



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

AS FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Manufactured Home Park Tenancy Act* (the Act). The tenant applied for permission to assign or sublet the site as the landlord's permission has been unreasonably withheld and to recover the cost of the filing fee.

The tenant, a legal advocate for the tenant PL (advocate), and the landlords TG and LG (landlords) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present any documentary evidence that was the submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns about the service of documentary evidence. As a result, I find the parties were sufficiently served in accordance with the Act.

Issues to be Decided

- Has the tenant provided sufficient evidence to support that the landlord has unreasonably withheld permission to assign the rental site under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the Request for Consent to Assign a Manufactured Home Site Tenancy Agreement #RTB-10 dated by the tenant September 5, 2019 (RTB-10) was submitted in evidence. The tenant writes in their application that the park owner indicated in section G of the RTB-10 that they were withholding consent, yet the grounds on which consent is withheld and information used to support these grounds section is not completed. The tenant submits that since no grounds are listed, that the landlord has unreasonably withheld permission and that the assignment should be permitted as a result.

While there was no dispute that the tenant received an attachment to the RTB-10 that specified at least six reasons why the landlord was not granting permission and the information on which the landlord was relying upon (attachment), the tenant did not provide a copy of the attachment in evidence. The landlord; however, did provide a copy of the attachment.

The legal advocate stated two primary arguments, the first of which is that the landlord failed to complete Section G and that by leaving the "Grounds on which consent is withheld (if applicable) and information used to support those grounds" section of the RTB-10, that pursuant to sections 45(1)(a), 45(2)(a) and 45(2)(b) of the *Manufactured Home Park Tenancy Regulation* (Regulation) that the landlord has not provided a response on the approved form and stated the grounds for withholding consent and the source and nature of the information on the approved form in accordance with the Act and Regulation. The second argument was that the attachment did not list sufficient grounds and information as required by section 48 of the Regulation.

During the hearing, the landlord testified as to the grounds described on the attachment for denying consent for the tenant to assign the site tenancy agreement. The reasons are listed as follows:

1. Doing an interview on the tail gate of a pickup truck does not create a good impression to a new landlord who cares very much about his park.
2. Does not have an address and does not use the address of the property which his camper is on next to the house of the owners...He uses his mothers address who lives 13 km. away in Smithers BC.
3. I understand he is presently unemployed but hopes to get a job on the LNG project.
4. He states the if he gets accepted at LNG he would be away two weeks of each month. I asked who would cut the grass when he's away, he stated that he hadn't got that far yet but he had a nephew which he could hire. I insist on grass being cut on a regular basis and this arrangement creates doubt in my mind.
5. His reference in Smithers, one is a store owner where he buys or bought his clothes for some time and that he went to school with them but is not to familiar with them now. The other one is a long time friend and ski buddy. Okay, but I can't put much faith in these, as friends general don't talk bad about there friends and don't care about there lifestyle or what kind of tenant they would be.
He put down the name of GH but he stated that he didn't have his phone no. but he would get it to me, he never did call me with the phone no#.
6. He has been self employed for last 4 yrs. but does not presently have a job. This raises doubt about his ability to pay rent on time. Being a contractor raises concerns in my mind as I have a contractor living in the park now who was a tenant when we bought the park and his yard is the worst in the park at times littering his yard with tools etc. My experience with contractors has not been good. And [name of tenant] anyone can buy your mobile home including Mr. H as long as they move it to one of the other parks or possible on someones farm, and there is no 55+ age restriction on whoever buys in order to move it.

(Names anonymized to protect privacy)

The landlord stated that before he filled out the RTB-10, he contacted the RTB and spoke to an RTB information officer (information officer). The landlord testified that the information officer advised him that attaching a document to the RTB-10 was acceptable, instead of writing the grounds for denying consent and the information to support the grounds to deny the consent on the RTB-10.

During the hearing, the landlord testified that they did not advise the tenant that they were not satisfied with the references from the purchaser and instead, wrote the attachment to explain their position. The landlord also confirmed that they did not complete a credit check of the purchaser because credit checks cost money and that purchaser admitted directly that they were not currently working and were hoping to get a job on the LNG project. The landlord also stated that they have never interviewed a purchaser on the back of a pickup tail gate that was not working before and that they were not left with a good impression of the purchaser and was not satisfied that they would pay the rent.

The tenant confirmed for the advocate that they were under the impression that they would have to sell their manufactured home and move it from the home park.

The landlord stated that there will be other purchasers; however, the landlord could not approve the one proposed by the tenant for the reasons listed on the attachment.

Analysis

Based on the above, the testimony of the parties and the advocate, the documentary evidence presented and on a balance of probabilities, I find as follows.

Firstly, I have reviewed section 45(1) of the Regulation which states:

Response within 10 days

45 (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.

As there is no dispute that the tenant received the attachment, I am not convinced that the attachment is not part of the RTB-10 and in the matter before me, as the tenant confirmed that they received the attachment, I am satisfied on the balance of probabilities that the tenant was aware that the attachment stated the grounds that the landlord was denying permission for the tenant to assign their site tenancy agreement under the Act. As a result, I find it more likely than not that the attachment was obviously a part of the RTB-10 form and became a part of the approved form as a result.

I will now deal with the grounds listed by the landlord on the attachment. The advocate submitted that section 48(a)(ii) requires a credit check, which I do not agree with. Section 48(a)(ii) of the Regulation states:

Grounds for withholding consent to a request

48 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;**
[emphasis added]

I find that the words “credit information” does not limit the landlord to only consider a credit check and that the landlord has the right to rely on any and all credit information. In the matter before me, the landlord stated that the proposed purchaser admitted directly to the landlord that they were not currently working but were hopeful to get a job on the LNG project. I am satisfied as a result, that the landlord had sufficient credit information and sufficient grounds to deny permission based on the proposed purchaser being unable or unlikely to pay the rent.

Therefore, I find it is not necessary to consider any other ground listed on the attachment, as I find the landlord has met the requirements of Act and Regulation on the balance of probabilities. As a result, I dismiss the tenant’s application due to insufficient evidence, without leave to reapply.

As the tenant's application has been dismissed, I do not grant the filing fee under the Act.

Conclusion

The tenant's application fails and is dismissed.

The filing fee is not granted.

This decision will be emailed to the tenant and their advocate. The decision will be sent by regular mail to the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 11, 2019

Residential Tenancy Branch