



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REDFERN HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Manufacture Home Park Tenancy Act* (the "Act"), for a monetary order for compensation or other money owed.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The parties agreed that the tenancy began April 2013. The tenancy ended on November 30, 2015, by an order of the director. The parties agreed that the landlord gave the tenant six (6) months from February 1, 2016 to August 1, 2016, sell the manufacture home or have it removed.

The tenant claims as follows:

a.	Compensation for manufactured home sale	\$10,000.00
	Total claimed	\$10,000.00

The advocate submits that the tenant lost two potential sales on their manufactured home due to the landlord failure to comply with section 28 of the Act, and section 48 of the regulations. The advocate submits the landlord unreasonably withheld their consent for the tenant to assign the tenancy and as a result the tenant had to sell the manufacture home at a lower amount.

The advocate submits the manufacture home first sale offer was on September 26, 2015 for \$28,000.00, and when the potential buyer was presented to the landlord they informed the buyer that there was an eviction hearing outstanding and they the manufactured home could not be sold at this time to remain on site. The advocate stated the sale collapsed.

The advocate submits that the manufacture home second sale offer was on August 1, 2016, and again the landlord was presented with a potential buyer and the sale again collapsed.

The advocate submits that it is the realtors practice to present the potential buyer to the landlord before completed any other documents. The advocate confirmed the tenant did not fill out the request to assigned documents.

Filed in evidence for the tenant are correspondence between realtors and the contracts to purchase, which I have reviewed. I should note the correspondence at page 15, indicated the tenant failed to inform the listing realtor on September 3, 2015, that there was a problem due to an outstanding eviction hearing and the potential buyer was very upset as they not notified of this prior to putting their offer in.

The landlord testified that on the first occasion the potential buyer introduced themselves and the landlord informed them that there was an upcoming hearing and that the manufacture home could not be sold on site until the outcome of the hearing was determined. The landlords testified that they had an obligation to inform potential buyers of the outstanding hearing.

The landlord testified that on the second occasion that the potential buyer never showed up. The landlord stated that they called the realtor on several occasions and never heard from them again. The landlords testified that they were never given any documents by the tenant.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim

Section 7(1) of the Act states 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.

Section 60 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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;

...

Written request for consent to assign or sublet

44 (1) Sections 45 [*response within 10 days*] and 46 [*deemed consent*] apply to a home owner's request for consent to assign or sublet only if the home owner requests the consent of the landlord of the park to assign or sublet in writing in the form approved by the director.

(2) The home owner must serve the request on the landlord

- (a) in accordance with section 81 of the Act [*service of documents*], and
- (b) within sufficient time prior to the effective date of the proposed assignment or sublease to allow the landlord to respond under section 45 (1) (c) [*response within 10 days*].

It is the tenant's position that the landlord has failed to comply with section 28 of the Act by unreasonable withholding their consent to assign the manufactured home site.

However, the evidence of the tenants was that they did not serve the landlord with the written request for consent to assign. While it may be the realtor's practise to first present the potential buyer to the landlord, that practise does not release the tenant under the Act from their responsibility to comply with section 44 of the Act.

Further, it would have been reasonable for the tenant to inform their listing agent that there was an outstanding eviction hearing, which an order of possession for the site was obtained with an effective vacancy date of November 30, 2016. I find it was reasonable and that the landlord was obligated to inform any potential buyer in September 2016, of this outstanding issue, since the tenant or their listing agent did not disclose that information.

Further, part 5 of the contract to purchase states that the seller shall, within five (5) days of acceptance of the offer, prepare and the seller and buyer will assign a request for the consent of the park owner to assignment of the pad location. No documents were prepared or signed by either the seller or buyer.

As the tenant did not comply with the requirements under section 44 of the Act, I cannot find the landlord has breached section 28 of the Act. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant has failed to prove a violation of the Act by the landlord. The tenant's 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 *Manufacture Home Park Tenancy Act*.

Dated: July 11, 2018

Residential Tenancy Branch