of the landlord causing the sale of her home to collapse, causing her to lose money every month with utilities bills and pad rent. The tenant submitted further that if she walks away from the home, she will lose \$40,000.00; however, it appears she will have to do so as no one will deal with this landlord.

It is noted that the landlord provided testimony and that the tenant's advocate and the tenant cross-examined the landlord; however, I have not recorded the short submissions as I found the testimony, questions, and answers to be cumulative of the prior oral and written evidence.

Analysis

I have not considered the tenant's evidence citing other Decisions of the RTB regarding other tenants of this manufactured home park, or evidence which were clearly submitted and of use in previous dispute resolution hearings between these parties. I have only considered the evidence relevant to the dispute before me. I decline the tenant's request of enforcement of a Decision made by another Arbitrator regarding other tenants, as not being relevant to the tenant's application and not being supported that I

have any authority to do so regarding an unrelated tenancy or tenant. I have, however, reviewed and considered all evidence relevant to the issues in this application.

I find the issues in the tenant's application all relate to the tenant's allegation that the collapse of the sale of her manufactured home are due to the actions of the landlord.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 60. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Under section 28 of the Act, a tenant is allowed to assign their tenancy agreement to their manufactured home site if the tenant has obtained the prior written consent of the landlord to the assignment, or is deemed to have obtained that consent, in accordance with the regulations. Further in this section, a landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulations.

As to those Manufactured Home Park Tenancy Regulations, section 43 requires that prior to requesting the landlord's consent to the assignment, the tenant/home owner must provide a copy of the tenancy agreement and park rules in writing to the potential purchaser, those documents being required to be served in a manner complying with section 81 of the Act.

Section 44 of the Regulations requires that the Request be in the approved form and in this case, I find that the tenant did so. Section 45 of the Regulations requires that the landlord respond to the Request within 10 days of receipt and under section 46, if the homeowner has not received the landlord's consent to a Request under section 44 by the end of the 10th day after receipt, consent to the Request is conclusively deemed to have been given and the homeowner may assign the tenancy agreement to the proposed purchaser identified in the written Request.

As to the tenant's service of the Request to the landlord by email attachment, I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the abundant evidence showing the same, as the tenant now resides on the East Coast. Although the Act does not recognize email transmission as an acceptable method of delivery of documents under section 81, I

order that the delivery of the tenant's Request through the November 24, 2014, email to the landlord, sufficiently served, pursuant to section 64 of the Act.

In consideration of the tenant's application, I find the undisputed evidence shows that the tenant violated the Act and Regulations as described due to her failure to provide the potential purchaser with a copy of the tenancy agreement and written park rules. This was confirmed in testimony and in a review of the Request.

Even if I were to overlook or not consider this violation, which I do not, the tenant has confirmed multiple times her understanding, through oral and written evidence, that the landlord was conclusively deemed to have consented to the assignment and therefore, there was nothing preventing the tenant from going forward with the sale of her home, as allowed by the Act and Regulations. I therefore concluded that it was the tenant's choice to not go forward with the sale of her home, not due to a breach of the Act or Regulations by the landlord. Due to this, I find the tenant submitted insufficient evidence to show that the landlord has breached the Act, the Regulations, or the tenancy agreement or to show that she took steps to minimize her loss.

As I have found that the tenant failed to comply with her obligations under the Act and Regulations by not providing the potential purchaser with a copy of the tenancy agreement and written park rules and due to my findings that the tenant has not presented sufficient evidence that the landlord violated the Act, Regulations, or the tenancy agreement, I find the tenant's claim for a loss of value of her home for \$8000.00 and \$15,000.00 for loss of quiet enjoyment has not been supported and those claims are therefore dismissed.

I therefore dismiss the tenant's application for an order requiring the landlord to comply with the Act, Regulations, or tenancy agreement and to provide the tenant with quiet enjoyment due to my finding that the tenant has submitted insufficient evidence that the landlord has violated the Act, Regulations, or tenancy agreement.

As to the tenant's claim for \$900.00 for pad rent for November and December 2014, and hydro for \$64.24 for October, November and December 2014, based on the landlord's refusal of a prior Request, I find issues relating to that refusal were dealt with in the Decision of October 28, 2014, by another Arbitrator, referred to herein. After that date, the tenant was obligated under the terms of her tenancy agreement to pay her monthly pad rent and bills. I therefore find the tenant submitted insufficient evidence to support these claims and they are dismissed.

Due to the above, the tenant's application, including her request for recovery of the filing fee paid for this application, is dismissed, without leave to reapply.

Conclusion

For the reasons herein, the tenant's 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: April 30, 2015

Residential Tenancy Branch

