



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, FFT

Introduction

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

- an order allowing the tenants to sublet because the landlord's permission has been unreasonably withheld pursuant to section 58; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The tenants and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 81 and 82 of the *Act*.

Preliminary Issue – Adjournment Request

The landlord testified that he would like to come to a mutual agreement with the tenants, but because he does not have authority to settle the dispute without consultation with the remaining shareholders, he requested an adjournment. The tenants did not consent to the adjournment.

Residential Tenancy Branch, Rules of Procedure, Rule 7.9 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- (a) the oral or written submissions of the parties;
- (b) the likelihood of the adjournment resulting in a resolution;
- (c) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment;
- (d) whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- (e) the possible prejudice to each party

I informed the parties at the hearing that I would not adjourn the hearing. Although I considered all the criteria in 7.9, I declined to adjourn the hearing as I remained unsatisfied that the adjournment would result in a resolution, and it would unfairly prejudice the tenants to reschedule the hearing.

Issue(s) to be Decided

Are the tenants entitled to an order allowing the tenants to sublet because the landlord's permission has been unreasonably withheld?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted manufactured home pad tenancy agreement and testimony of the parties, the tenancy began on October 1, 1996 on a month-to-month basis. Rent in the amount of \$251.00 is payable on the first of each month. The male tenant owns the manufactured home and has never resided in it. The manufactured home has been sublet for the duration of this tenancy.

Previous hearings have been held in regards to this tenancy. The first decision was rendered on May 27, 2004. The file number has been included on the front page of this decision for ease of reference. The Arbitrator found, based on the evidence presented that the landlord did not satisfy the good faith requirement of section 42 of the *Act*, and therefore set aside the common notice to end tenancy for each of the 15 applicant tenants.

The second decision was issued on March 7, 2013 in response to the tenants' application to cancel a One Month Notice to End Tenancy ("1 Month Notice"). This file number has also been included on the front page of this decision. In the March 7, 2013 decision, the Arbitrator found that the landlord had failed to meet his burden in proving the grounds for the notice and for that reason, set the 1 Month Notice aside.

On August 20, 2018, the tenants submitted a written request to sublet their manufactured home site and on August 22, 2018 the landlord withheld consent based on the following grounds;

- CLRC Inc. has not been actively in the business of promoting pad rentals for over two decades and the Tenant is well aware of the direction to phase out pad rentals. To date, CLRC Inc. has respected the wishes of the few remaining pad rentals to remain as sole tenants. The park has only 3 pad rental tenancies remaining.
- The tenant previously asked CLRC Inc. several years ago to sublet, and the request was denied. The tenant stated at that time that they intended to retire to lot 13 and they would be the sole occupants of the unit.
- The tenant is aware that CLRC Inc. does not permit sub-letting and this has been consistently applied.
- To date CLRC Inc. has respected the Tenants desire to remain as the sole occupant of Lot 13 and continues to do so.
- CLRC is willing to discuss the option of the Tenant either purchasing the share attached to Lot 13 or explore terms to terminate the pad rental agreement.

[Reproduced as written]

The tenants contend that the landlord has unreasonably withheld permission to sublet. It is their position that their tenancy agreement and current park rules do not prohibit sublet of the manufactured home site.

Analysis

While I have turned my mind to all the documentary evidence, including meeting minutes, letters, emails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 45 of the *Manufactured Home Park Regulation* ("*Regulation*") establishes that if a landlord withholds his or her consent for the home owner to sublet, the landlord's response must indicate the grounds under section 48 of the *Regulation*.

Pursuant to section 48 of the *Regulation* and for the purposes of section 28(2) of the *Act*, the landlord may withhold consent to assign or sublet only for one or more of the following reasons:

- (a) the request is for consent to assign, and
 - (i) the landlord, on the basis of relevant information, has reasonable grounds to conclude that the purchaser is unlikely to comply with the tenancy agreement or applicable rules, or
 - (ii) the landlord, on the basis of credit information, has reasonable grounds to conclude that the proposed purchaser is unable or unlikely to pay the rent;
- (b) the request is for consent to sublet and the landlord, on the basis of relevant information, has reasonable grounds to conclude that the proposed sublease is likely to result in a breach of the home owner's obligations under the tenancy agreement and rules;
- (c) the request is for consent to sublet and the tenant has agreed in the tenancy agreement not to sublet;
- (d) there is not at least one proposed purchaser or subtenant in a proposed assignment or sublease who meets the age requirement in a park where every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the *Human Rights Code* [*permitted age requirements*];
- (e) the proposed purchaser or subtenant does not intend to reside in the manufactured home and
 - (i) intends to use the manufactured home for business purposes, or
 - (ii) has purchased more than one manufactured home in the landlord's manufactured home park;
- (f) the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed;

(g) the landlord, as a result of being unable to contact one or more references provided under section 44 (3) (e), (f) or (g) [*required information*], has insufficient information to make a decision about the request, if the landlord

(i) promptly advised the home owner of his or her inability to contact one or more of those references, and

(ii) made every reasonable effort to contact those references and any references provided by the home owner in place of those references;

(h) the home owner owes the landlord arrears of rent or an amount due under an order of the director;

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

I find that the grounds to withhold consent as indicated by the landlord are incongruent with any of the allowable grounds under section 48 of the *Regulation*. Further, I accept the tenants' evidence that there is no provision in their tenancy or park rules that prohibit the subletting of the manufactured home. For these reasons, I find that the landlord's permission to sublet has been unreasonable withheld. Therefore pursuant to section 58 of the *Act*, I authorize and Order that the tenants may proceed to sublet their manufactured home.

Conclusion

I authorize and Order that the tenants may proceed to sublet their manufactured home.

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: October 11, 2018

Residential Tenancy Branch