



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN BAY LANDING INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: AS FF

Introduction:

This hearing dealt with an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for orders as follows:

- a) To allow a tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 28 and Regulations 42 to 48;
- b) To recover the filing fee for this Application

SERVICE

I find the Application for Dispute Resolution hearing package was served personally on the landlord so was legally served.

Issues to be Decided:

Has the landlord proved on the balance of probabilities that they are not unreasonably withholding permission to assign the tenancy? Is the tenant entitled to recover the filing fee for this application?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The landlord explained the reasons that they had not given permission to assign the tenancy. They said that although the tenant had submitted two requests for permission to assign the tenancy, the tenant had not yet provided the necessary information on the proposed purchaser so they could do a credit check or obtain verification of the identity and financial ability of the proposed purchaser to pay rent.

The tenant contended that they had completed the form according to the Act and that they had subsequently provided a date of birth and a telephone number for the proposed purchaser so a credit check could be done using one of the credit agencies like Equifax. The landlord said they use their professional association which has met all

the legal requirements to request credit checks on tenants of manufactured home parks; the telephone number provided for the purchaser did not correspond to the residence addresses provided for the purchaser so the credit agency could not do a credit check for him. They telephoned the employer listed but got a personal line and did not pursue it when the person answered only with "Hello" with no identification of a company or person. They still do not have sufficient information on the proposed purchaser as they have never met him and were unable to verify his information. However, the landlord stated as their credit check was unsuccessful, if the tenants wished to provide them with an up to date credit check on the purchaser, they would consider the background information provided and not unreasonably withhold consent. They said their normal procedure is to meet the proposed purchaser, have all the information provided and do a credit check. They allege they have no incentive not to give permission to assign if all information is provided and can be verified independently; they have a duty to protect the peaceful enjoyment of all residents in the park and need to verify backgrounds of new tenants in order to do this.

The tenant provided a letter from the purchaser stating that his references were not contacted. They contended that the landlord should have telephoned and taken information over the telephone.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Section 28 of the Act provides:

28 (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.

The relevant sections of Section 48 of the Regulations provide:

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;

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

I find the weight of the evidence is that the landlord has not unreasonably withheld permission to assign the tenancy. Although the tenant contended the form had been completed with information according to the Act, I find the landlord was unable to do a credit check due to insufficient information being provided. I find from the correspondence provided that there was a reluctance to provide further information such as a telephone number for the proposed purchaser or a date and place of birth. Although this may have been due to the tenant's concern to protect the privacy of the purchaser, I find it reasonable that it may have raised the landlord's concerns about the identity of the purchaser, especially since the purchaser did not come for an interview as is often the case. I find it reasonable that the landlord would withhold permission to assign to a purchaser whose identity and financial capability could not be verified.

Furthermore, I find on the sworn evidence that when a telephone number for the purchaser was provided, it was inconsistent with the purchaser's addresses so the landlord was unable to do a credit check. Although the tenant contended that the purchaser had supplied all information as set out in the Act, I find that section 48 of the Regulations states: '**on the basis of credit information**' which implies that the purchaser must supply all information necessary to do a credit check so the landlord can determine the financial capability of paying the rent. Although the tenant contended the landlord did not contact references of the purchaser or the purchaser by telephone, I find the explanation of the landlord reasonable that when the credit check failed and he was not answered by a business telephone for the listed employer, he did not contact further references.

Conclusion:

I find the weight of the evidence is that the landlord has not **unreasonably** withheld consent to assign the tenancy. I dismiss the application of the tenant and find they are not entitled to recover their filing fee.

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 07, 2014

Residential Tenancy Branch

