



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OLC, FFT

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)* and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on October 24, 2020 the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch in October of 2020 were mailed to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 23, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on December 15, 2020. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

### Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to provide the Tenants with a written tenancy agreement?

Is there a need to issue an Order requiring the Landlord to include a term that provides the Tenants with water, without cost, as a term of the tenancy agreement?

Background and Evidence:

The Landlord and the Tenants agree that the Tenants purchased the manufactured home from a former tenant in the manufactured home park. The female Tenant stated that the sale of the property completed on September 28, 2019. The Agent for the Landlord does not dispute that the sale completed on September 28, 2019.

The female Tenant stated that when they purchased the manufactured home, they believed the tenancy agreement of the previous owner had been assigned to them, although she was never provided with a complete copy of that agreement.

The Agent for the Landlord stated that the previous owner of the manufactured home did not submit a request to assign the tenancy agreement to these Tenants and that tenancy agreement was never assigned to the Tenants.

The Agent for the Landlord stated that on August 16, 2019 he provided the female Tenant with an application for tenancy. He stated that completed form was returned to him on, or about, August 18, 2019.

The female Tenant stated that the application for tenancy was submitted to the Agent for the Landlord on August 19, 2019.

The Landlord and the Tenant agree that:

- the application for tenancy declared that monthly rent would be \$480.00;
- they verbally agreed that rent was due on the first day of each month;
- the Tenants have paid the monthly rent of \$480.00 to the Landlord every month, commencing on October 01, 2019;
- the Landlord did not present a written tenancy agreement to the Tenants until late August or early September of 2020; and
- the Tenants have never signed a written tenancy agreement for the site.

The female Tenant stated that:

- they did not sign the tenancy agreement that was give to them in 2020 because they did not agree with the terms in the tenancy agreement;
- when she submitted the application for tenancy, she believed the rent was \$434.00;
- she believed the additional \$46.00 in rent outlined on the application for tenancy reflected a payment for an upgrade to the water system;

- she believed the addition \$46.00 was temporary, which would be suspended once the water system upgrade was paid for;
- her belief that the \$46.00 payment was temporary was based on information provided to her by people living in the park;
- the Landlord never informed the Tenants that rent would be less than \$480.00;
- she believes that “free” water was included as a term of the tenancy agreement;
- the Landlord never informed her that “free” water would be included with their tenancy; and
- she believed that “free” water was included as a term in their tenancy agreement because she has seen tenancy agreements of other park occupants, which declare that the cost of water is included.

The Agent for the Landlord stated that:

- he informed the Tenants that rent was \$480.00;
- he never informed the Tenants that rent would be reduced;
- he never informed the Tenants that “free” water was included as a term of the tenancy
- some other occupants of the manufactured home park are provided with “free” water as a term of their tenancy agreement;
- the previous owners of this manufactured home were provided with “free” water as a term of their tenancy agreement;
- provision of “free” water was not something that was included as a term of the tenancy agreement after September of 2019; and
- tenants in the park who are not entitled to “free” water are obligated to pay for water consumption directly to the company that supplies water to the site.

In the Notice of Rent Increase which was served to the Tenants and submitted in evidence by the Tenants, there is a space on the form that declares water is included with the tenancy. The female Tenant stated that this space appears to have been “checked” and then “whited out”. The Agent for the Landlord stated that this space was checked on several rent increases served to occupants of the manufactured home park, and that it was “whited out” on the notice served to the Tenants because water was never included in their tenancy agreement.

The Landlord submitted a letter, dated December 14, 2020, which declares that the Agent for the Landlord was instructed to stop including “free” water with tenancy agreements “Post September 2019”. The female Tenant noted that their tenancy began on September 28, 2019 and was not a “post September 2019” tenancy agreement.

Analysis:

Assigning a tenancy means permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

When a manufactured home park tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement and is usually not responsible for actions or failure of the original tenant to act prior to the assignment.

Section 28(1)(a) of the *Act* allows a tenant to assign a tenancy agreement if the tenant has obtained the prior written consent of the landlord to the assignment or is deemed to have obtained that consent, in accordance with the regulations.

On the basis of the undisputed evidence, I find that the Landlord did not consent, in writing, to assign the tenancy agreement of the former owner of the manufactured home to the Tenants. I also find that there is insufficient evidence to conclude that the former owners are deemed to have obtained the Landlord's consent to the assignment in accordance with the *Manufactured Home Park Tenancy Regulation*. I therefore cannot conclude that the tenancy agreement of the former owners was assigned to these Tenants, pursuant to section 28(1)(a) of the *Act*.

Section 44 of the *Manufactured Home Park Tenancy Regulation* outlines the manner in which a homeowner may request a landlord's consent to assign a seller's tenancy agreement. I have no evidence that the former owners of this manufactured home requested the Landlord's consent to assign their tenancy agreement to the tenants in accordance with section 44.

Section 45(1) of the *Manufactured Home Park Tenancy Regulation* stipulates that the landlord of the manufactured home park must provide the homeowner with a written response to a request to assign a tenancy agreement promptly and, in any case, within 10 days of the landlord's receipt of the request. As there is no evidence that the former owners of the manufactured home made a request to assign a tenancy agreement, I cannot conclude that the Landlord had an obligation to provide the former owners with a written response.

Section 46(1) of the *Manufactured Home Park Tenancy Regulation* stipulates that a landlord's consent to a request under section 44 of the *Act* is conclusively deemed to have been given and the home owner may assign to the proposed purchaser identified in the written request if the home owner has not received the landlord's response by the end of the 10th day after the day the landlord received the home owner's request, or if

the time for response has been extended under section 45 (3) of the *Act* to a specific date, by that date. As there is no evidence that the former owners of the manufactured home made a request to assign a tenancy agreement, I cannot conclude that there was a conclusive presumption that the Landlord consented to assign the tenancy agreement.

Section 28(1)(b) of the *Act* allows a tenant to assign a tenancy agreement if the tenant has obtained an order of the director authorizing the assignment or sublease. As there is no evidence that the director authorized the assignment of the tenancy agreement, I cannot conclude that the tenancy agreement of the former owner of the manufactured home was assigned to these Tenants, pursuant to section 28(1)(b) of the *Act*.

Section 28(1)(c) of the *Act* allows a tenant to assign a tenancy agreement if the tenancy agreement authorizes the assignment or sublease. Neither party submitted a complete copy of the tenancy agreement belonging to a former owner of the manufactured home park that establishes there is such a term in the previous owner's tenancy agreement. Neither party submitted any evidence that causes me to conclude that the former owner of the manufactured home assigned their tenancy agreement to the Tenants. I therefore cannot conclude that the tenancy agreement of the former owner of the manufactured home was assigned to these Tenants, pursuant to section 28(1)(c) of the *Act*.

As there is no evidence that the tenancy agreement of the former owners was assigned to the Tenants, I must now determine whether the Landlord and the Tenants entered into a new tenancy agreement. 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".

On the basis of the undisputed evidence, I find that the Landlord and the Tenants have not entered into a written tenancy agreement.

I find, on the balance of probabilities, that the Landlord and the Tenants entered into an oral tenancy agreement. In reaching this conclusion I was influenced, in part, by the application for tenancy which the Tenants given to the Landlord in August of 2019. By signing and submitted the application, I find that it is clear the Tenants were seeking a tenancy agreement. By signing the application, the Agent for the Landlord accepted the "tenancy, subject to proof of ownership, and completion of the TENANCY AGREEMENT

and other requirements noted in paragraph I above". Although the Tenants have not yet signed a tenancy agreement, one was not presented to them until August or September of 2020.

My conclusion that the Landlord and the Tenants entered into an oral tenancy agreement was influenced, in part, by the Model Assignment of Lease Consent Agreement for Manufactured Homes which was submitted in evidence. By signing this form, the Agent for the Landlord confirmed that the Tenants had, or were about to, enter into a "Site Lease".

My conclusion that the Landlord and the Tenants entered into an oral tenancy agreement was heavily influenced by the declaration on the application for tenancy that rent would be \$480.00, and that the Tenants have paid the required rent to the Landlord since October 01, 2020. In my view, the payment/acceptance of this rent very clearly indicates that both parties believed they had entered into a tenancy, regardless of the fact a tenancy agreement had not been signed.

My conclusion that the Landlord and the Tenants entered into an oral tenancy agreement was influenced, in part, by the Notice of Rent Increase served to the Tenants in 2020, which increased their rent to \$492.48, effective November 01, 2020. I find that this notice clearly establishes that the Landlord understood there was a tenancy agreement with the Tenants.

Section 13(1) of the *Act* stipulates that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. On the basis of the undisputed evidence, I find that the Landlord has prepared a written tenancy agreement, which was given to the Tenants in late August or early September of 2020. As the Landlord has presented the Tenants with a written tenancy agreement, I find that he has complied with section 13(1) of the *Act*. I therefore dismiss the Tenants' application for an order requiring the Landlord to provide them with a written tenancy agreement.

There is nothing in the *Act* that requires the Tenants to sign a written tenancy agreement. Without a signed written tenancy agreement, the parties are bound by the terms of their oral tenancy agreement.

I find, on reasonable and probable grounds, that when this tenancy began the rent was \$480.00. In reaching this conclusion I was influenced by:

- the application for tenancy which declared that monthly rent would be \$480.00;

- the Model Assignment of Lease Consent Agreement for Manufactured Homes which declared that monthly rent would be \$480.00;
- the Agent for the Landlord's testimony that he informed the initial rent was \$480.00;
- the Agent for the Landlord's testimony that he never informed the Tenants that rent would be less than \$480.00;
- the female Tenant's testimony that the Landlord never informed the Tenants that rent would be less than \$480.00; and
- the undisputed evidence that the Tenants began paying rent of \$480.00, effective October 01, 2020.

In determining that the monthly rent was \$480.00, I placed no weight on female Tenant's testimony that she believed the rent was \$434.00; that she believed the additional \$46.00 in rent outlined on the application for tenancy reflected a payment for an upgrade to the water system; and that she believed the addition \$46.00 payment was temporary, which would be suspended once the water system upgrade was paid for, I placed no weight on this submission because the information was not provided to her by the Landlord. Rather, the information was provided to her by other people living in the park, who do not act on behalf of the Landlord.

I note that the tenancy agreement provided to the Tenants in August/September of 2020 declared that rent was \$480.00. In adjudicating this matter, I have not determined whether the rent was increased from \$480.00, as that is not a matter in dispute at these proceedings.

On the basis of the undisputed evidence, I find that the Landlord and the Tenants verbally agreed that rent was due on the first day of each month. I therefore find that the rent is due by the first day of each month.

I find that the Tenants submitted insufficient evidence to establish that the Landlord agreed to provide "free" water as a term of their oral tenancy agreement.

In reaching this conclusion I was influenced by:

- the Agent for the Landlord's testimony that he never informed the Tenants that "free" water was included as a term of the tenancy; and
- the female Tenant's testimony that the Landlord never informed them that "free" water was included as a term of the tenancy.

In considering the issue of water, I placed no weight on female Tenant's belief that "free" water was included as a term in their tenancy agreement because she has seen tenancy agreements of other park occupants, which declare that "free" water is

included. I find that terms in other tenancy agreements are not relevant to the terms in this tenancy agreement. I find that to be particularly true in regard to provision of water, as the Agent for the Landlord testified that providing “free” water was not something that was included as a term of any tenancy agreement created after September of 2019.

In considering the issue of water, I placed little weight on the Notice of Rent Increase on which there is a space on the form that declares water is included with the tenancy. Although this space appears to have been “checked” and then “whited out”, I find that the Agent for the Landlord provided a reasonable explanation for that change. In light of the explanation provided by the Agent for the Landlord, I find that this document does not help to establish that “free” water was included as a term of this tenancy.

In considering the issue of water, I placed little weight on the letter, dated December 14, 2020, which declares that the Agent for the Landlord was instructed to stop including “free” water with tenancy agreements “Post September 2019”. I find that this letter does not establish that the Landlord agreed to provide “free” water as a term of the tenancy.

As the Tenants submitted insufficient evidence to establish that the Landlord agreed to provide “free” water as a term of their oral tenancy agreement, I am unable to order the Landlord to include that term in any written tenancy agreement provided to the Tenants, and I am unable to conclude that the oral tenancy agreement requires the Landlord to provide Tenants with “free” water as a term of the tenancy agreement.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their application to recover the filing fee.

Conclusion:

The Application for Dispute Resolution is dismissed 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 *Residential Tenancy Act*.

Dated: January 13, 2021

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Residential Tenancy Branch