



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

AS MNDC OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on March 13, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- an order that the Tenants be allowed to assign or sublet because the Landlord's permission has been unreasonably withheld;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulation or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves and were assisted by P.L., an advocate. Also present was a witness, G.G., who was not called to provide testimony. The Landlord was represented at the hearing by L.W. A witness for the Landlord, M.B., was present but not called upon to provide testimony. All parties giving evidence provided a solemn affirmation.

On behalf of the Tenants, P.L. advised that the Tenants' Application package, which included a Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on February 11, 2017, and was accepted on February 14, 2017. On behalf of the Landlord, L.W. acknowledged receipt. I find the Tenants' Application package was received by the Landlord on February 14, 2017.

On behalf of the Landlord, L.W. testified the Landlord's documentary evidence in response to the Tenants' Application was served on the Tenants by courier. The Tenants acknowledged receipt of the Landlord's documentary evidence. I find the Landlord's documentary evidence was served on and received by the Tenants in accordance with the *Act*.

No further issues were raised with respect to service or receipt of the above documents. The parties represented at the hearing and were ready to proceed. The parties were provided with the full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issue to be Determined

1. Are the Tenants entitled to an order that the Tenants be allowed to assign or sublet because the Landlord's permission has been unreasonably withheld?
2. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Tenants entitled to an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement?
4. Are the Tenants entitled to an order granting recovery of the filing fee.

Background and Evidence

According to B.H., the tenancy began on or about April 1, 2012. She confirmed the Tenants own a manufactured home and pay pad rent to the Landlord in the amount of \$379.00 per month. The Tenants wish to sell their manufactured home. The Tenants have identified a willing purchaser, G.G., who would like to leave the manufactured home in place and live in the park.

The Tenants would like to assign their tenancy agreement to G.G. Accordingly, they submitted a Request for Consent to Assign a Manufactured Home Site Tenancy Agreement, dated February 10, 2017 (the "Request"), to the Landlord. A copy of the Request was submitted with the parties' documentary evidence. The Landlord denied the Request on the bases that it was not complete. The written response of the Landlord appears on the Request as follows:

Applicant needs to file Application for Tenancy so I can complete a credit check. Potential buyer is unsure if he wants to rent or buy. He will decide Saturday how he wishes to proceed. If he files our form I will be able to proceed with the credit check. The applicant has been advised this but wants to wait. Due to the time constraints of this form I will deny the application until he files the form as requested. He also has not seen the Lease Agreement it was not attached to this request.

[Reproduced as written.]

During her testimony, L.W. confirmed that the Request was initially rejected because it was incomplete, contrary to section 44 of the Act. Specifically, L.W. testified the Tenants did not include a copy of the tenancy agreement or the park rules with the Request, and information required to complete a credit check was not provided. However, L.W. confirmed she subsequently obtained information required to perform credit and reference checks. L.W. testified she performs these checks with all prospective tenants. She discovered G.G. had a “very poor” credit rating and owed rent to a previous landlord. In an email from P.L. to L.W., dated February 16, 2017, submitted with the Tenants’ documentary evidence, P.L. acknowledged that the Landlord’s request for credit information for G.G. was “fair and reasonable”, and asked what was required.

In addition, L.W. testified that G.G. sent her an email in which he described disparaging remarks made by the Tenants. In light of the incomplete Request, G.G.’s credit score, and the email sent to L.W., it was decided that G.G. would not be a suitable addition to the park. These reasons were communicated to the Tenants in an email dated February 27, 2017, and to G.G. in a letter bearing the same date. Copies of the email and the letter were submitted with the Landlord’s documentary evidence.

During the hearing, L.W. confirmed the Tenants are, of course, at liberty to sell their manufactured home at any time; however, she submitted the Landlord retains the right to determine who resides in the park.

In reply, the Tenants testified to their belief that consent to assign the tenancy agreement has been unreasonably withheld. The submitted that the Landlord had the necessary information to make a decision and that the Request was complete. The Tenants also submitted that a number of attempts were made to provide information.

In addition, on behalf of the Tenants, P.L. submitted that any reasons for denying the assignment of the tenancy to G.G. after February 17, 2017, are irrelevant and should not be considered. In written submissions, the Tenants also suggested the Landlord has a history of interfering with the sale of the Tenants' manufactured home. The written submissions also outline the Tenants' position that the provision of the park rules dealing with the sale of manufactured homes is unconscionable as it places too high a burden on the vendor.

The Tenants seek a monetary order in the amount of \$379.00, based on a loss of one month of pad rent.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 28 of the *Act* permits a tenant to assign a tenancy agreement if the tenant has obtained the prior written consent of the landlord. However, a landlord may withhold consent in the circumstances described in the Regulations. Section 44(3) of the Regulation sets out the information that must be provided with an application to assign a tenancy. In this case, L.W. testified she did not receive a complete application. Specifically, she stated the Tenants did not provide a copy of the tenancy agreement or park rules. However, the Landlord subsequently received sufficient information with which to perform a credit and reference checks. The credit check indicated that G.G. had a poor credit rating.

I find the Tenants are not entitled to the relief sought. As alleged by the Landlord, I find the Request was not complete. I have made this finding, in part, as a result of inconsistent testimony on the part of the Tenants. On the one hand, the Tenants testified they submitted the Request was complete. On the other hand, they submitted they took steps to provide information to the Landlord. In any event, the Landlord took steps to obtain information that would permit credit and reference checks to be completed. These checks revealed that G.G. had a "very poor" credit rating, had made disparaging remarks made about the Landlord, and owed outstanding rent to a previous Landlord. This evidence was not disputed by the Tenants. I find these findings provide a reasonable basis for the Landlord to withhold consent to assign the tenancy

agreement. Landlords in these circumstances, retain the right to deny applicant tenants based on credit checks, referrals, and the like. In this case, not only was the Request incomplete, but the credit and reference checks indicated G.G. would not be a suitable tenant at the park.

In light of my finding that the Landlord acted reasonably in denying the Tenants' Request, it is not necessary for me to consider their claims for compensation or that the Landlord complies with the *Act*.

The Tenants' Application is dismissed, without leave to reapply.

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

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: June 28, 2017

Residential Tenancy Branch