Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELCO HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, FFT

Introduction

This decision pertains to the tenant's application for dispute resolution made on June 1, 2018, under the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant seeks an order to allow assignment or sublet when permission has been unreasonably denied, and a monetary order for recovery of the filing fee.

The tenant and the landlord's representative (the "representative") attended the hearing before me and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant called one witness to the hearing.

The tenant testified that he served the landlord with the Notice of Dispute Resolution Proceeding (the "Notice") in person, but could not recall the date on which it was served, or even an approximate date on when it was served. The representative testified that his accountant notified him of the arbitration hearing "about 3 hours ago." I asked him whether he knew the hearing was about, whether he had had an opportunity to review the tenant's evidence, and whether he was ready to proceed. The representative answered that he did, he had not, and that he was ready to proceed.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Preliminary Issue - Jurisdiction

After the tenant had testified and made submissions regarding his application, the representative raised the issue of whether the dispute fell under the Act, and whether I had jurisdiction to hear the matter.
The representative submitted that the tenant is "not a tenant" and that "he's a developer." He further argued that "we're dealing with a developer" and that while the tenant "wants to be treated as a tenant," he has not acted like a tenant. Thus, the representative submits, because the tenant is not a "tenant" I have no jurisdiction to hear the dispute.

The tenant submitted into evidence a copy of a written tenancy agreement. The names of the tenant and landlord are on the agreement, and the agreement went into effect on October 1, 2017. I asked the representative about the agreement, confirming that the landlord did, in fact, enter into a tenancy agreement with the tenant. The representative acknowledged the tenancy agreement, but commented that the landlord only entered into it to "provide some security" to the tenant. The tenant testified that he pays pad rent as per the tenancy agreement, and is therefore a "tenant."

Section 1 of the Act defines a "tenancy agreement" as "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities." Although the word "tenant" is not defined in Section 1, "tenancy" means "a tenant's right to possession of a manufactured home site under a tenancy agreement." Further, section 2(1) of the Act states that "this Act applies to tenancy agreements, manufactured home sites and manufactured home parks."

There is in evidence before me a written tenancy agreement. The tenancy agreement is between the tenant and the landlord. The tenancy agreement is about the tenant's possession of a manufactured home site, use of common areas and services and facilities. Whether the intentions of the tenant in respect of that possession are consistent with the landlord's idea of a "tenant" is irrelevant in respect of whether the tenant is a "tenant."

If the landlord did not intend to have an individual enter into a written tenancy agreement on the basis that the individual was a "developer," or someone who is seeking to make a profit from the purchase and sale of manufactured homes, then the landlord ought not to have entered into the tenancy agreement a the outset.

Accordingly, applying the law to the facts, I find that given the existence of a tenancy agreement that there is a tenancy, that this Act applies, and that I therefore have jurisdiction to consider the tenant's application.

Issues to be Decided

1. Is the tenant entitled to an order to allow assignment or sublet when permission has been unreasonably denied?

2. Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenant testified, and presented into evidence a written submission, that he purchased a manufactured home by way of a private sale with the intention to renovate it and then resell. The tenant received park approval for a tenancy, which was required for the tenant's sale of the

home to close. Unfortunately, he was unable to renovate due to other factors, and so the home was listed and sold to another party that wished to renovate and live in the home. The landlord denied the assignment or sublet of the tenancy, insisting that the trailer home be removed and a new one put in its stead.

After a second sale was attempted, the tenant testified, the purchaser was willing to remove the old trailer and put in a newer trailer. The tenant sought approval from the landlord prior to the offer, but the landlord denied assignment or subletting. Afterward, the tenant purchased a new manufactured home to put on the site. The landlord sent to the tenant an invoice for $31,500.00 as a “lot renewal fee.”

The tenant submitted into evidence a copy of the landlord’s invoice, but did not submit into evidence copies of any correspondence related to the two denials by the landlord for the tenant to assign or sublet the tenancy. The tenant’s witness, a financial advisor, argued that the invoice itself is evidence of the landlord’s denial.

While the tenant technically applied under the Act for an order, he stated that the actual “purpose of this application at this time is solely to determine if this [$31,500.00] is a valid fee that must be paid.”

The landlord testified that the tenant is solely in the business of making a profit, and has no interest in being a tenant in the park. He did not respond to the tenant’s argument that the lot renewal fee is the landlord’s denial of a tenancy assignment or sublet. And he did not elaborate or respond to the tenant’s testimony regarding two previous denials.
I asked the landlord about the purpose of the lot renewal fee. He responded that “$30,000 is a reasonable amount” sought by the landlord, given that the tenant stands to make a substantial profit from the sale of a six-figure manufactured home. I further asked the landlord under which section of the Act the landlord sought this fee; he was unable to provide me with an applicable section.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 44 (1) of the *Manufactured Home Park Tenancy Regulation* (the “Regulation”) outlines the detailed and specific steps that must be taken by a tenant in seeking consent to the tenant’s request to assign or sublet.

Section 28 (2) of the Act states that 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 section 48 of the Regulation, which lists nine grounds on which the landlord may

withhold consent.

The tenant applied under section 58 (1) of the Act for an order allowing him to assign or sublet his site. Section 58 (1) (g) permits an arbitrator to make an order "that a tenancy agreement may be assigned or a manufactured home site may be sublet if the landlord's consent has been withheld contrary to section 28 (2)."

While the tenant testified that the landlord has twice withheld consent to sublet or assign the tenancy agreement, he did not submit any documentary evidence of this refusal. He did not testify as to the dates on which these refusals occurred, nor did he provide any details surrounding the refusals, other than to testify that "there was paperwork." For me to find that the landlord has unreasonably withheld consent, I must be satisfied—with supporting documentary evidence—that the tenant (A) sought consent under section 44 (1), and (B) that the landlord withheld consent under section 48.

The representative did not offer any testimony or provide additional information in respect of the tenant's claim that assignment or sublet was refused. Rather, he reiterated that the tenant is not a tenant and that the lot renewal fee was a reasonable fee based on the tenant's sale and anticipated profit of a manufactured home.
Regarding the invoice itself, the representative could not provide me with the section or sections of the Act or Regulation giving the landlord the legal right to seek payment of $31,500.00 for a "lot renewal fee" from the tenant. Likewise, there is nothing in the tenancy agreement that refers to a "lot renewal fee."

In respect of what fees are permitted under the Act, section 15 sets out which fees are prohibited to be charged by a landlord. Similarly, sections 3 through 5 of the Regulation cover fees that are permitted and fees that are not permitted under the Regulation. The only fees (both refundable and non-refundable) that a landlord may charge are contained within sections 4 and 5 of the Regulation. Section 5 (1) of the Regulation states that

> A landlord may charge any of the following non-refundable fees:
>
> (a) direct cost of replacing keys or other access devices;
> (b) direct cost of additional keys or other access devices requested by the tenant;
> (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
> (d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
> (e) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

I find that the landlord has no legal right under the legislation or the tenancy agreement to seek this amount. To answer the tenant's earlier question: no, this is not a valid fee.

That having been said, I do not find that the invoice itself constitutes a withholding of consent. (Indeed, consent would presumably be given if the tenant pays the amount.)

Taking into consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving on a balance of probabilities that the landlord's consent to assign a tenancy agreement or sublet the tenant's interest has been withheld contrary to section 28 (2) of the Act. As such, I dismiss the tenant's application without leave to reapply.
I dismiss the tenant's claim for a monetary order for recovery of the filing fee.

Conclusion

The tenant is not entitled to an order to allow assignment or sublet when permission has been unreasonably denied, and I dismiss his claim 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 Act.

Dated: July 26, 2018

Residential Tenancy Branch