



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREEN BAY LANDING INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AS, O, FF

### Introduction

The tenants apply to compel the landlord's consent to an assignment of their tenancy agreement over the manufactured home site in question to the purchaser of a manufactured home located on that site.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only evidence that had been traded between the parties was accepted during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord had good and valid grounds to refuse the assignment, in accordance with the *Manufactured Home Park Tenancy Act* (the "Act") and the Manufactured Home Park Tenancy Regulation (the "Regulation")?

### Background and Evidence

The manufactured home site (the "site") is located in a thirty seven site manufactured home park.

The tenancy began in 2010. There is no written tenancy agreement. The current monthly rent is \$467.25, due on the first of each month, in advance.

The *Act* requires that a tenant wishing to assign his or her tenancy must obtain the prior written consent of the landlord. There is a formal request process and, once the landlord has received the request, there is a ten day period for the landlord to consider it and to respond in writing. If a landlord does not respond within the ten day period, the consent to assignment is considered to have been given.

The tenants served the landlord on August 14, 2015 with a "Request for Consent to ASSIGN a Manufactured Home Site Tenancy Agreement" in the government form. There is no dispute but that the form was fully completed. All information called for in the form had been written in the appropriate spaces.

The government form contains a section for "PARK OWNER'S RESPONSE" in which a landlord is required to set forth the ground or grounds for withholding consent. In this case the landlord withheld its consent. The stated grounds for refusing consent, given to the tenants on August 24th by Mr. TS, the park manager, were:

- Credit Report Submitted; appears to be fraudulent. There are 2 separate pages to this report, each with a different date; and the 2<sup>nd</sup> page does not identify who the credit rating is posted for. The staple holding this report together, is placed over the two different dates, possibly to hide this fact!
- Electrical Inspection Report submitted; (Dated May 2011) \* A Current/Recent Report is Required.
- Delivery date indicated on the cover letter to your documents is wrong; and the manner in which you chose to deliver them was completely unacceptable.  
-The info sheet you included regarding delivery of documents, clearly highlights the fact that you delivered these documents to a person and not a business. These documents are addressed to a business, with a business address, not to a person you feel can "hunt down" and assault. You E (*name redacted*), in fact, hit me twice in the face with the documents, before illegally (trespassing) reaching into my vehicle and placing the documents on the back seat of my vehicle; without the right or permission to do so. This was witnessed by another.

As the result of this refusal, the tenants brought this application.

At this hearing the landlord was represented by Mr. T.S. and by Mr. T.W, the head of the corporate landlord.

Mr. T.S. testifies about the service of the Request document on him by the tenant Ms. M.K., how he was struck twice in the face with the document and how Ms. M.K. reached in through the rear window of his vehicle and put the document on the seat. He says it was not appropriate service.

Mr. T.S. says that he thinks there might have been renovation work done to the manufactured home located on the site after the Electrical Inspection Report referred to in the stated grounds above.

He notes arguable discrepancies in the credit report the tenants had provided concerning the proposed assignee.

He acknowledges that he did not follow up on the references provided in the Request document. He did not call the tenants for any further information about the prospective assignee.

Mr. T.S. says that to conduct a credit check on a prospective assignee through the manufactured home park owners association to which the landlord belongs, one needs to know either the prospective assignee's social insurance number or his or her current phone number.

The tenant Mr. M.K. testifies that all one needs for a credit check is the subject's name, address and birthdate. He says that the prospective assignee provided his own credit check and it was passed along to the landlord. He says that he was willing to provide any other information the landlord might have required, but it was never requested.

Mr. M.K. says that the certificate of electrical inspection confirms that "all work is complete" and that the manufactured home is "approved for sale."

He says that the tenants made a video recording of the service of the Request on Mr. T.S. and that there was no assault.

Mr. M.K. testifies that the landlord has refused to consent to the assignment in hope of forcing a new tenancy agreement on the purchaser, on terms more favourable to the landlord.

In reply, Mr. T.S. submitted that regulations state that a certificate regarding a manufactured home must be "current." He did not specify what regulation he was referring to. The Regulation prescribed under the *Act* does not appear to contain such a requirement.

### Analysis

First, regarding service, a document may be served on a landlord by leaving a copy with an agent of the landlord (s. 81(b) of the *Act*). Mr. T.S. is the park manager and is the agent of the landlord. The question of whether an assault or trespass occurred during service of the application on August 14<sup>th</sup> is not an issue before me and does not particularly influence the question of whether or not the landlord was served with the Request. The landlord was duly served.

Through the *Act* and Regulation, the provincial legislature has considered it to be in the public interest to regulate the assignment of manufactured home park tenancy agreements to new purchasers of on-site homes.

Section 28 of the *Act* provides:

### **Assignment and subletting**

**28** (1) A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies:

- (a) the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;
- (b) the tenant has obtained an order of the director authorizing the assignment or sublease;
- (c) the tenancy agreement authorizes the assignment or sublease.

(2) 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.

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

The Regulation is much more detailed. Section 44(3) of the Regulation says the tenant must provide certain information to the landlord when requesting consent. That required information is accurately reproduced in the standard form used in this case (the standard form appears to include even more information than what is required by the Regulation, such as the tenants' phone number)

The tenants fully complied with the requirements of the *Act* and regulations in making their request of the landlord for consent to assign their tenancy.

As noted in section 28(1) of the *Act*, above, a landlord may only withhold consent "in the circumstances prescribed in the regulations." Section 48 of the Regulation sets out the limited grounds on which a landlord can withhold consent. I apologize for this lengthy extract, but for clarity the entire section should be set out;

**Grounds for withholding consent to a request**

**48** For the purposes of section 28 (2) of the *Act* [*landlord's consent*], the landlord of the park may withhold consent to assign or sublet only for one or more of the following reasons:

- (a) the request is for consent to assign, and
  - (i) the landlord, on the basis of relevant information, has reasonable grounds to conclude that the purchaser is unlikely to comply with the tenancy agreement or applicable rules, or
  - (ii) the landlord, on the basis of credit information, has reasonable grounds to conclude that the proposed purchaser is unable or unlikely to pay the rent;
- (b) the request is for consent to sublet and the landlord, on the basis of relevant information, has reasonable grounds to conclude that the proposed sublease is

likely to result in a breach of the home owner's obligations under the tenancy agreement and rules;

(c) the request is for consent to sublet and the tenant has agreed in the tenancy agreement not to sublet;

(d) there is not at least one proposed purchaser or subtenant in a proposed assignment or sublease who meets the age requirement in a park where every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the Human Rights Code[*permitted age requirements*];

(e) the proposed purchaser or subtenant does not intend to reside in the manufactured home and

(i) intends to use the manufactured home for business purposes, or

(ii) has purchased more than one manufactured home in the landlord's manufactured home park;

(f) the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed;

(g) the landlord, as a result of being unable to contact one or more references provided under section 44 (3) (e), (f) or (g) [*required information*], has insufficient information to make a decision about the request, if the landlord

(i) promptly advised the home owner of his or her inability to contact one or more of those references, and

(ii) made every reasonable effort to contact those references and any references provided by the home owner in place of those references;

(h) the home owner owes the landlord arrears of rent or an amount due under an order of the director;

(i) the manufactured home does not comply with housing, health and safety standards required by law.

The first ground for withholding; the allegation of a fraudulent credit report, is just that; an allegation. It is merely a matter of conjecture or speculation on the landlord's part. Arguably, had it been proved that the tenants and/or the assignee provided false or misleading information it might indicate that the purchaser is "unlikely to comply with the tenancy agreement or applicable rules" as per s. 48(a)(i), above, but the landlord's evidence falls far short of proof.

This ground for refusal was not justified.

The second ground for withholding consent is that the electrical inspection report was not current, having been issued in May 2011. That ground can only relate to s. 48(i) above, that "the manufactured home does not comply with housing, health and safety standards required by law."

In my view it is not for a tenant to prove compliance. The tenant's obligation is to provide the information required in the Regulation and nothing more. Obviously, a tenant wishing to close the sale of a manufactured home and the assignment of the tenancy over the site on which it sits will be eager to provide additional information, as these tenants did, but the law does not require it.

It is for the landlord to show that the manufactured home does not comply with housing, health and safety standards. The landlord has failed to establish that fact in this proceeding. Mr. T.S.'s suspicion that there might have been renovation work done on the manufactured home after the electrical inspection report of May 2011 is far from proof of non-compliance.

This ground for refusal was not justified.

The third ground for refusal was because a cover letter was "wrong" and that the manner of deliver of the documents was "unacceptable." These are not grounds permitted under the law for refusal of a request to assign a tenancy and were not justified.

### Conclusion

I hereby order and authorize the assignment of the tenancy agreement as set out in the tenants' Request for Consent to Assign a Manufactured Home Site Tenancy Agreement, filed in this matter.

The tenants are entitled to recover the \$50.00 filing for the application. I authorize them to reduce their next rent due by \$50.00 in full satisfaction.

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: October 28, 2015

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Residential Tenancy Branch

