



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E.K. SMITH CONSTRUCTION COMPANY LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 60; and,
- authorization to recover her filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 60?

Is the tenant entitled to reimbursement of her filing fee for this application from the landlord pursuant to section 65?

Background and Evidence

This matter relates to a dispute regarding the assignment of the site tenancy agreement of a thirty year old manufactured home located in the landlord's manufactured home park. The tenant was the executor of the estate of the deceased owner of the

manufactured home. The tenant attempted to sell the manufactured home and she had extensive communications with the landlord regarding the sale.

The tenant testified that the landlord interfered with the marketing of the manufactured home on multiple occasions. The tenant testified that the landlord made false statements to buyers regarding the condition of the manufactured home. The tenant also testified that the landlord made numerous demands requiring expensive improvements before the landlord would agree to an assignment of the tenancy agreement.

The tenant testified that she received two offers in the amount of \$137,500.00 to purchase the manufactured home but both transactions fell through because the landlord refused to assign the site tenancy agreement. The tenant testified that she did not file an application for arbitration to obtain an order requiring the landlord to assign the tenancy agreement because her real estate agent advised her that Residential Tenancy Branch arbitration would take too long.

Eventually the tenant received a lower offer of \$134,000.00 to sell the manufactured home. The tenant testified that the landlord refused to co-operate with the sale unless the tenant agreed to pave the driveway on the rental site and pay for sewer repairs. The tenant testified that the paving of the driveway cost \$6,500.00 and the sewer repair cost \$1,000.00. The tenant testified that she eventually acquiesced to pay the \$7,500.00 to facilitate the transaction. The tenant credited \$7,500.00 to the buyer on sale of the manufactured home which were indicated on the statement of adjustments from the sale. These credits reduced the tenant's sale proceeds by \$7,500.00.

The landlord testified that he had nothing to do with the sale of the manufactured home. The landlord testified that he did provide truthful information to prospective buyers regarding the condition of the manufactured home. However, he testified that he was not involved in the transaction.

The landlord testified that paving the driveway was a park requirement. The landlord testified that the park rules were amended in 2017 to require all new tenants to have paved driveways. The landlord testified that this benefitted all park residents because many of the tenants were elderly and they had limitations ambulating. The landlord testified that the new rules applied to this manufactured home because this transaction involved the cancellation of the tenant's tenancy agreement and the entry of a new tenancy agreement with the purchaser rather than an assignment.

Analysis

Section 60 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the applicant tenant to prove entitlement to a claim for a monetary award. 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 applicant tenant has requested a monetary order for losses relating to an allegation that the landlord made misrepresentations regarding the condition of the manufactured home to prospective purchasers which dissuaded prospective purchasers from purchasing the manufactured home; an allegation that the tenant lost prospective purchases of the property because the landlord improperly refused to assign the tenancy of the manufactured home site to prospective purchasers; and losses relating to an allegation that the landlord improperly required the tenant to make financial concessions to eventually secure the landlord's co-operation in the sale of the manufactured home. I will address each of these allegations separately.

Misrepresentations of Condition of the Manufactured Home

The tenant argued that the landlord made misrepresentations regarding the condition of the manufactured home to prospective purchasers which dissuaded prospective purchasers from buying the tenant's manufactured home. Section 60 of the *Act* gives arbitrators the authority to make an order that a party pay compensation for an action which constitutes a violation of the *Act*, *Regulations* or the tenancy agreement. I find that an alleged misrepresentation by the landlord to a prospective purchaser does not

constitute a violation of the *Act*, *Regulations* or the tenancy agreement. As such, I dismiss the applicant's request for compensation for misrepresentations regarding the condition of the manufactured home.

Refusal to Assign Tenancy Agreement

The applicant claims that the landlord has improperly refused to authorize the assignment of the tenancy agreement to prospective purchasers of the applicant's manufactured home. Section 28(1) of the *Act* states that a tenant may assign a tenancy agreement for a manufactured home site only if the landlord consents to the assignment in writing; the tenant obtains a Residential Tenancy Branch arbitration decision ordering the assignment; or the tenancy agreement authorizes the assignment. Section 28(2) of the *Act* states landlords can only withhold consent to a request for assignment in the circumstances prescribed in the *Manufactured Home Park Tenancy Regulations* (the "*Regulations*"). Regulations 44 to 48 provide the rules for the assignment of manufactured home site tenancies.

The applicant argued that the landlord did not comply with the regulations by refusing to assign the tenancy agreement. However, even if the landlord withheld consent to an assignment, the tenant had an obligation to take reasonable measures to mitigate her loss pursuant to section 7(2) of the *Act*. If the tenant disagreed with the landlord's refusal to assign the tenancy agreement, the tenant could have filed an application for dispute resolution for arbitration for an order requiring the landlord to assign the tenancy agreement pursuant to section 28(1)(b) of the *Act*.

The tenant testified that she was aware of this remedy, however she testified that she did not pursue it because her real estate agent advised her that an application for dispute resolution would take too long to resolve and the purchasers would abandon the sale. However, that is speculative. By failing to make an application for dispute resolution to request an order requiring the landlord to assign the tenancy agreement, I find the applicant tenants have not adequately mitigated their losses. As such, I dismiss the tenant's application for a monetary order for the landlord's refusal to an assignment of the tenancy agreement.

Compensation for Financial Concessions to Landlord to Secure Landlord Co-Operation

The tenant also claimed that the the landlord improperly required the tenant to make financial concessions to eventually secure the landlord's co-operation in the sale of the manufactured home. Section 28(3) of the *Act* states that "...a landlord must not charge

a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.” In this matter, the tenant argued that she was required to provide \$7,500.00 in credits to purchaser in the sale of the manufactured home to secure the landlord’s co-operation with the sale transaction.

The landlord argued that there was no assignment of the tenancy agreement. Rather, the landlord argued that the parties agreed to end the tenancy agreement and create a new tenancy agreement with the purchaser of the manufactured home. I do not find this argument persuasive. The extensive email communications between the parties indicate that the parties requested an assignment of the tenancy agreement in relation to multiple potential sales. The email communications indicate that the landlord unilaterally demanded that the transaction be structured as a new tenancy agreement rather than fairly evaluate the tenant’s request for an assignment as required by the *Act* and the *Regulations*.

I find that the legislative purpose of section 28(3) is to protect owners of immovable or difficult to move manufactured homes from predatory landlords. This purpose would be completely subverted if landlords were able to sidestep the protections of the *Act* by simply forcing the tenant to terminate the tenancy agreement rather than assign the tenancy agreement. I find that this transaction of terminating the tenant’s tenancy agreement and concurrently entering a new tenancy agreement with the purchaser of the manufactured home is a de facto assignment and, as such, the rules and regulations relating to assignments in the *Act* and the *Regulations* apply herein. Therefore, I find that the landlord was prohibited from accepting consideration for this transaction pursuant to section 28(3).

I find that the landlord obtained valuable consideration for his co-operation in agreeing to the assignment in violation of section 28(3). The tenant was forced to pay \$7,500.00 for the driveway and sewer repair by crediting these amounts to the purchaser in the sale. The landlord obtained reimbursement of sewer repairs and the landlord’s manufactured home park obtained the benefit of a permanent capital upgrade by the paving the driveway on the manufactured home park site. This driveway will enhance the value of the landlord’s manufactured home park space. In addition, based on the landlord’s testimony, this driveway will benefit other residents of the park and it will presumably make the landlord’s park more desirable to tenants. I find that the landlord has received valuable consideration in exchange for his co-operation in assigning the tenancy agreement in violation of section 28(3).

Section 60 of the *Act* states that an arbitrator can award compensation for damages caused by a violation of the *Act*. I find that the landlord has violated section 28(3) and the tenant was damaged by this violation. The tenant incurred a cost of \$7,500.00 to facilitate the sale of the manufactured home which was caused by the landlord's violation of section 28(3).

The landlord has benefitted from the \$7,500.00 in driveway improvements and sewer repairs. However, the tenant and the purchasers have also each benefitted from these improvements. In the absence of evidence attributing the benefit of these improvements between these parties, I find that each of the tenant, the purchaser and the landlord benefitted equally from these improvements. Accordingly, I find that the landlord received a one-third benefit from these improvements, being \$2,500.00 (one-third of \$7,500.00). Therefore, I order the landlord to pay \$2,500.00 to the tenant in compensation for its violation of the *Act*.

Since the tenant has partially prevailed in this matter, I grant the tenant's request for reimbursement of her filing pursuant to section 65.

Accordingly, I grant the tenant a monetary order in the amount of \$2,600.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
Damages for violation of s. 28(3)	\$2,500.00
Reimbursement of filing fee	\$100.00
Total	\$2,600.00

Conclusion

I grant the tenant a monetary order in the amount of **\$2,600.00**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to be enforced as an order of that Court.

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: May 16, 2019

Residential Tenancy Branch