



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AS

### Introduction

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

- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 7, 2016. The landlord confirmed receipt of this package as claimed by the tenant. The landlord submitted 2 documentary evidence packages via Canada Post Registered Mail on November 12, 2016 and November 15, 2016. The tenant confirmed receipt of these two packages as claimed by the landlord. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act. Both parties are deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to an order authorizing them to sublet the rental unit due to the landlord's permission being unreasonably withheld?

### 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 respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek an order authorizing them to sublet the rental unit as the landlord has unreasonably withheld permission from the tenants to sublet.

The landlord disputes this referring to the tenant's application "Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement". The landlord referred to his written response which states,

Withheld

As previous decision May 30, 2016 File #....

Sublet tenancy is not permitted.

.....

Arbitrator

The landlord stated that it was an order issued by the arbitrator which does not allow the tenant to apply to sublet the rental.

The original decision dated May 30, 2016 states in part,

Analysis

*The tenant has not proven that the failure of either possible sale to complete was a result of the wrongful conduct of the landlord. In the first case, I find that one of the purchasers failed to apply for consent, and in the event chose not to. I find no evidence that this decision was as a result of any interference by the landlord. In the second case, the purchaser never formally completed the required application form seeking approval of an assignment of the tenancy, and in any event was seeking a sublet tenancy that was not permitted. Accordingly the tenants have not proven that the landlord unreasonably consented to an assignment or sublet of the tenancy. Further, the tenants have not proven on a balance of probabilities that the landlord's interference with their sale of their trailer has resulted in loss of rental income. The tenants' claim is therefore dismissed.*

Analysis

Section 28 of the Manufactured Home Park Tenancy Act states that a landlord may withhold consent to sublet a manufactured home only in the circumstances prescribed in the regulations.

Section 47 of the Manufactured Home Park Regulations state that if the landlord withholds consent to sublet, he or she must indicate the grounds on which he or she is withholding consent.

In this case the landlord has stated that a decision dated May 30, 2016 holds a finding made by the arbitrator which prohibits the tenant from applying for consent to sublet.

A review of the original arbitrator's decision does not provide an order or finding that the tenant is not allowed to sublet. The landlord has also referred to the signed tenancy agreement, addendum to the agreement and park rules without providing any specific clause that prohibits the tenant from seeking permission to sublet the tenancy. I note that clause #13 in the signed

tenancy agreement which is struck and initialled by both parties provides that the tenant may not sublet the rental unit. In the absence of any evidence from the landlord, I find that there is no prohibition from the tenant seeking consent of the landlord to sublet.

I find that the landlord has failed to provide sufficient evidence to satisfy me that he has grounds to withhold consent to the homeowner to sublet the tenancy. I also note during the hearing that the landlord provided many different reasons for withholding the consent to sublet that was not indicated on the landlord's response as required. As such, the tenant's application is granted.

### Conclusion

The tenant is authorized to sublet the rental unit to Alex Ault as requested by the tenant.

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: December 21, 2016

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Residential Tenancy Branch