



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on October 26, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord carries on business on November 6, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated October 26, 2013?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on in 2007. The present rent is \$405 per month payable in advance on the first day of each month.

There are four manufactured home pads in this park. The landlord owns the manufactured homes on three of the pads.

The Application for Dispute Resolution filed by the Tenant states that she does not believe the landlord has all necessary permits and approvals required by the law and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home pad.

The evidence presented by the tenant is limited. She testified that she met with the Municipal Planner on October 29, 2013 and he confirmed that at that time no permits had been issued. The tenant also testified the landlord had previously made an offer to purchase her manufactured home but she decided not to accept the offer.

The representative of the landlord testified that it intends in good faith to convert all of its property to a residential use other than a manufactured home park. He testified the landlord does not require any rezoning permits or approvals to convert its property to residential zoning because the property is already legally zoned as RU4 (Rural Residential). A document from the municipal planner was attached to support this testimony.

The landlord further testified that as of December 15, 2013 the landlord owns 3 of the 4 units in its manufactured home park with the applicant owning the other unit. When the applicant's unit has been removed from the park the conversion from a manufactured home park to private residential property will be completed. Section 4 of the Manufactured Home Park Act provides that this Act no longer applies. The Residential Tenancy Act will apply to the rentals of the manufactured homes on the residential property as the landlord will own both the pads and the homes.

Grounds for Termination

The Notice to End Tenancy relies on section 42 (1) of *Manufactured Home Park Tenancy Act*.

Landlord's notice: landlord's use of property

42 (1) Subject to section 44 [*tenant's compensation: section 42 notice*], a landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.

Relevant Legislation:

The relevant provision of the Manufactured Home Park Tenancy Act includes the following:

landlord", in relation to a manufactured home site, includes any of the following:

- (a) the owner of the manufactured home site, the owner's agent or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant whose manufactured home occupies the manufactured home site, who
 - (i) is entitled to possession of the manufactured home site, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the manufactured home site;
- (d) a former landlord, when the context requires this;

"manufactured home" means a structure, whether or not ordinarily equipped with wheels, that is

(a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and

(b) used or intended to be used as living accommodation;

"manufactured home park" means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

"manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

What this Act does not apply to

4 This Act does not apply with respect to any of the following:

(a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;

(b) prescribed tenancy agreements, manufactured home sites or manufactured home parks.

Relevant Case Law:

The Supreme Court of British Columbia decision in Howe v. 3770010 Canada Inc., 2008 BCSC 330 dismissed a petition filed by five tenants to set aside a decision of an arbitrator who held that the Notices to End Tenancy issued by the landlord were valid. The arbitrator concluded that the necessary permits and approvals were those required to convert the park to a residential use other than a manufactured home park. It does

not require the landlord to have permits and approvals necessary for the eventual end use of the property.

In coming to this decision the court relied on the following:

[26] In ***North Shore Motels (1977) Ltd. v. Gould***, [1981] B.C.J. No. 1044 (S.C.), aff'd [1982] B.C.J. No. 112 (C.A.), McLachlin L.J.S.C. (as she then was) considered the wording of s. 17 of the ***Residential Tenancy Act***, R.S.B.C. 1979, c. 365. The case involved a property which was occupied by both a motel and a mobile home park. The entire property was zoned for tourist or commercial use. The landlord served notices of termination to the tenants of the mobile home park. The rentalsman held that even though the landlord *bona fide* intended to occupy or use the residential premises for a purpose which complied with the ***Residential Tenancy Act***, the termination notices were invalid because the landlord had failed to obtain the prior approval of the municipality. The rentalsman was of the view that the word "approval" meant something more than appropriate zoning. The issue before the Court was whether the "approval" required in s. 17(2) required the landlord to obtain municipal consent to the proposed construction prior to serving termination notices on the tenants.

[27] In finding that the required approvals related to the change in use such as zoning changes, McLachlin L.J.S.C. stated at ¶11:

It is important to note that the approval in question is not approval of a construction project, but rather approval required for conversion from residential premises to other premises, in this case tourist-commercial premises. Alteration of existing premises is not inevitably associated with a change from residential to non-residential use. Consider the example of what are often referred to as apartment hotels. Such buildings are often constructed with a view to operation as residential premises for a time, after which they will be used as tourist-commercial premises, without further alterations. Similarly, while it would be unlikely, it might be entirely possible for the Landlord in the case at bar to operate tourist facilities out of mobile homes on its property without ever obtaining municipal consent to new construction. These examples illustrate that conversion of residential premises to other premises - the conversion contemplated by Section 17(1)(e) - does not necessarily entail alteration of the physical premises. While new construction often takes place in such circumstances, it is incidental to the change of use to which Section 17(1)(e) refers. It follows that "approval" in Section 17(2) as applied to Section 17(1)(e) should not be read as referring to physical changes or new construction, but rather the change in use, such as zoning changes. Since the land is

presently zoned for commercial/tourist use, no further approval is required. The Rentalsman, by requiring that "the municipality through the building inspector must give some form of positive indication that the Landlord may construct the motel extension" erred in law by treating Section 17(1)(e) as though it referred to physical changes involving new construction rather than changes in use.

[28] The Arbitrator reached a similar conclusion in this case. The Arbitrator concluded that the necessary permits and approvals were those required to convert the Park to a residential use other than a manufactured home park, *i.e.* for the change in use.

In Steeves v. Oak Bay Marina the landlord served a Notice to End Tenancy on 44 tenants pursuant to its plans to convert the current use of the park from a manufactured home park where tenants reside more or less permanently on a year round basis to a seasonal forty-four site RV park and campground. Many tenants had invested significant money in improving their manufactured home. The tenants alleged that the reasons the landlord wanted to end the manufactured home park was because it had an legal obligation to improve the sewage system. The court dismissed the petition and held that the plaintiffs' claims for rights to the land are dismissed and the defendant is, pursuant to its counterclaim, entitled to vacant possession of the land. The court determined the landlord had a legal right to under section 42 to change the use of the property from a manufactured home park to a RV park which was not covered by the Manufactured Home Park Tenancy Act.

Analysis

All of the evidence was carefully considered and on the basis of the information before me I accept that the landlord intends, in good faith, to convert the manufactured home park to a residential use other than a manufactured home park. I am satisfied that the landlord is not required to have permits or approvals to close the Park. Further, I am satisfied that the present zoning is sufficient for the intended use of the property. The tenant failed to present evidence to the contrary. I am also satisfied that the landlord intends to convert all or a significant portion of the park. There are only four pads in this park and the landlord intends to use all of them for its intended purpose. The tenant

failed to produce evidence to support an allegation that the landlord is acting in bad faith or that the landlord has a dishonest or ulterior motive. In my view the landlord's offer to purchase the tenant's manufactured home is evidence supporting the landlord's intended use.

The case law supports the proposition that the landlord has a right to change the use of the rental property provided the appropriate process is followed. That process involves giving the tenant 12 months free rent. In *Steeves v. Oak Bay Marina* the landlord was permitted to change the park from a manufactured home park to an RV park. In *Howe v 3770010* the landlord was permitted to change its use from a manufactured home park to a residence. In *North Shores Motels* the landlord was permitted to change the use from a manufactured home park to increase the size of the motel portion of the rental property.

I am satisfied that in this case the intention of the landlord to change the use from a manufactured home park covered by the Manufactured Home Park Tenancy Act to the rental of individual manufactured homes owned by the landlord and covered by a Residential Tenancy Act is a change of use that is permitted by the Act.

Determination and Orders

As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession

The landlord did not request an Order for Possession at the hearing and as a result no such order is made.

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*, SBC 2002, c. 77.

Dated: December 20, 2013

Residential Tenancy Branch

