



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DANA MARR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, PSF, MNDC, FF

Introduction

This hearing held on November 26, 2018 and is the result of an application by the Tenant which was originally heard on October 2, 2018. The original hearing was adjourned to this date. At the first hearing there was not enough time to fully review the evidence and to have both parties complete their testimony. This was because the Applicant had a large volume of evidence which was presented by the Applicant's Agent A.P. Due to the time limit set for the hearing the Respondent did not get an opportunity to present her defence. Consequently the parties agreed to adjourn the hearing until today. It should be noted the hearing today has been allotted additional time to allow both parties time to be fully heard.

Issue(s) to be Decided

This matter deals with an application by the Tenant to assign a manufactured home park pad tenancy, to provide services and facilities required by the tenancy agreement, for compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 17, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an assignment of the tenancy agreement on the Manufacture Home Park pad A1?
2. Has the Landlord provided services and facilities required under the tenancy agreement?
3. Is the Tenant entitled to compensation for loss or damage under the Act, regulations or tenancy agreement and if so how much?

Background and Evidence

During the first hearing on October 2, 2018 the Tenant's Agent A.P. presented the following evidence and testimony:

- The Agent said there were numerous communications between the Tenant's Agent A.P. and the Landlord regarding the manufactured home purchase by Tenant S.B. and that tenant K.W. would be making an application to assign the tenancy on pad A1 to S.B. The previous tenant K. W. would be advising the Landlord that Tenant S.B will be taking over the tenancy on pad A1 and establishing a new tenancy. The Tenant's Agent A.P. said there were discussions with the Landlord on May 13 and 14 and the Landlord faxed the realtor package to the Tenant's Agent A.P. on May 19, 2018 and again on May 28, 2018.
- The Tenant's Agent A.P. continued to say that two meetings occurred with the Landlord, Tenant S.B. and the Tenant's Agent A.P. The first meeting was on May 30, 2018 and the second meeting was on June 1, 2108. Agent A.P. said the assignment of tenant K.W.'s tenancy was discussed and forms were reviewed. The Agent A.P. continued to say one issue that came up was that the Tenant had two dogs and only one dog is allowed under Park Rules.
- The Agent A.P. said this issue was resolved as the Tenant S.B. agreed to board one of the dogs with the previous tenant K.W. outside the Park.
- Further Agent A.P. said that the previous tenant K.W. delivered the Request to Consent to Assign a Manufactured Home Site Tenancy Agreement to the Landlord A.M. on June 10, 2018. The Agent said the tenant K.W. hand delivered the document to the Landlord at the office of the Manufactured Home Park.
- The Tenant's Agent A.P. continued to say that the Landlord Mr. A.M. text messaged him on June 11, 2018 indicating the application for tenancy was not approved and the assignment of tenant K.W. tenancy was not valid.

- The Tenant's Agent A.P. who also was the realtor in the sale of the manufactured home continued to explain a number of issues including the dog issue, the septic system issue and the details about the purchase agreement. These issues provided history for the situation but used up most of the time in the first hearing.
- The Tenant's Agent A.P. concluded by saying that because the Landlord did not response to tenant K.W.'s request to have the tenancy assigned within the 10 day limit as set out in the Act and regulations, then Tenant S.B. is deemed to be assigned tenant K.W.'s tenancy. The Tenant's Agent A.P. requested an order to assign the tenancy from tenant K.W. to Tenant S.B.

The Landlord D.M. said her defence is based on the fact that the document that tenant K.W. gave the Landlord A.M. was illegible and it was not completed correctly. The Landlord said because the documents were illegible and incomplete the Landlord thought the documents were invalid. Consequently, the Landlord believed they did not have to respond to them. The Landlord said she agrees to an adjournment so that she would have ample time to present her evidence and testimony.

The Hearing was adjourned to November 26, 2018.

When the hearing commenced on November 26, 2018, Tenant S.B. was represented by Counsel. The Tenant's Counsel said the main issue is whether or not the Landlord was served with the Request to Consent to Assign a Manufactured Home Site Tenancy Agreement and if the document is valid. Counsel continued to say the Landlord was served with the Request to Consent to an Assignment form on June 10, 2018 by tenant K.W. Consequently, Counsel said the Landlord had 10 days to respond in writing or the tenancy would be deemed to be assigned to Tenant S.B, under section 46 of the Residential Manufacture Home Park Tenancy Regulations. Counsel said the Landlord A.M. sent a text on June 11, 2018 declining both the application for tenancy and the consent for an assignment. Counsel continued to say this shows the Landlord understood the request from tenant K.W. and he responded to it. Further Counsel said the Landlord did not respond in writing with in 10 days as required by the regulations. Therefore, Counsel said the tenancy should be deemed to have been assigned to Tenant S.B.

The Landlord said she appreciated the opportunity to present her evidence and testimony. First the Landlord said the application is from S.B. and there is no tenancy agreement and no assignment agreed with the Applicant S.B. and the Landlord. Therefore, S.B. is not a tenant at the Park and is ineligible to make an application for an assignment of a pad. The Landlord continued to say S.B. cannot make an application because there is no contract between the Landlord and the Applicant S.B. The Landlord requested the application be dismissed on this ground, because there is no tenancy agreement, therefore the Residential Tenancy Act does not have jurisdiction in this situation.

The Landlord continued to say the documents that they received from tenant K.W. were illegible and from what she could read they were not completed correctly. The Landlord said they were unable to do their do diligence on the application, therefore they deemed the documents from K.W. were invalid. Consequently, the Landlord said she believed they did not have to respond to them. The Landlord said on June 11, 2018 her father A.M. sent a text message to Agent A.P. that the Landlord was not accepting the application for tenancy from S.B. and the request for assignment was invalid.

The Landlord continued to say that they did not receive a completed Request to Consent to Assign a Manufactured Home Site Tenancy Agreement from either tenant K.W. or the Applicant S.B. The Landlord requested that Tenant S.B.'s application be dismissed because the forms were not completed, they were illegible and the Landlord believes the request to assign the tenancy was invalid.

The Tenant's Counsel responded to the Landlord by saying the Tenant S.B. has made the application not the previous tenant K.W., because they have assumed the tenancy was deemed to have been assigned to the Tenant S.B so she is a tenant and has the right to make the application. Counsel said this is because the documents were served to the Landlord and the Landlord had the responsibility to respond in writing within 10 days. Counsel continued to say the Landlord did not respond to the tenant K.W. so the tenancy is deemed to have been assigned to Tenant S.B. Counsel said Tenant S.B. is a tenant of the park by the assignment of tenant K.W.'s tenancy agreement.

Further Counsel said that even though the forms were not completed well, the Landlord had numerous discussions with Agent A.P. about the sale and assignment of site A1 to Tenant S.B. Further the Landlord met with Tenant S.B. on May 30, 2018 and June 1, 2018 for an interview and to complete the documents for an assignment of tenancy and a new tenancy application. Counsel continued to say that the Landlord also met with tenant K.W. in person on June 10, 2018 when K.W. delivered the Request to Consent to

Assign a Manufactured Home Site Tenancy Agreement to the Landlord. Counsel said that although the forms may not have been completed correctly and the copying of the forms may have been poor, the Landlord was fully aware of the situation and the Landlord knew that tenant K.W. was making a request to assign his tenancy to S.B. Counsel said the Landlord had an obligation under section 45 of the regulations to respond in writing to the tenant K.W. within 10 days and the Landlord did not. Counsel said therefore the tenancy is deemed to be assigned to S.B. Consequently Tenant S.B. has the right to make the application as she is a tenant of the Park.

Counsel called K.W. as a witness. K.W. gave affirmed testimony that he was first going to put the request to assign his tenancy in the office mail box but then the Landlord A.M. arrived at the office so he gave the documents to Landlord A.M. in person. Tenant K.W. said the Landlord A.M. knew what the documents were.

Counsel then called Agent A.P. as a witness. Agent A.P. gave affirmed testimony that he had discussions with the Landlord A.M. numerous times in May, June and July 2018 about the assignment of site A1 to S.B. from K.W. Witness A.P. said there was no way the Landlord did not understand that tenant K.W. was requesting to assign his tenancy to S.B. Witness A.P. continued to say he did understand the tenant K.W.'s scanner may not have done a good copying job on the documents but the Request to Consent to Assign a Manufactured Home Site Tenancy Agreement documents that S.B. sent to the Landlord on July 9, 2018 were good quality documents. Agent A.P. said the Landlord did not respond to these documents as well.

The Landlord said the documents S.B. sent in July 2018 did not have the tenant K.W.'s information on them so they were incomplete and invalid. The Landlord said section 44 of the regulations says what the forms must include and the forms sent by S.B. did not have the proper information completed.

Counsel said in closing that the Landlord had enough information from the different documents, text messages and in person meetings to know that K.W. was requesting an assignment of his tenancy. Counsel continued to say the some pages of the document K.W. served the Landlord A.M. are legible. One page is titled Request to Assign and this page has the names and signatures of both K.W. and S.B. S.B. signed May 30, 2018 and K.W. signed on June 10, 2018. Counsel said the Landlord did not response in writing within 10 days as indicated in the regulations, therefore the assignment of tenancy is deemed to have been given to S.B. by section 46 (a) of the regulations. Counsel said that the spirit of the Act is not in filing forms out correctly, but having the parties understand what is being requested. Counsel said in this situation

the Landlord was fully aware that K.W. was requesting an assignment of his tenancy to S.B. and that Tenant S.B. qualified for the assignment and new tenancy. Counsel requested the assignment of tenancy be ordered.

The Applicant S.B. said in closing that this is her first time renting and it has been very difficult. She is disappointed with the lack of communication and confusion and she wished someone had told her the forms were not completed correctly. The Applicant S.B. said she has tried to make this situation work and she hopes the assignment will be ordered.

The Landlord said in closing that they have be very fair with the tenants as they met with them as they requested and the Landlord provided information and forms that were need to make the application for the assignment of a tenancy agreement. The Landlord continued to say the application was never make in a complete, accurate or legible way. Therefore, the Landlord could not do their do diligence to approve or decline the request to assign the tenancy from K.W to S.B. The Landlord said section 44 of the regulations is clear about what information is required for a request to assign a tenancy. The Landlord continued to say the requests for assignment the Landlord received from the tenants did not meet the requirements; therefore the Landlord did not believe they had to responds to it. The Landlord requested the Applicant S.B.'s application be dismissed.

Analysis

The assignment and subletting of a manufactured home site is governed by section 28 of the Manufactured home Park Tenancy Act and by Part 7 of the regulations.

Section 28 of the Act says: (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;

(b) the tenant has obtained an order of the director authorizing the assignment or sublease;

(c) the tenancy agreement authorizes the assignment or sublease.

(2) 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.

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

The sections of the Part 7 of the regulations that are relevant to this situation are section 44, 45, 46, 47 and 48.

Written request for consent to assign or sublet:

Section 44 says: (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].

(3) The written request under subsection (1) must be signed by the home owner and must provide all of the following information:

(a) the name and address of the home owner making the request;

(b) the name and address of the landlord or landlord's agent;

(c) the proposed effective date for the assignment or sublease;

(d) the name of the proposed purchaser or subtenant;

(e) the current address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address;

(f) if the length of time at the address provided under paragraph (e) is less than 2 years, the previous address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address;

(g) the names and telephone numbers of two personal references for the proposed purchaser or subtenant;

(h) the signed consent of the proposed purchaser or subtenant authorizing the landlord to contact the other landlords whose names are provided under paragraphs (e) and (f) and the personal references provided under paragraph (g) for the purpose of verifying or obtaining information relevant to the request to assign or sublet;

(i) if the manufactured home site is in a park in which 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], the date of birth of the proposed purchaser or subtenant who meets the age requirement and proof of that person's age;

(j) if the request is for consent to sublet, a statement that the home owner has complied with section 50 (2) [effect of sublease];

(k) if the request is for consent to assign,

(i) the current monthly rent for the manufactured home site,

(ii) the effective date of the most recent legal rent increase,

(iii) the proposed purchaser's signed consent authorizing the landlord to obtain a credit report on the proposed purchaser,

(iv) the proposed purchaser's signed statement that he or she has been informed of and agrees to comply with

(A) the tenancy agreement, and

(B) the applicable rules,

(v) a copy of

(A) any part of the tenancy agreement that is in writing, and

(B) any of the rules that are in written form and that apply to the tenancy of the home owner, and

(vi) a copy of any outstanding orders or notices given under the Act respecting the manufactured home park site;

(l) any additional information required by the form approved by the director referred to in subsection (1).

Response within 10 days

Section 45 says: (1) the landlord of the park must provide the home owner with a written response to a request under section 44 [written request]

(a) in the form approved by the director,

(b) in accordance with section 81 of the Act [service of documents], and

(c) promptly, and in any case so that the home owner receives the response in accordance with section 83 of the Act [deemed receipt] within 10 days of the landlord's receipt of the request.

(2) If a landlord withholds his or her consent for the home owner to assign or sublet, the landlord's response must indicate

(a) the grounds under section 48 [grounds for withholding consent] on which he or she is withholding consent, and

(b) the source and nature of the information that supports those grounds.

(3) The landlord and home owner may agree in writing to extend the time for response under paragraph (1) (c) to a specific date.

Deemed consent if no response within 10 days

Section 46 says: (1) the landlord's consent to a request under section 44 [written request for consent] is conclusively deemed to have been given and the home owner may assign or sublet to the proposed purchaser or subtenant identified in the written request if the home owner has not received the landlord's response

(a) **by the end of the 10th day after the day the landlord received the home owner's request, or**

(b) if the time for response has been extended under section 45 (3) [agreement to extend] to a specific date, by that date.

(2) The home owner is entitled to consider that consent is deemed to have been given under paragraph (1) (a) if he or she can demonstrate that the request on the landlord was served in accordance with section 81 of the Act [service of documents].

Request to assign or sublet that does not comply

Section 47 says: (1) if a home owner's request for consent to assign or sublet does not comply with section 44 [written request], the landlord of the park must do one of the following:

(a) consent to the request;

(b) notify the home owner in writing that consent to the request is withheld on one or more of the grounds under section 48 [withholding consent];

(c) **advise the home owner promptly that only a request for consent that complies with section 44 [written request for consent] will be considered.**

(2) If the landlord withholds consent under subsection (1) (b), the landlord must indicate

(a) the grounds under section 48 on which he or she is withholding consent, and

(b) the source and nature of the information that supports those grounds.

Grounds for withholding consent to a request

Section 48 says: For the purposes of section 28 (2) of the Act [landlord's consent], the landlord of the park 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 have reviewed the evidence and testimony presented by both the Applicant and the Respondent and these are my findings.

The Act and regulations provide a tenant is required to request in writing permission from the landlord to assign their tenancy. The regulations require the tenant to give as much information as possible to the landlord. The information required is listed in section 44 of the regulations. In this situation the Tenant K.W. gave affirmed testimony that he served the Landlord A.M. with the Request to Consent to Assign a Manufactured Home Site Tenancy Agreement on June 10, 2018. The Landlord D.M. did not dispute the service of the documents, but indicated the documents were incomplete and illegible which invalidated the request. Further the Landlord submitted evidence that Landlord A.M. text messaged the Tenant's Agent A.P. on June 11, 2018 saying the tenancy application by S.B. was not accepted and the efforts for assignment by K.W. are not valid. The Tenant submitted evidence that on June 19, 2018 the Landlord A.M. told tenant K.W. that the deal with S.B. was dead. This testimony and evidence establishes grounds that Landlord A.M. had a full understanding that tenant K.W. had made an application to the Landlord to assign his tenancy to S.B. Further, Landlord D.M. gave testimony they received a copy of the Request to Consent to Assign a Manufactured Home Site Tenancy Agreement signed by K.W. on June 10, 2018 and signed by S.B. on May 30, 2018. This page is legible and contains the signatures and is titled

“Request for Consent to Assign”. Further it contains the names of both the existing tenant K.W. and the applying tenant S.B. Consequently, I find the Tenant has established grounds to prove the Landlord A.M. had full knowledge of the request for the assignment. The Landlord A.M. had discussions, meetings and text messages with the tenants and S.B.’s agent as well as receiving the partially completed/legible Request to Consent to Assign a Manufactured Home Site Tenancy Agreement. As testified by both parties the Landlord A.M. had sufficient information to respond to the request by text message declining the new tenancy and assignment request. Consequently, I find the Landlord had sufficient information to respond in writing that the request did not comply with section 44 as stated in section 47(c). Based on the Landlord A.M.’s actions and the communication between the parties, I find tenant K.W.’s Request to Consent to Assign a Manufacture Home Site Tenancy Agreement dated June 10, 2018 is valid. Further, I find the Landlord was obligated to provide a written response to the tenant K.W. within 10 days pursuant to section 45 of the Act.

I respect the Landlord’s position that the Request to Consent to Assign a Manufactured Home Site Tenancy Agreement received from tenant K.W. was a poor copy and may not have been completed as per section 44 of the Act. I also accept that as there was enough information given to the Landlord A.M. for the Landlord A.M. to respond by text message to the application made by tenant K.W. Given that the Landlord understood the request well enough to respond in text message, I find there is no reason that the Landlord could not have responded in writing as required by the Act and regulations. I find the Landlord was obligated pursuant to section 45 of the regulations to respond in writing to the tenant K.W.’s request to assign a manufactured home site tenancy agreement.

Section 47 of the regulations says a Landlord must respond in writing in one of the following manners:

(1) If a home owner's request for consent to assign or sublet does not comply with section 44 [written request], the landlord of the park must do one of the following:

- (a) consent to the request;
- (b) notify the home owner in writing that consent to the request is withheld on one or more of the grounds under section 48 [withholding consent];
- (c) **advise the home owner promptly that only a request for consent that complies with section 44 [written request for consent] will be considered.**

The Landlord testified that tenant K.W.'s application did not comply with section 44 of the regulations; therefore the request was not valid. Section 47 (c) of the regulations provides a written response to a tenant that a Landlord can rely on if the Landlord does not believe the request complies with section 44 of the regulations. Good business practise and the principle of good faith dictate that the Landlord is obligated to respond in writing when a request is made in writing. I do not accept the Landlord's defence that the tenant K.W.'s Request of Consent to Assign a Manufacture Home Site Tenancy Agreement dated June 10, 2018 is invalid. As tenant K.W. did submit a written request, S.B submitted a written request and Agent A.P. had several discussions with Landlord A.M. about the assignment, I find the Landlord had enough information to make a formal response. Pursuant to section 45 of the regulations the Landlord must respond in writing with in 10 days. The Landlord did not respond in writing with in 10 days of receiving tenant K.W.'s Request to Consent to Assign a Manufactured Home Site Tenancy Agreement dated June 10, 2018; therefore I find pursuant to section 28 of the Act and section 46 (a) of the regulations that tenant K.W.'s tenancy is deemed to be assigned to Tenant S.B. I order the assignment of the tenancy be completed and S.B.'s tenancy application to be approved forth with.

With regard to the Tenant S.B.'s application for the Landlord to provide services and facilities as agreed in the tenancy agreement; I order the Landlord to provide services and facilities as stated in the previous tenancy agreement with K.W.

Further the Tenant has requested compensation of \$500.00 for costs incurred to put this assignment and tenancy in place. The Residential Tenancy Act only has jurisdiction on loss or damage during a tenancy. I find that the costs the Tenant S.B. is claiming were incurred prior to the tenancy. Consequently the Tenant's compensation claim of \$500.00 is dismissed without leave to reapply.

As the Tenant has been partially successful in this matter I order the Tenant to recover the filing fee of \$100.00 by deducting it from the first month's rent. The first month's rent is adjusted from \$625.00 to \$525.00.

Conclusion

I order the Landlord to accept tenant K.W.'s request for an assignment of manufactured home site A 1 to Tenant S.B.'s and to accept Tenant S.B.'s application for tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 29, 2018

Residential Tenancy Branch