Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COREMARC PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Manufactured Home Park Tenancy Act (the "*Act*") for:

- an order of to allow the tenant to assign or sublet because the landlord's consent is unreasonably withheld.

Two agents appeared for the tenant (collectively the "tenant") at the teleconference hearing and gave affirmed testimony, although most of the testimony was given by A.K. The landlord's agent (the "landlord") also appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The tenant's evidence package included a Monetary Worksheet and a Schedule itemizing costs that the tenant would be seeking from the landlord in the event that the tenant's sale didn't complete as a result of losing the prospective purchaser. As the tenant has not made an application for a monetary order, this portion of the Application is dismissed with leave to reapply.

Issue(s) to be Decided

- Is the tenant entitled to an order to allow the tenant to assign or sublet because the landlord's consent is unreasonably withheld, pursuant to section 58(1) of the *Act*?

Background and Evidence

The undisputed evidence established that a month to month tenancy started on November 1, 1992 pursuant to a written Pad Tenancy Agreement signed by the tenant's deceased spouse on October 20, 1992. The unit is a manufactured home located on a site in a manufactured home park.

The tenant entered into a contract of purchase and sale dated October 3, 2016 to sell the manufactured home. The offer became unconditional on October 19, 2016 after all the subjects were removed and approval was granted by the Park Manager. Completion was scheduled for October 31, 2016, however, the sale was frustrated by the landlord who would not provide the prospective purchaser with a copy of the assignment of the Pad Tenancy Agreement. A copy was required by the prospective purchaser to fulfill the conditions of financing. The sale is still pending with a new completion date.

The landlord's reason for denying the assignment of the pad tenancy agreement is that the landlord claims that the manufactured home does not comply with housing, health and safety standards required by law. The landlord claims that the tenant's oil tank had a leak that may have contaminated the soil. The landlord is requiring the tenant to satisfy the landlord that there is no soil contamination by having the soil tested. The landlord is withholding their consent until such time as the soil testing results establish that there is no contamination.

During the course of the inspection of the property for purposes of the sale, the purchaser's inspector had made a notation on his report pertaining to the oil tank. The inspector wrote at the top of one page, "Caution oil filter leaking on the ground at the oil tank. Further evaluate is urged". The landlord heard about the comment from the purchaser who gave the landlord a copy of the report showing these comments.

The landlord is relying upon the inspector's written comments in taking the position that the site is not clean and demanding that the tenant have the soil tested by an accredited company as proof of no environmental damage. The landlord is also relying on photographs that she believes show discoloration of the soil.

The tenant testified that she examined the tank and did not see any oil leaking. As a condition of the sale, the tenant was required to remove the oil heating system and clean up the area by the tank as the purchaser wanted to install an electric heat pump. The tank was removed on October 26, 2016 by a qualified technician.

According to the tenant, the technician that removed the tank was 100% certain that there was no sign of any leak. When the tank was removed, the tenant took photos of

the area underneath the tank which the tenant stated was dry and showed no signs of a leak.

The tenant testified that she sent the landlord a copy of the technician's receipt dated October 26, 2016 with his comments written on it as follows: "No leak in oil tank; No cracks or leaks coming out of the oil line". The tenant sent the landlord copies of the photos she took as well as additional information to support the tenant's position that the demand for soil testing is unreasonable. The tenant's position is that the landlord's demand for soil testing is unreasonable when there is no evidence of a leak.

The tenant followed up with the first inspector in regards to his written comments that suggested there was a problem with the tank. The inspector clarified his comments in an email dated November 9, 2016 that he did not see an active oil leak during the 2-3 minutes spent observing the oil tank and the surrounding area. The tenant testified that the inspector should not have said that there was a leak when he never actually saw a leak, but instead a tin can that was placed under the oil line.

The tenant's position is that she did what the inspector recommended which was a further evaluation by the qualified technician who removed the tank who found no leaks.

The tenant submitted a subsequent email dated November 15, 2016 which was sent to the landlord from the initial inspector. The email states:

> *The oil company that had removed the tank is the entity to which the true condition around the tank site is the definitive report because [he] performed the destructive removal of the tank to reveal the extent of any contamination.*

Despite the inspector's deference to the qualified technician's opinion, the landlord continues to insist that there is a leak in the tank based upon the inspector's original comments. As such, the landlord continues to demand that the tenant have the soil tested to prove that the site is clean.

The landlord argued that the tank is leaking due to the neglect of the tenant in maintaining the tank. In support of her position, the landlord testified that she is relying upon the coffee can under the oil line as proof of a leak and the discoloration of the soil. The landlord argued that she cannot rely on the technician's opinion as she has no name for the technician. The landlord testified that she attempted to contact the company by letter with no response. The landlord wants proof that there is no environmental contamination that would exceed minimal wear and tear. The landlord

relied on the section 23 of the *Act* and the *Environmental Management Act of BC* to argue that the landlord is entitled to require the tenant to prove that the site is not contaminated.

The tenant testified that the technician was away for a time and has since returned. The tenant testified that the can was placed under the line as a precautionary measure and not as a result of any leak.

Analysis

Based upon the above testimony and documentary evidence, and on a balance of probabilities, I find as follows.

Section 28(2) of the *Act*, reads as follows:

> *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.*

Section 48 of the *Manufactured Home Park Tenancy Regulation* outlines when a landlord of the park may withhold consent to assign or sublet. The landlord is relying upon section 48(i) to withhold consent as follows:

> *48(i) the manufactured home does not comply with housing, health and safety standards required by law.*

I find that there is insufficient evidence that there is a leak in the tank that has led to soil contamination sufficient to support a finding that the manufactured home does not comply with housing, health and safety standards required by law. The tenant provided an opinion from a qualified professional who removed the tank that supports a finding that there is no leak. The landlord also did not provide sufficient evidence of the specific legislation and/or legal standards that she is alleging the manufactured home does not comply with.

The landlord's position is that she requires proof first from the tenant that there is no problem with contamination by having the soil tested before she consents to the assignment. Section 48 of the Manufactured Home Park Tenancy Regulation, however, places the onus on the landlord to prove that there is a problem to the extent that the manufactured home does not comply with housing, health and safety standards required by law.

I find that section 23 of the *Act* does not entitle the landlord to require the tenant to do soil testing. Furthermore, the Residential Tenancy Branch has no authority or jurisdiction under the *Environmental Management Act,* in any event.

Based upon the foregoing, I find that the landlord's withholding of consent is unreasonable. Accordingly, I find that the tenant is entitled to an order that allows the tenant to assign the Pad Tenancy Agreement to the purchaser named in the contract of purchase and sale dated October 3, 2016, and previously approved by the landlord.

Conclusion

The tenant's application is successful.

I ORDER that the pad tenancy agreement be assigned to the prospective purchaser named in the contract of purchase and sale dated October 3, 2016.

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: January 26, 2017

Residential Tenancy Branch