Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, OLC, FFT

Introduction

The tenant filed an Application for Dispute Resolution on September 23, 2020 seeking an order that the landlord allow them to assign their tenancy. Additionally, they seek to have the landlord comply with the legislation and/or tenancy agreement, and compensation of their Application filing fee.

The matter proceeded by way of a hearing pursuant to section 67(2) of the *Manufactured Home Park Tenancy Act* (the "*Act*") on November 23, 2020 and December 3, 2020.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matters

The tenant stated that they delivered notice of the hearing via registered mail. This included the documentary evidence the tenant presented at this hearing. They provided three separate tracking numbers for prepared evidence they sent to the landlord. They sent a fourth package to the landlord on November 14, 2020.

In the initial hearing the landlord stated their concern that they had not received all of the tenant's prepared evidence. At the start of the reconvened hearing, I undertook a tally with both parties of all documents the landlord received in advance of the hearing. Through description of individual documents per each package, I determined the landlord had received all material sent by the tenant in proper fashion within the allowed timeline prior to the hearing.

The tenant also prepared a monetary worksheet and provided a copy of the same dated November 9, 2020. They sent this to the landlord on November 14, 2020, and their registered

mail tracking information shows the landlord received this on November 23, 2020, the date of the initial hearing.

The landlord did not receive this last package of information more than 14 days before the hearing. By Rule 3.14, the tenant did not follow the prescribed timeline. I do not allow a late amendment to the tenant's Application for the reason of making a monetary claim. I sever this evidence from the record, and the claim surrounding monetary compensation receives no consideration herein.

In the initial hearing I determined that the landlord's evidence did not arrive to the Residential Tenancy Branch system. The landlord provided that they uploaded their documentary evidence to the case management system on November 13, 2020.

The number of pages of the landlord's evidence is 146 pages, all of which are numbered sequentially. In the interim, I confirmed the landlord's material was on system, and viewed the same prior to the reconvened hearing.

The tenant confirmed they received this evidence, albeit by a questionable means of service. The tenant pointed out that the evidence packaged appeared on their doorstep and they take issue with this because the branch told them "that papers were to be served taped to the door and three other ways of serving." I am satisfied the tenant received the landlord's materials and had the chance to review these materials prior to the hearing. The means of service is not at issue where the tenant has actually received the materials in hand. Had they not received the material, that would necessitate a close examination of the landlord's actual service; however, because the tenant has the materials, this is not necessary.

Also, in the interim at the tenant's request I corrected the opening page of the Interim Decision dated November 23, 2020, to ensure the parties were correctly identified as 'landlord' and 'tenant' on the first-page list of attendees.

Issue(s) to be Decided

- Is the tenant entitled to an Order allowing an assignment when permission has been unreasonably denied, pursuant to section 58(1)(g) of the *Act*?

- Is the tenant entitled to an Order that the landlord comply with the legislation and/or the tenancy agreement, pursuant to section 55(3) of the *Act*?

- Is the tenant entitled to reimbursement of the Application filing fee pursuant to section 65 of the *Act*?

Background and Evidence

The tenant gave testimony on what happened for each of two proposed sales of their manufactured home. They attribute each withdrawal of the purchaser's interest to the landlord withholding their consent for the assignment of the tenancy agreement. This amounts to the landlord informing potential purchasers that there was work done with the home site which had no landlord permission. In their submission dated October 25, 2020, the tenant states: "What they are doing is wrong telling my buyers that I did all this stuff was done without permission is insane." Further: "They are telling prospective buys in park meetings that I didn't get permission so therefore I am responsible and if I don't sign papers and lie that I did put the stuff there, then they will take it upon themselves to go after new tenants because it is there [*sic*] responsibility now."

In the first instance, the purchasers were "told of things they have to get rid of if they take ownership." The tenant provided a detailed list of all the issues raised by the landlord on the manufactured home site, those involving violations of park rules or local bylaws.

The tenant provided a copy of the completed form 'Request for Consent to ASSIGN a Manufactured Home Site Tenancy Agreement'. This shows the landlord's indication "withheld", meaning they did not consent on September 22, 2020. This also shows the landlord's stated reason to be:

> [potential purchasers] withdrew the Request for Consent . . . and rescinded permission for the landlord to conduct a credit verification and would not provide proof of identification, therefore the Landlord is unable to provide consent.

The tenant provided a copy of their own letter in response to this, dated September 23, 2020. This contains the tenant's immediate response to the issues concerning "things that were on the property when [they] took it over." Additionally, they stated that "nothing new has been constructed for the term [they] have been there".

In the second sale, the "buyers pulled out": The tenant surmised that the "same sort of thing happened" – that is to say, the landlord informed the buyers of issues tied to the home site. In essence, this equates to the landlord not giving their consent to assign the tenancy agreement.

The witness who attended the hearing was the purchase agent involved in both potential sales. They spoke to their knowledge of the potential purchasers' interview with the landlord (referred as a "park interview") and subsequent direct communication they had with the landlord. They raised the issue of the extant needed repairs and previous alterations to the home site as being already there when the current tenant initially purchased the unit. From their perspective, the tenant should not be unduly subject to failed purchases because of issues tied to the home site, already in place for quite some time prior to the potential sale.

The tenant also had witnesses ready who were prepared to attest to the state of the unit prior to the proposed purchase. One of them was prepared to speak to the state of the unit prior to the tenant's initial purchase of the property in 2014. In the end, these witnesses did not give testimony in the hearing.

After the landlord responded to this primary issue, the tenant described in detail all changes or alterations to the manufactured home site. Some of these required approval in the past – which was granted – and others did not. In some instances, the tenant was not even aware that an issue or difficulty was present. They were "never approached about these issues" in over six years they were living there. They described in detail each piece of repairs or alterations at issue, with references to photos throughout.

To respond to the tenant's Application, the landlord provided a summary response letter dated November 11, 2020. They described each of the two set of purchasers' wish to obtain consent to assign. They informed the first set that "the current tenancy had certain contraventions with the Park rules" at which point they "rescinded" their consent for the landlord to obtain credit information. In the case of the second set of purchasers, they "accepted the request for consent to assign and provided written notice of the same to the tenant."

The landlord provided copies of all transactions, agreements, required legal forms and correspondence concerning the manufactured home site. The earliest piece in this evidence is from 2014. The landlord also provided photographs to illustrate issues at the home site from their perspective.

In the hearing, the landlord described their standard approach to interviewing purchasers. For this particular manufactured home site, the landlord stated that, as would normally happen, with all issues that remain, "the current tenant as well as new tenants would take responsibility."

The landlord's representative in the hearing submitted on the landlord's behalf that "an application that the landlord not be allowed to speak to potential tenants is unreasonable."

Further, they summarized plainly that the first purchase was “not a proper application – there was no assignment” and “the second assignment was granted and [the purchasers] withdrew from the purchase.”

Analysis

The tenant here submits the landlord unreasonably withheld consent to assign. They have applied for an order that the tenancy agreement be assigned. I shall determine whether or not the circumstances in this particular case constitute the landlord unreasonably withholding their consent.

The *Act* section 28 provides the following:

> (1) A tenant may assign a tenancy agreement . . .only if one of the following applies:
> (a) 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;
> (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 . . .in a manufactured home site only in the circumstances prescribed in the regulations.

Particular to an assignment, the *Manufactured Home Park Tenancy Regulation* (the “*Regulation*”) prescribes a landlord’s grounds for withholding consent to a request. These include: a landlord concludes a purchaser is unlikely to comply with rules or unlikely to pay rent; a purchaser intends to use the unit for business purposes or purchased more than one unit; a landlord is unable to contact references; and, the manufactured home “does not comply with housing, health and safety standards required by law.”

The *Act* section 58(1) sets out the following:

> . . . if the director finds that a landlord or tenant has not complied with the Act, the regulations or the tenancy agreement, the director may make any of the following orders:
> . . .
> (g) that a tenancy agreement may be assigned . . . if the landlord’s consent has been withheld contrary to section 28(2)

On my review of the evidence and submissions of the parties, I conclude that the tenant has not shown the landlord unreasonably withheld consent. The landlord has shown, with the first

potential new tenants, their consent was not required given the discontinued application. With the second set of purchasers, the landlord has shown they actually gave their consent to the tenant as requested. My reasons for this finding are based exclusively on the order of events for each of the two purchaser applications.

In the first instance, when the landlord explained outstanding issues with the manufactured home site, the potential purchasers withdrew their application. This is not a situation where the tenant made a request to assign and the landlord withheld consent. Rather, the purchasers withdrew on their own volition after they discovered the extant issues.

I find section 44(3)(k)(iii) of the *Regulation* applies to the situation here. This is the requirement that a proposed purchaser give consent to the landlord to obtain their credit report. The potential purchasers withdrew that consent; therefore, at that point the application process ended. The landlord was not obligated to consider factors listed in section 48 of the *Regulation*. There was no need for the landlord's consent going forward and the end of the sale was not due to the landlord withholding consent.

The issues why the purchasers withdrew is unrelated to the core issue of the landlord's consent. I find after the purchasers withdrew the assignment request process ended. There was no need for assignment of the tenancy agreement from that point forward. Consequently, the landlord was not in the position where they had to grant or deny an assignment – there was no more purchase and no more prospect of assigning the tenancy agreement.

I find the landlord checked the box 'not granted' as an indication that they did not consent because the sale ended. This is an indication that in this process their consent was not given at any time.

I find the landlord did not deny consent incorrectly in this first instance. Rather, the process did not pass the stage where landlord consent was needed. The application was withdrawn prior to the landlord having any obligation to consider one of the factors listed in the *Regulation*.

With the second set of purchasers, the landlord also explained outstanding issues with the unit. Both parties agree that these potential purchasers were waiting and more open to completing the sale; however, they then did not proceed on the purchase.

I find the landlord did not withhold consent to assign in this instance. It is clearly indicated on the form that the landlord granted consent. On this basis, I find the circumstances of this second set of potential purchasers does not require my consideration – the facts establish that the landlord gave their consent, it was not withheld.

The tenant also applied for an order that the landlord comply with the *Act*, the *Regulation*, and/or the tenancy agreement. On their Application, they state there is a "new rule" that is against the *Act*. My understanding of this "new rule" is based on the tenant's submissions: in order for the landlord to consent to an assignment, a tenant must have proof of permission for construction/alteration to the items/structure on the manufactured home site, as part of the application for consent to assign.

For the landlord to impose such a rule arbitrarily would amount to acting outside of the legislation, particularly section 44 of the *Regulations*. This section lists very specific information that a homeowner (here, the tenant) must provide. There is no requirement for prior permission given for alterations or development on the manufactured home site.

In this hearing the tenant made submissions and provided evidence to show that alterations on the property were made before their acquisition of that property, pre-2004. This included photos of all aspects of the manufactured home site that are at issue. From the landlord's point of view, this involves compliance with local bylaws, or work that alters the home site in such a way as to cause interference to the park. These are contraventions of park rules.

I find the landlord is aware of the *Regulation* as it governs all transactions involving assignment of a tenancy agreement. There is no evidence that the landlord asked for proof of permission for alterations to the home site. Given the record produced by the landlord, containing as it does a comprehensive set of all documentation of this manufactured home site, I find it implausible that the landlord would ask for this information without documentation, in a less formal manner. In the hearing, the landlord's representative described the landlord's administration as a "fairly stringent standard" – I find the way the landlord keeps records is evidence of the way in which they conduct their business of managing the park. On a balance of probabilities, I find this in turn proves their adherence to the legislation and the tenancy agreement.

I find it more likely than not that the landlord is aware of the *Regulation* section 49, that which sets out the effect of an assignment. For them to impart information regarding to the manufactured home site to potential purchasers does not run counter to the legislation or the tenancy agreement. I find as fact that the landlord did impart such information to the two sets of potential purchasers. While this led to a withdrawal of the purchasers' interest, these are not actions of the landlord that run counter to the legal process governing an assignment. I find this is more in line with the tenets of section 49, with the landlord disclosing information about a purchased home site to the buyers.

The actual state of the unit and the site is immaterial. Similarly, how it got to that state and who bears responsibility going forward does not directly link to the landlord's consent. In summary, in both cases the purchasers withdrew from the purchase. This was not based on the landlord withholding consent.

As the tenant was not successful in their Application, I find they are not entitled to recover the $100 filing fee paid.

Conclusion

I find the landlord neither withheld consent unreasonably, nor were they not in compliance with the legislation and/or the tenancy agreement. On both of these grounds, the tenant's Application 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 *Act*.

Dated: December 8, 2020

Residential Tenancy Branch