



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stonecliff Properties Ltd dba Stonecliff Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; his advocate; 3 agents for the landlord and their legal counsel.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

At the outset of the hearing the landlord identified that they believed the tenant had filed his Application for Dispute Resolution outside of the 15 day time limit after receiving the 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park.

The landlord submitted the Notice was issued on August 20, 2014 and that it was sent by registered mail to the tenant on August 21, 2014. Canada Post tracking information shows the registered mail was accepted on August 21, 2014 ; that the "recipient not located at address"; provided item being returned to sender and that it was eventually returned to the landlord on September 25, 2014.

The landlord also submits that another copy of this Notice had been sent to the tenant on September 22, 2014 with another letter that was sent to tenants on that date. The landlord submits that it should be deemed received by the tenant by September 27, 2014.

The tenant submits that he does not have any understanding why Canada Post would have not been able to locate him for the registered mail that had been previously sent, as his mailing address has not changed at all. The tenant also submits that, as the landlord is aware, he is out of town for extended periods on a very regular basis. He states that he did not receive the mail sent by the landlord on September 22, 2014 until he returned on October 5, 2014.

The tenant submitted his Application for Dispute Resolution seeking to cancel the 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park on October 17, 2014.

Section 42 of the Act allows a landlord to end a tenancy by giving notice that 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.

Section 42(4) of the Act allows a tenant to dispute a notice to end tenancy under Section 42 within 15 days after the date the tenant receives the notice. Section 42(5) states that if a tenant does not submit an Application for Dispute Resolution seeking to dispute the notice within 15 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit by that date.

I find that explanations provided by the tenant regarding receipt of the notice to be plausible and in the absence of any other explanation for Canada Post's tracking of the registered mail or the tenants receipt of the regularly mailed notice to be plausible. As such, I find the tenant received the Notice to End Tenancy on October 5, 2014 and he had until October 20, 2014 to submit his Application for Dispute Resolution to seek to cancel the Notice.

As the Application for Dispute Resolution was received by Service BC on October 17, 2014 I find the tenant has filed his Application within the required timeframes for consideration.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 42, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

The tenant has submitted into evidence a copy of a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park issued on August 20, 2014 with an effective vacancy date of August 31, 2015 that cites the landlord has all 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.

The landlord submits that the manufactured home park is over 50 years old and is in disrepair. They submit that since they have purchased the park they have attempted to

start necessary repairs but they have been met with hostility from many tenants, not including this tenant.

They submit that not only is the infrastructure old and deteriorating but the park does not meet the current park standards required under local bylaw 545. The landlord has wanted to specifically upgrade the water and sewer systems but that many residents will not allow them access to the individual sites to complete any work.

The landlord submits that as a result it is costing the landlord between \$10,000.00 and \$15,000.00 to operate the site while if the park was converted to green space the only costs would be taxes of roughly \$6,000.00.

The landlord submits that the intention is to remove all current infrastructures and maintain the property as a green space that eventually they may sell or develop the property at a future date.

The landlords also acknowledge that they had bid to purchase an adjacent piece of crown land in the hopes of converting that area to a manufactured home park but that they have recently been advised that all sales of crown land in that area are on hold for at least 2 years due to a recent Supreme Court of Canada decision.

The landlord submits they are not aware of any permits that may be required for the demolition of the park infrastructure.

The tenant submits the Notice should be cancelled for two reasons:

- The landlord does not have all necessary permits and approvals required by law; and
- The landlord does not intend, 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.

The tenant did not provide any indication that he was aware of any specific permits that would be required.

The tenant and his advocate questioned the landlord regarding the plans for the site and the landlord clarified that their intention is to convert to green space with no other intention; to remove abandoned trailers; to level the site; remove sewer and water lines that are leaking; return the site to natural land.

The landlord, in response to the tenant and his advocate, reiterated that at this time there is no long term plan for the site other than conversion to green space and even if they did obtain the crown land when it does become available and they intend to build a manufactured home park on it and to keep this as green space.

The tenant's advocate did not feel that this was a realistic plan for any landlord or business person. The advocate felt the landlord did not have to end all tenancies if the problem was merely hostility from certain tenants in regards to impeding the landlord's ability to make required infrastructure repairs.

The advocate submitted the landlord could have sought assistance from the Residential Tenancy Branch to enforce their ability to complete the repairs or to invoke Section 26.2 of the *Act* (tenant's obligations to maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site).

Analysis

Section 42 of the *Act* allows a landlord to end a tenancy by giving notice that 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.

I find the tenant has failed to establish that there are any permits or approvals required by law that the landlord is required to have in order to close the manufactured home park or to convert it to green space. As such, I find the tenant cannot rely on this as a reason to cancel the Notice.

Residential Tenancy Policy Guideline 2 states that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice, and no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End Tenancy.

The guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord has a dishonest purpose.

If good faith is called into question the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy and that they have no other purpose that negates the honesty of the intent or ulterior motive.

While the tenant has raised the issue of good faith, I find, based on the evidence and testimony of both parties, that there is no evidence before me that the landlord does not intend to convert the park to green space or that the landlord has a dishonest purpose or ulterior motive.

I find that it is insufficient to question the landlords' business decision as an indication of a reason to question good faith of their intentions. As such, I find the landlord has established that they intend, in good faith, to convert the current manufactured home park to green space.

Conclusion

Based on the above, I dismiss this Application for Dispute Resolution in its entirety. As a result, I find the 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park issued on August 20, 2014 with an effective vacancy date of August 31, 2015 to be valid and enforceable.

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: November 13, 2014

Residential Tenancy Branch

