



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, O

### Introduction

The tenant had filed a Landlord's Application for Dispute Resolution that only asked for repayment of the filing fee and "Other". The document attached to the application, which was served on the landlord, made it clear that the tenant was asking for a monetary order equivalent to the pad rent and filing fee. The hearing proceeded on that basis.

### Issue(s) to be Decided

- Did the landlord breach the *Manufactured Home Park Tenancy Act* when it refused to consent to the subletting of the rental unit?
- If so, is the tenant entitled to a monetary order for that breach?

### Background and Evidence

The tenant owns two manufactured homes, which are located on separate sites in this manufactured home park. The tenant lives in one of the homes and rents out the other. She has lived in the park for 21 years and has owned the rental unit for eleven. There is no written tenancy agreement. The landlord bought this park in 2003.

The pad rent is \$546.00 per month, and includes water, sewer and garbage.

The tenant's previous sub-tenant moved out near the end of September 2015. She entered into a tenancy agreement with B. The agreement was that he would rent the manufactured home for \$900.00 per month, starting October 1, 2015.

On September 10, 2015, the tenant submitted a Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement to the park manager.

On September 14 the park manager responded with a denial of the tenant's request for the following reasons:

- "1. The Request to Sublet is incomplete; information on proposed subtenant is missing.
2. The home does not comply with s.48(1) of the Manufactured Home Park Tenancy Regulation.

3. There is a hearing to be held October 21, 2015 . . . dealing with a previous unauthorized sublet.”

The park manager provided the tenant with a form to be completed by the proposed sub-tenant.

The form appears to be an amalgam of two different forms. The first portion is titled “Application for Tenancy”, is three pages long, and contains paragraphs A to T. The proposed sub-tenant completed all of the information except date of birth and driver’s licence number. Although the form asks for the Social Insurance Number the form makes it clear that: “the provision of a SSN is optional. This information is requested for the sole purpose of conducting a credit check.” The proposed sub-tenant signed all three pages.

The fourth page of the document is also titled “Application for Tenancy” and contains paragraphs F to J. The proposed sub-tenant did not sign this page.

The landlord testified that this is the most important page because it authorizes them to do a credit check, which they do through ROMS. He testified that although the driver’s licence number is very useful when doing a credit check they can still do an adequate check if they have the person’s full name and date of birth.

The landlord expressed the view that they are entitled to do credit checks and the proposed sub-tenant’s failure to complete the form so as to authorize the performance of a credit check was a ground for refusing to approve the sub-tenancy.

The park manager testified that he went back to the tenant several times and asked her to have the proposed sub-tenant complete the form. Her response was that the proposed sub-tenant had provided all the information they were required to.

The tenant testified that once she told the proposed sub-tenant that the landlord had refused he moved on and found another place to rent.

The tenant filed this application for dispute resolution on September 15 and the hearing was set for November 19.

At some point the tenant’s daughter asked if she could move into this manufactured home. The tenant told her daughter that she could not until the dispute with the landlord was settled. Her daughter completed a Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement and it was submitted to the landlord on October 20. When the landlord did not respond the daughter moved into the unit.

There was some dispute about when the daughter’s tenancy commenced. The tenant said November 1. The park manager said that furniture was moved into the rental unit on October 27, so he thought that was when the daughter’s tenancy started. In her rebuttal evidence the

tenant said it was her furniture that was moved into the rental unit on October 27, and that this was done to facilitate some renovations being done at her own unit.

The tenant says that the unit was unoccupied for the month of October only.

There have been two other dispute resolution proceedings between these parties. In his decision the arbitrator for the hearing held on October 21 commented that one of the two underlying issues between the parties was whether the landlord can demand of a sub-tenant personal information such as driver's licence number, social insurance number or consent to a criminal record search. He said: "The parties' attention was also drawn to the form RTB-25 'Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement' which states '[t]he home owner and proposed subtenant are not required to provide any other information other than that required on the form.'"

### Analysis

An assignment of a tenancy agreement occurs when the owner of the manufactured home sells that home to a purchaser and the tenancy agreement between the homeowner and the manufactured home park is transferred, or assigned, to the purchaser.

The legal effect of an assignment is set out in s.49 of the *Manufactured Home Park Regulation* which states that when a home owner assigns their tenancy agreement to a purchaser:

- the purchaser becomes the tenant and assumes the rights and obligations under the Act and the tenancy agreement, and,
- the tenancy agreement continues on the same terms.

After an assignment takes effect, the former homeowner:

- is not liable for any breach of, or obligation under, the Act or the tenancy agreement relating to the period after the assignment;
- continues to be liable for any breach of, or obligation under, the Act or tenancy agreement relating to the period before the assignment; and,
- may enforce his or her rights as a tenant under the Act or tenancy agreement relating to the period before the assignment.

In short, the purchaser, or the assignee, becomes the new tenant of the manufactured home park.

When a home owner rents their manufactured home to a tenant but maintains ownership of the home and the tenancy agreement with the manufactured home park, this creates a sub-tenancy. The homeowner is still the tenant of the park and is responsible for the rent and all other obligations of the tenancy agreement.

Although there is considerable overlap in the prescribed procedure for approval by the landlord of an assignment or a sub-tenancy, they are not identical.

There are two different prescribed forms: RTB-10, Request for Consent to Assign a Manufactured Home Site Tenancy Agreement; and RTB-25, Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement. Both forms are available on the Residential Tenancy Branch web site.

Section 44(3) of the *Regulation* sets out the information that must be provided by a home owner when requesting consent to an assignment or a sub-tenancy. The section requires a homeowner requesting consent to an assignment to provide considerable more information than a homeowner requesting consent to a sub-tenancy. In particular, it is only on a request for consent to an assignment that the homeowner must provide the proposed purchaser's signed consent authorizing the landlord to obtain a credit report on the proposed purchaser. (s.44(3)(k))

Section 48 of the *Regulation* sets out the reasons for which a landlord may withhold consent to assignment or sub-tenancy. Once again, a distinction is made between the two different requests, with the list of permitted reasons for refusing to consent to a sub-tenancy being shorter than the list of permitted reasons for refusing to consent to an assignment. In particular, it is only if the request is for consent to an assignment that a landlord may refuse to consent if: "if the landlord, on the basis of credit information, has reasonable grounds to conclude that the proposed purchaser is unable to unlikely to pay the rent." (s.48(1)(i)) This is not a ground for refusing to consent to a sub-tenancy. Presumably, the rationale for the distinction is that it is only on an assignment of a tenancy agreement that the landlord assumes the risk of whether the new occupant can pay the pad rent or not. If the unit is sub-let it is the tenant who assumes that risk.

A landlord may withhold consent to a sublet if the landlord, on the bases 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 (s.48(b)); or, if the landlord does not have enough information to make a decision because one or more of the proposed sub-tenant's references could not be reached. (s. 48(g))

All of this information is set out in the *Guide for Manufactured Home Park Landlords and Tenants in British Columbia*, prepared by the Residential Tenancy Branch also on page 6 of the RTB-10 form, also prepared by the Residential Tenancy Branch.

The tenant is attempting to sublet this unit; not sell it.

The proposed sub-tenant completed the required form. As set out in the previous decision and on page 6 of the form itself: "The homeowner and the proposed subtenant are not required to provide any further information other than that required on the forms"

The additional information requested by the landlord is information a landlord may demand when a tenant is attempting to assign their tenancy agreement but not when they are subletting it. Accordingly, the proposed sub-tenant's failure to sign the last page of the application or to

provide his date of birth and driver's licence number are not permitted grounds for withholding consent to a sub-tenancy.

Section 48(1) does allow a landlord to withhold consent to a request for consent to an assignment or a subletting if the manufactured home does not comply with the housing, health and standards required by law. The landlord's evidence did not establish this ground.

In summary, the landlord did not establish that it had a valid reason ground for refusing to consent to the particular sub-tenancy.

This decision has focused on what information a landlord may request on an application for consent to sub-tenancy. However, it was apparent in the hearing that the parties may have other disputes about privacy legislation and its' applicability to residential tenancies. The parties are referred to a document produced by the Office of the Information and Privacy Commissioner for British Columbia titled *Privacy Guidelines for Landlords and Tenants*. Among other topics the *Guideline* addresses landlord's requests for social insurance numbers, tenant identification, driver's licence number, tenant's insurance policies and criminal records.

Section 7(1) of the *Manufactured Home Park Tenancy Act* provides that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement the non-complying landlord or tenant must compensate the other for damage or loss that results. Subsection (2) requires the party claiming compensation to do whatever is reasonable to minimize the loss or damage.

At some point the landlord and her daughter agreed that the daughter would move into the rental unit. From that point on the tenant would not have made any efforts to obtain another tenant for the unit. The tenant's evidence as to when this agreement was reached was neither specific nor logical. The tenant's evidence is that she told her daughter that she could not move in until the dispute with the landlord was resolved. However, the tenant knew in mid-September that this hearing would not be until mid-November. The daughter's application was submitted in mid-October. This was before the hearings set for October 21 or November 19 so the parties were not waiting until these disputes were settled. Further, the tenant and her daughter clearly came to an agreement prior to completing and submitting Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement. Finally, the tenant's own evidence is that for the last few days of October she used the rental unit for her own purposes.

Although the landlord's refusal to consent to the tenant's sub-letting was not in compliance with the legislation I am not satisfied on the evidence before me that the tenant lost a month's rent as a result. Accordingly, the tenant's claim for reimbursement of the October rent is dismissed.

The tenant is entitled to reimbursement from the landlord of the fee she paid to file this application. The tenant may deduct the sum of \$50.00 from the next rent payment due to the landlord.

Conclusion

- a. The landlord did not have grounds to refuse to consent to the proposed sub-tenancy and breached the legislation by doing so.
- b. The tenant was not successful in proving that she suffered a financial loss as a result of the landlord's action so her claim for reimbursement of the October rent is dismissed.
- c. The tenant may deduct \$50.00, which is the amount she paid to file this application, from the next rent payment due to the landlord.

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: December 16, 2015

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Residential Tenancy Branch

