

## **DECISION**

Dispute Codes      OLC, PSF, FF, CNLC, MNDC

### Introduction

This hearing was reconvened from February 16, 2010. On that date, I issued a Decision in which I found that the Residential Tenancy Branch had jurisdiction to hear the Tenants' application in this matter. The Tenants' application for a monetary order for compensation was also dismissed with leave to reapply. Consequently, this hearing dealt with the Tenants' application to cancel a 12 Month Notice to End Tenancy for Landlords' Conversion of Manufactured Home Park and to determine if an Order was necessary to restore water to the manufactured home site.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is an Order required to restore services or facilities to the manufactured home site?

### Background and Evidence

This tenancy started on or about July 15, 2009. Pad rent is \$200.00 per month. The Tenants said they made a verbal agreement with the former owner of the mobile home which they referred to as a "rent to own" agreement. In particular, the Tenants claim that the former owner told them that if they made repairs to the mobile home she would sell it to them for \$2,500.00 and that they could make payments on that amount when they could. The Tenants said they made some repairs and paid the former owner \$2,500.00 on March 4, 2010.

Consequently, the Tenants argued that when the Landlord served them with the 12 Month Notice to End Tenancy on January 4, 2010, they were not the owners of the mobile home and therefore not the proper parties to be named on and served with that document. The Tenants also argued that the Landlords did not issue the Notice in good faith because they could have relocate the mobile home on another pad site on the rental property if it was too close to the Landlords' residence.

The Landlords claimed that they had no tenancy agreement with the former owner of the mobile home (who was the sister of one of the Landlords). The Landlords argued that if there was a tenancy agreement to rent the manufactured pad site, it was only with the Tenants as it was they who rented the pad site and paid rent to the Landlords. Consequently, the Landlords also argued that the Tenants were properly named and served with the 12 Month Notice to End Tenancy.

The Landlords also claimed that they never intended to rent out the property. The Landlords said it was their intention from the time they took possession of the property

to do landscaping and renovations so that the property could be used for themselves. The Landlords claimed that as soon as they took possession of the property, they made arrangements to hire an excavator and bob cat to do the landscaping.

The Tenants also claimed that on January 15, 2010, the Landlords cut off their water supply and that since that time they have had to haul in water for all of their domestic needs. The Tenants said that they were advised by the previous owners of the mobile home that there was always a water supply to the pad site. The Landlords argued that there was only a hose connecting the water supply to the mobile home site when the Tenants moved in which is not a permanent water supply.

The Landlords claim that they disconnected the water supply to the manufactured home site because they believed that they were not in compliance with the Drinking Water Protection Act. In particular, the Landlords argued that the water source was a sand point well (or surface water) and that as a result, the Drinking Water Protection Act requires them to obtain a permit to operate a water supply system where there is more than one residence using it. The Landlords claimed that they would also be required to install an engineered system to do ongoing testing and monitoring as well as to chlorinate the water.

The Landlords also argued that the water was unsafe for use because it was located too close to the Tenants' septic system which they claimed overflowed periodically. The Tenants denied this and claimed that not only did the septic system meet required standards but that it functioned properly. The Tenants also noted that the Landlords used this water for their household needs (with the exception of drinking water). The Landlords admitted that the water had not been tested to determine if it met safety standards required by law.

The Tenants argued that the water supply in the well was fed from ground water and that the sand point referred to by the Landlords was simply intended for filtration. Consequently, the Tenants argued that the Landlords did not require a permit in order for them to use the well on the rental property.

The Landlords also claimed that they could not get liability insurance for the property because there were third parties on it. Consequently, the Landlords claimed that out of concern for the Tenant's safety and their liability concerns, they cut off the water supply to the mobile home site.

### Analysis

There is nothing in the Act or Regulations that states that a 12 Month Notice to End Tenancy must be served on **the owner** of a mobile home. Section 42 of the Act requires that a Landlord serve a 12 Month Notice to end a tenancy **on a Tenant** of a mobile home site. Section 1 of the Act defines a "tenancy agreement" as "an agreement whether written or oral between a landlord and tenant respecting possession of a manufactured home site, use of common areas and facilities."

In the Decision issued on February 16, 2020, I found that there was a tenancy agreement between the previous owner of the rental property and the Tenants which continued when the property was transferred to the current Landlords. I find that there is no evidence of a tenancy agreement between the former owner of the mobile home and either the former Landlord or the current Landlords. Consequently, I conclude that the Tenants were properly named as parties on the 12 Month Notice dated January 4, 2010. In any event, I find that the Tenants had a beneficial interest in the ownership of the mobile home on January 4, 2010 as they had already made repairs and thereby had likely substantially performed the purchase agreement by that date.

RTB Policy Guideline #2 (Ending a Tenancy – Good Faith Requirement) states at p. 2 that “if the good faith intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord’s primary motive.”

The Tenants did not dispute that the Landlords intended in good faith to convert all or part of the property to a strictly residential use. The Tenants argued, however that the Landlords could have offered them another mobile home pad site. In the circumstances, I find that there is sufficient evidence that the Landlords intend in good faith to convert the mobile home pad site to a residential use and as a result, the Tenants’ application to cancel it is dismissed without leave to reapply.

After hearing the contradictory evidence of each of the Parties, however, I find that additional evidence is required to determine if the Landlords should be required to provide a permanent water supply to the manufactured home site. Consequently, I order the Parties to contact Interior Health to investigate this matter no later than April 29, 2010. If Interior Health is unable to investigate this matter, then I Order the Parties to engage the services of another independent, qualified, third party to investigate it no later than May 6, 2010. I further Order the Parties to obtain a report of the investigation and to submit it as evidence prior to the next hearing date which addresses:

- (a) if the current water supply is safe for domestic use or not; and
- (b) if the Landlords are required to obtain a permit to operate a water supply system as they alleged and if so, what the requirements of that operating permit would include.

In the interim, I Order the Landlords to restore the water supply to the manufactured home site ***immediately***. This Order is granted having regard to the Tenants’ assurances that they will not hold the Landlords liable for any loss or damage arising out of any adverse health effects they or other occupants or guests of the pad site might sustain from using the water supply. This Order is also subject to any Order of the Interior Health Authority that requires the Landlords to cease supplying water from this source to the mobile home site.

## Conclusion

The 12 Month Notice to End Tenancy for Landlords' Conversion of Manufactured Home Park dated January 4, 2010 remains in force and takes effect on January 31, 2011. The Tenants' application for an Order that the Landlords provide services and facilities is adjourned to **June 8, 2010 at 11:00 a.m.** for hearing.

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: April 15, 2010.

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Dispute Resolution Officer