Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA VILLAGE TRAILER PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55; and
- an order allowing the tenant to assign her tenancy agreement because the landlord's permission has been unreasonably withheld pursuant to section 58.

The tenant attended the hearing. The tenant was represented by her advocate. The tenant was assisted by her support person. The individual landlord (the landlord) attended the hearing. The landlord attended both on her own behalf and as agent for the corporate landlord. The landlord confirmed she had authority to act on behalf of the corporate landlord. The landlords were represented by counsel.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant elected to call one witness, MA. Each party was in receipt of evidence sent by the opposing party.

Preliminary Issue – Impartiality

At the hearing landlords' counsel disclosed to the tenant that counsel is my former coworker. I explained to the parties the scope of my relationship with counsel, that is, counsel and I were both employees of the same law firm.

I expressed my position that I would be able to conduct the hearing in an unbiased and impartial manner notwithstanding the fact that landlords' counsel and I were once coworkers.

I asked the parties for their submissions on the issue. Both parties consented to the hearing proceeding before me.

On the basis that I have no financial or personal interest in the outcome of this matter, I have no financial or personal dealings with landlords' counsel, and that both parties consented, I determined that I was able to conduct the hearing.

Proceedings Before the Residential Tenancy Branch

This tenancy is the subject of several past and current disputes before the Residential Tenancy Branch. For the purposes of determining the issues before me, the prior disputes are not relevant.

There are two contemporaneous disputes in respect of this tenancy before the Branch. One application was brought by the corporate landlord. That application relates to the payment of past rent owing. A hearing of that application is pending. That application will necessarily involve a determination of the rent payable for the manufactured home site. The other application as brought by the tenant. In that application the tenant seeks $14,000 in compensation.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord comply with the Act, regulations or tenancy agreement? Is the tenant entitled to an order allowing the tenant to assign her tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

Testimony of Tenant

The tenant testified that this tenancy began in 2000. The tenant testified that her site rent at the commencement of the tenancy was $250.00 per month.

At some point in 2004, the tenant's daughter moved in to the tenant's manufactured home. It was the intent of the tenant to expand her manufactured home by building on to it. In order to do this, the tenant began renting a second manufactured home site. At that time the on-site manager (GR) informed the tenant that the manufactured home could only be altered in a particular way that did not meet the tenant's needs. Later in 2004 the tenant's daughter vacated the manufactured home. The tenant testified that at this point she relinquished the second site and returned to her original tenancy agreement. The tenant admits that she does not have any evidence now that she ever rented two manufactured home sites.

In 2006, the landlord requested production of the tenancy agreement for this tenancy. The tenant did not produce her tenancy agreement at that time as she did not have an original of this agreement.

The tenant testified that GR prepared the "Original 2003 Agreement" to provide to the Province to assist with the tenant's assistance application. The tenant admitted that she signed this

agreement and that the Original 2003 Agreement only set out that it was for the subject manufactured home site. The tenant testified that she altered the Original 2003 Agreement in order to make sense of the document and that the altered document was the only agreement that she had in her possession. The tenant testified that she altered the Original 2003 Agreement to add, among others, the notation "E-8" (the Altered 2003 Agreement). On cross examination, the tenant confirmed that she altered the Original 2003 Agreement. The tenant testified that she does not know if she informed the landlord that the Altered 2003 Agreement contained the tenant's alteration.

The tenant testified that she gave the Altered 2003 Agreement to the landlord in or about October 2014. The tenant testified that her advocate contacted the Province to see if it could provide a copy of the tenancy agreement. On 5 December 2014, an employee of the Province provided the Original 2003 Agreement in response to this inquiry.

The tenant testified that prior to 2003 the tenancy was governed by an earlier written tenancy agreement. The tenant testified to the following details in respect of that agreement:

- at clause 2 the agreement would have read "E-10";
- at clause 3 the date would have been approximately 2000;
- at clause 4 the security deposit would have been $75.00; and
- at clause 5 the rent amount would have read $250.00.

The tenant testified that in February 2015 she sent an assignment request to the landlord (the February Request). In that request the tenant did not provide a correct date for response. The tenant provided a copy of the Altered 2003 Agreement and the latest park rules with that request to both the prospective purchaser and the landlord. In the February Request the rent was incorrectly stated as $315 instead of $314.

The tenant testified because of the error for the response date in the February Request, the tenant reissued a request in March 2015 (the March Request).

The tenant testified that on 13 April 2015 she received the landlord's response to the March Request. The tenant testified that the landlord's usual practice is to send document to the resident manager who would then arrange for registered mail locally.

Testimony of Witness

The witness MA testified. The witness is the prospective purchaser of the manufactured home. The witness testified that the sale of the manufactured home is pending the resolution of this matter.

The witness testified that he first applied for assignment in February 2015. The witness testified that at this time he was provided with a copy of the tenancy agreement and the current park rules.

The witness testified that the February Request contained an error and the March Request was filed to remedy the error. The witness testified that he received a copy of the tenancy agreement and park rules with the March Request.

The witness admits that he did not supply his information for the purpose of allowing the landlord to perform a credit check. The witness submitted that he did not need to provide this information because a credit check was unnecessary as he already rented within the park.

Testimony of Landlord

By court order, the landlord became manager of the manufactured home park in 2004. In 2006 ownership of the manufactured home park was resolved in favour of the landlord. The landlord did not receive copies of any tenancy agreements in relation to the manufactured home park from the previous owner.

The landlord testified that in 2006 the property managers went to each tenant to inquire as to his or her monthly rent. At that time the property managers asked for a copy of any tenancy agreement in the residents' control. The landlord testified that the tenant did not provide a tenancy agreement at this time. The landlord testified that she took each occupant at his or her word as to the details of the individual tenancy agreements. The landlord testified that she relied on the "honour system".

The landlord testified that she did not see a copy any tenancy agreement until tenant's previous counsel for the tenant sent a copy of the Altered 2003 to the landlord.

The landlord testified that the corporate landlord received the tenant's February Request. The landlord testified that the Altered 2003 Agreement and the 4 December Park Rules were attached. The landlord responded to the February Request on 15 February 2015. The landlord stated that the tenant did not provide the requisite amount of time and asked the tenant to reapply.

The landlord testified that the resident manager stated that the tenant had never rented two sites. The landlord testified that other residents of the manufactured home park indicated that the tenant never rented E-8. The landlord admitted that there was a fence around the yard but there was no maintenance or use of the lot. The landlord testified that the second lot was on the wrong side of the manufactured home. The landlord testified that she was suspicious of the Altered Tenancy Agreement because she believed that the notation "E-8" was written in a different handwriting. The landlord testified that she was concerned that this document was falsified.

The landlord testified that she believes the tenant's rent in 2004 was not $250.00 as the tenant had originally indicated.

The landlord testified that the March Request indicated that it there were documents attached, but there were no such documents attached. The landlord testified that she attempted to perform the necessary investigation. The landlord testified that it was difficult for her to conduct this investigation as the tenant had directed that correspondence be conducted in writing and that the landlord could not call the tenant directly. The landlord testified that she required more information from the prospective purchaser in order to conduct a credit check. The landlord testified that she was uncertain if the prospective purchaser could afford the second site. The landlord testified that the prospective purchase has not provided this information.

The landlord testified that she sent the landlords' response to the March Request to the tenant on 25 March 2015. The landlord testified that she sent the response by "first class" "registered mail". The landlord testified that the fastest way to send the response was by express or priority mail but that these methods are not "registered mail".

The landlord acknowledges that she did not make further inquiries of the tenant's previous counsel in response to that counsel's letter of 8 December 2014. The landlord stated that this lack of response did not indicate that she considered the issue settled.

Relevant Documentary Evidence

I was provided with a copy of the Canada Post tracking information for the March assignment application. That application was delivered to the landlords' office on or about 20 March 2015.

I was provided with a copy of the UPS tracking information for the landlords' response to the March assignment application. That mailing was sent 25 March 2015 and received by the tenant 13 April 2015.

I was provided with a copy of the March Request. At part D, subpart 1 the March Request set out that rent amount is $315.00 per month. At part D, subpart 4 the March Request indicates that the tenancy agreement and park rules are attached to that request. The prospective purchaser's signature is missing in the portion titled "purchaser's statement including agreement to comply with terms of tenancy agreement AND signatures".

I was provided with a copy of the park owner's response to the March Request:

> *The Request to Consent to Assign a Manufactured Home Tenancy Agreement dated March 16, 2015 ("the Request") is incomplete. Specifically, in Section D of the Request, the home owner states that there is a written Tenancy Agreement and Park Rules and that such documentation is attached to the Request. However, no such documentation is attached to the Request. As a Result [landlord] will not be able to view the Request. Please note that section 44(3)(k) requires the homeowner to supply the Landlord with a copy of the written tenancy Agreement or rules as part of the Request. [Landlord] will*

view the Request when all relevant information is received. Until that time, the 10-day period in which the landlord has to respond to the Request is not started.

The Original 2003 Agreement sets out the following details:

- at clause 2 the agreement reads "E-10";
- at clause 3 the date is 1 January 2004;
- at clause 4 the security deposit is blank; and
- at clause 5 the rent amount is $300.00.

The Altered 2003 Agreement sets out the following details:

- at clause 2 the agreement reads "E-8 E-10";
- at clause 3 the date is 1 January 2004;
- at clause 4 the security deposit is blank; and
- at clause 5 the rent amount is $300.00.

Submissions of Tenant

The tenant submits that the landlord failed to reply within the ten days permitted by the *Residential Tenancy Regulation* (the Regulation). The tenant submits that the landlord ought to have known that the method of delivery selected by the landlord would have taken longer than the five days set out in the deeming provisions in section 83 of the Act.

The tenant submits that the documents provided in the February assignment application were incorporated by reference into her March assignment application. The tenant submits that the landlord should have known that the response would have taken longer than five days to be delivered to the tenant.

The tenant submits that the landlords' letter of 3 December 2014 is an admission that the landlord holds a copy of the Original 2003 Agreement. The tenant submits that she believed that all issues were clarified when the landlord failed to make further inquiries after receiving the 8 December 2014 letter. The tenant submits that the Altered 2003 Agreement was the only agreement that they had at the time and that there was no intent to deceive. The tenant clarifies that it is just E-10 that the tenant seeks to transfer.

The tenant submits that the information contained in the form prepared by the Residential Tenancy Branch is sufficient to determine the assignment.

Submissions of Landlord

The landlord submits that the response to the March Request was made in accordance with the Act and Regulation. The landlord submits that the decision to deny the March Request was reasonable as the tenant had not provided a copy of the tenancy agreement and park rules with the application and the prospective purchaser refused to provide information to allow the

landlord to conduct a credit check. Further, the landlord submits that the refusal was necessary in order to insure that E-8 was not accidentally assigned.

The landlord submits the ten-day limit in section 45 of the Regulation only applies if there is a valid application pursuant to section 44 of the Regulation. In any event, the landlord submits that they provided a response within the ten days allowed for and informed the tenant that they required the written attachments in order to approve the assignment. Further, the landlord submits that she attempted to get the information from the prospective purchaser to perform a credit check but that he would not provide the necessary information. The landlord submits that there is no applicable exemption for the credit check because the prospective purchaser is a current resident of the manufactured home park as renting two sites is materially different than renting one.

The landlord submits that the agreement supplied 30 March 2015 is the valid agreement and that this is the first time the landlord was made aware of its existence. The landlord submits that the parol evidence rule limits any outside evidence as to this meaning of this agreement.

Analysis

Section 44 establishes requirements as to the form and content of a tenant's request for assignment:

> (3) The written request under subsection (1) must be signed by the home owner and must provide all of the following information: …
>
> (k) if the request is for consent to assign,…
>
> (v) a copy of
>
> (A) any part of the tenancy agreement that is in writing, and
>
> (B) any of the rules that are in written form and that apply to the tenancy of the home owner,…

The March Request was deficient in that the park rules and tenancy agreement were not attached. I reject the tenant's submission that the documents attached to the February Request were incorporated by reference into the March Request. I make this finding on the basis that there were ongoing disputes as to terms material to the tenancy agreement.

The tenant submits that the landlord failed to provide a response within ten days of receiving the March Request.

Subsection 47(1) sets out the landlord's obligations in respect of a request by a tenant that does not comply with section 44:

> 47 (1) If a home owner's request for consent to assign or sublet does not comply with section 44 *[written request]*, the landlord of the park must do one of the following: …

(c) advise the home owner promptly that only a request for consent that complies with section 44 *[written request for consent]* will be considered.

Section 47 does not set out any timeline for response. In contrast, the timeline for a compliant response is set out in section 45 of the Regulation:

45 (1) The landlord of the park must provide the home owner with a written response to a request under section 44 *[written request]…*

(b) in accordance with section 81 of the Act *[service of documents]*, and

(c) promptly, and in any case so that the home owner receives the response in accordance with section 83 of the Act *[deemed receipt]* within 10 days of the landlord's receipt of the request. …

[emphasis added]

Notably, the underlined language is absent from section 47. I find that this exclusion is intentional and that the landlord's response to a deficient request pursuant to section 47 is due promptly, but not within ten days.

The landlords' official response arrived within a month of the landlords' receipt of the March Request. In addition, counsel for the landlords provided an email response to the tenant 31 March 2015. The landlords' response set out that they were refusing to consider the incomplete response. I find that the landlords promptly advised the tenant that the incomplete request would not be considered. As such, I find that the landlords complied with paragraph 47(1)(c) of the Act.

As the landlords complied with the Act, I refuse the tenant's request for an assignment of the rental unit or to order that the landlords comply with the Act.

Conclusion

The tenant's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 12, 2015

Residential Tenancy Branch