



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC AS FFT**

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Manufactured Home Park Tenancy Act* (the "Act") in which the Tenant seeks:

- an order to allow the Tenant to assign the tenancy agreement of a home site when the Landlord has unreasonably withheld or denied permission pursuant to section 58;
- an order for the Landlord to comply with the Act, the *Manufactured Home Park Tenancy Regulations* (the "Regulations") and/or tenancy agreement pursuant to section 60; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 65.

The Landlord's agent ("YK"), the Tenant and the Tenant's legal counsel ("SS") attended this hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant testified she served the Notice of Dispute Resolution Proceeding and her evidence ("NDRP Package") on the Landlord by registered mail on July 15, 2022. YK acknowledged the Landlord received the NDRP Package. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 81 and 82 of the Act.

YK stated the Landlord served evidence on the Tenant by email on June 7, 2022. SS acknowledged the Tenant received the Landlord's evidence. I find the Landlord's evidence was sufficiently served on the Tenant pursuant to section 64(2)(b) of the Act.

Issues to be Decided

Is the Tenant entitled to:

- an order allowing the Tenant to assign the tenancy agreement for the home site to another party?
- an order for the Landlord to comply with the Act, the Regulations and/or tenancy agreement?
- recovery of the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

SS submitted a copy of the tenancy agreement dated August 27, 2020 (“Tenancy Agreement”) between the Landlord and the Tenant. The parties agreed the tenancy for the home site (“Home Site”) the Tenant is occupying commenced on October 1, 2020 with rent of \$650.00 payable on the 1st day of each month. The parties agreed the rent had been increased to \$660.00 pursuant to a Notice of Rent Increase served by the Landlord on the Tenant.

SS stated the Tenant wants to sell her manufactured home (“Home”) and assign the Tenancy Agreement for the Home Site to a prospective purchaser. SS submitted into evidence a copy of a letter dated February 4, 2022 from the Tenant to the Landlord in which she advised she intended sell the Home. SS submitted into evidence a copy of a letter from KY dated February 10, 2022 in which YK stated:

As I mentioned on the phone call a couple weeks ago, we are not to sign the lease agreement for new tenants.

Additionally, we are planning to increase the rent to double as we are not making any profit on your property right now.

In fact, we paid more property tax on your property than your (sic) paid rent. Please make sure informing your buyer of the two things:

1. No signing of lease agreement for new tenants
2. Doubling the current rent due to no profit.

B. regards,

KW

[Name of Landlord]

SS submitted into evidence an email dated March 11, 2022 from the Tenant's real estate agent to the Tenant that stated:

I called the park manager [name of park manager] today to let her know that my client is going to do a home inspection on Friday 11 am (March 11, 2022) and asked if possible, we can meet her there for some questions and give her the paperwork for the park approval/tenancy lease application. [First name of park manager] said her owner's instruction to her is the owner is not going to renew any lease and the seller is aware of the situation and suggested I talk to the seller. Please find out more details and let me know, thanks very much.

Best Regards,

[Name of agent]

SS stated the Landlord now wants a new tenancy agreement with any prospective tenant in which the rent is \$2,400.00, being more than three times the current rent. When I asked, SS admitted the Tenant has not completed and submitted a Form RTB-10 to the Landlord for consideration. SS stated it was the Tenant's position that, by denying consent for the proposed assignment of the Tenancy Agreement on the basis that the Landlord wants a new tenancy agreement at higher rent with the prospective purchaser, violates the provisions of the Act and Regulations. SS requested that I make an order the assignment of the Tenancy Agreement.

YK stated the Home Site is the only home site located on the property on which this portion of the Landlord's home park is located. YK stated the Landlord is losing money because the taxes are more than the rent the Tenant is currently paying for the Home Site. YK stated it is the Landlord's position that, as it is currently losing money on the on

which the Tenant's Home Site is located, it can require a prospective purchaser to sign a new tenancy agreement at higher rent and is not required to consent to the assignment of the Tenancy Agreement to a prospective purchaser.

Analysis

Section 28 of the Act states:

- 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.
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

[emphasis in italics added]

Pursuant to section 28(1)(b) of the Act, a tenant who wishes to assign their tenancy agreement must obtain the written consent of the landlord to the assignment in accordance with the Regulations.

Sections 42 through 48 of the Regulations state:

42 In this Part:

"assign" means to assign a home owner's tenancy agreement to a purchaser under section 28 (1) of the Act [*assignment and subletting*];

"home owner" means an owner of a manufactured home who rents a manufactured home site from a park owner;

"purchaser" means a person who has purchased a home owner's manufactured home;

"sublet" means to sublet the manufactured home site on which the home owner's manufactured home is situated to a subtenant under section 28 (1) of the Act.

- 43 Before requesting the landlord's consent to an assignment or a sublease, a home owner must provide a copy of
- (a) any part of the tenancy agreement that is in writing, and any rules in writing and applicable to the tenancy agreement, to a proposed purchaser, and
 - (b) any rules and any part of the tenancy agreement that are in writing and applicable to the sublease, to a proposed subtenant.

Pursuant to section 43 of the Regulations, a tenant who proposes to assign a tenancy agreement, must provide the tenancy agreement to the proposed purchaser.

Sections 44 through 48 of the Regulations state:

- 44(1) Sections 45 [*response within 10 days*] and 46 [*deemed consent*] apply to a home owner's request for consent to assign or sublet only if the home owner requests the consent of the landlord of the park to assign or sublet *in writing in the form approved by the director*.
- (2) The home owner must serve the request on the landlord
 - (a) in accordance with section 81 of the Act [*service of documents*], and
 - (b) within sufficient time prior to the effective date of the proposed assignment or sublease to allow the landlord to respond under section 45 (1) (c) [*response within 10 days*].
- (3) The written request under subsection (1) must be signed by the home owner and must provide all of the following information:
 - (a) the name and address of the home owner making the request;
 - (b) the name and address of the landlord or landlord's agent;
 - (c) the proposed effective date for the assignment or sublease;
 - (d) the name of the proposed purchaser or subtenant;

- (e) the current address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address;
- (f) if the length of time at the address provided under paragraph (e) is less than 2 years, the previous address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address;
- (g) the names and telephone numbers of two personal references for the proposed purchaser or subtenant;
- (h) the signed consent of the proposed purchaser or subtenant authorizing the landlord to contact the other landlords whose names are provided under paragraphs (e) and (f) and the personal references provided under paragraph (g) for the purpose of verifying or obtaining information relevant to the request to assign or sublet;
- (i) if the manufactured home site is in a park in which every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the *Human Rights Code* [permitted age requirements], the date of birth of the proposed purchaser or subtenant who meets the age requirement and proof of that person's age;
- (j) if the request is for consent to sublet, a statement that the home owner has complied with section 50 (2) [effect of sublease];
- (k) if the request is for consent to assign,
 - (i) the current monthly rent for the manufactured home site,
 - (ii) the effective date of the most recent legal rent increase,
 - (iii) the proposed purchaser's signed consent authorizing the landlord to obtain a credit report on the proposed purchaser,
 - (iv) the proposed purchaser's signed statement that the proposed purchaser has been informed of and agrees to comply with

- (A) the tenancy agreement, and
 - (B) the applicable rules,
 - (v) a copy of
 - (A) any part of the tenancy agreement that is in writing, and
 - (B) any of the rules that are in written form and that apply to the tenancy of the home owner, and
 - (vi) a copy of any outstanding orders or notices given under the Act respecting the manufactured home park site;
 - (l) any additional information required by the form approved by the director referred to in subsection (1).
- 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.
- (2) If a landlord withholds the landlord's consent for the home owner to assign or sublet, the landlord's response must indicate
- (a) the grounds under section 48 *[grounds for withholding consent]* on which the landlord is withholding consent, and
 - (b) the source and nature of the information that supports those grounds.
- (3) The landlord and home owner may agree in writing to extend the time for response under paragraph (1) (c) to a specific date.
- 46(1) The landlord's consent to a request under section 44 *[written request for consent]* is conclusively deemed to have been given and the home owner may assign or sublet to the proposed purchaser or subtenant identified in the written request if the home owner has not received the landlord's response

- (a) by the end of the 10th day after the day the landlord received the home owner's request, or
 - (b) if the time for response has been extended under section 45 (3) [*agreement to extend*] to a specific date, by that date.
 - (2) The home owner is entitled to consider that consent is deemed to have been given under paragraph (1) (a) if the home owner can demonstrate that the request on the landlord was served in accordance with section 81 of the Act [*service of documents*].
- 47(1) If a home owner's request for consent to assign or sublet does not comply with section 44 [*written request*], the landlord of the park must do one of the following:
- (a) consent to the request;
 - (b) notify the home owner in writing that consent to the request is withheld on one or more of the grounds under section 48 [*withholding consent*];
 - (c) advise the home owner promptly that only a request for consent that complies with section 44 [*written request for consent*] will be considered.
- (2) If the landlord withholds consent under subsection (1) (b), the landlord must indicate
- (a) the grounds under section 48 on which the landlord is withholding consent, and
 - (b) the source and nature of the information that supports those grounds.
- 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;
- (b) the request is for consent to sublet and the landlord, on the basis of relevant information, has reasonable grounds to conclude that the proposed sublease is likely to result in a breach of the home owner's obligations under the tenancy agreement and rules;
- (c) the request is for consent to sublet and the tenant has agreed in the tenancy agreement not to sublet;
- (d) there is not at least one proposed purchaser or subtenant in a proposed assignment or sublease who meets the age requirement in a park where every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the *Human Rights Code [permitted age requirements]*;
- (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 the landlord's 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 home owner owes the landlord arrears of rent or an amount due under an order of the director;

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

Section 44(1) of the Act only applies to a home owner's request for consent to assign or sublet if the home owner requests the consent of the landlord to assign or sublet in writing approved in the form approved by the direct. The prescribed form is RTB-10. Section 44(2) of the Regulations states the home owner *must* serve the request on the landlord in accordance with section 81 of the Act and within sufficient time prior to the effective date of the proposed assignment or sublease to allow the landlord to respond under section 45(1(c)). SS admitted the Tenant had not completed and signed RTB-10 and served it on the Landlord. As such, I find the Tenant has not complied with the requirements of sections 44(1) and 44(2) of the Regulations. As there has been no request made by the Tenant, the Landlord is not required to provide the Tenant with a written response under section 45(1). As the Tenant has not made a request for consent in compliance with section 44 of the Regulations, I find that I do not have the authority, to make an order that the Tenancy Agreement may be assigned pursuant to section 58(g) of the Act since, at this point in time, the Landlord has not withheld its consent to a request made under section 44 of the Regulations.

YK stated the Landlord is not making any money from the rent paid by the Tenant for the Home Site. YK testified that the Landlord will not consent to the assignment of the tenancy agreement and that a prospective purchaser will be required to sign a new tenancy agreement at significantly greater rent than what the Tenant is currently paying. If the home owner's request for consent to assign or sublet complies with section 44, then the landlord of the park may only withhold consent to assign or sublet for one or more of the reasons listed in subsections 48(a) through 48(i) of the Regulations. None of the reasons set out in subsections 48(a) or 48(b) include the landlord withholding consent on the basis that the landlord is not making money from the tenant. Furthermore, no where in the Act or Regulations is there a provision that, when a Landlord is served with a signed and completed RTB-10, the Landlord may use the request for consent by Tenant made in accordance with section 47 of the Regulations as an opportunity to extract a rent increase from the prospective purchaser that does not otherwise comply with the provisions of section 35 and 36 of the Act.

Based on the testimony of the parties, I have a reasonable apprehension that, even if the Tenant complies with the provisions of section 44 of the Regulations, the Landlord will refuse to comply with sections 45, 47 and 48 of the Regulations. As such, I hereby order the Landlord to comply with sections 45, 47 and 48 of the Regulations in respect

of any request for consent to an assignment of the Tenancy Agreement that is made made by the Tenant to the Landlord in accordance with the provisions of section 44 of the Act. The failure of the Landlord to comply with this Order may result in a referral of the Landlord to the Enforcement and Compliance Unit of the Residential Tenancy Branch.

Conclusion

The Landlord is ordered to comply with sections 45, 47 and 48 of the Regulations in respect of any request for consent to an assignment of the Tenancy Agreement that is made by the Tenant to the Landlord in accordance with the provisions of section 44 of the Act.

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: July 23, 2022

Residential Tenancy Branch