Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNLC, OLC, FF

Introduction

This hearing dealt with joined tenants' Applications for Dispute Resolution seeking to cancel notices to end tenancy; an order to have the landlord comply with the *Manufactured Home Park Tenancy Act (Act)*, regulation or tenancy agreement; a rent reduction; and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; two agents and legal counsel for the landlord; the tenants' advocate and the lead applicant.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenants have applied to cancel a notice to end tenancy and a number of additional orders related to the interpretation of tenancy agreements, I find that the additional orders sought by the tenants are unrelated to the issue of the notice to end tenancy.

As such, I dismiss the portion of the tenants' Applications seeking orders to have the landlord comply with the *Act*, regulation or tenancy agreement; rent reductions and compensation, with leave to reapply at a future date, under separate Applications for each tenancy.

During the hearing I had advised the parties that I would only adjourn the additional matters to be re-heard a future date, however, upon further deliberation and review of the tenants' Applications for Dispute Resolution and submissions, I find that the issues raised are not suitable for adjudication as joint applications.

Each of the tenants who have submitted their Application are seeking remedies related to changes they submit the new landlord has made in relation to their individually negotiated verbal tenancy agreements with their previous landlord. As such, I find it would be cumbersome for an arbitrator to make rulings on the terms of 10 distinct verbal tenancy agreements and to determine any appropriate remedy for each of the complaints.

In addition, in the Application for Dispute Resolution submitted I note that the claim for these remedies is made only on the lead tenant's Application and not in any of the

subsequent joined Applications. As such, it is not clear that all tenants are seeking any remedy or even if they have the same dispute. And finally, I find that by failing to disclose the amount of rent reductions sought and the amount of compensation sought by the tenant(s) the tenant has failed to disclose full particulars of the dispute as required under Section 52(2) of the *Act*.

During the hearing, the landlord verbally requested orders of possession should the tenants be unsuccessful in their Applications.

Issue(s) to be Decided

The issues to be decided are whether the tenants are 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 *Act.*

If the tenants are unsuccessful in their Applications seeking to cancel the 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park it must be decided if the landlord is entitled to orders of possession for each site, pursuant to Section 48 of the *Act*.

Background and Evidence

The tenants have submitted into evidence copies of 12 Month Notices 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 for each of the subject park sites.

The landlord submits that the manufactured home park is 50 to 60 years old and is in disrepair. She submits 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 they recognized that to complete the required work there would be many safety concerns. To that end the landlord attempted to install safety fences and had arranged for escorted access using golf carts to each site while asking tenants to park outside of their usual parking areas.

The landlord submits that despite all of these arrangements some tenants refused to cooperate with the landlord's requests and requirements. The landlord stated that in addition some tenants threatened her contractors with many things including putting sugar in gas tanks of equipment on site. The landlord stated that as a result she

incurred additional costs because the contractor had to remove all equipment from the park each night.

The landlord states that as a result of the inability to complete this work and because she is not allowed, by the municipality, to allow new homes into the park until these repairs had been made she decided to close the park and convert it to a green space. She states she currently has no other plans for the park.

The landlords submit that as a result it is costing the landlords between $10,000.00 and $15,000.00 per month to operate the park while if the park was converted to green space the only costs would be taxes of roughly $6,000.00 per year.

The landlord submitted that the monthly costs include costs associated with various hearings through the Residential Tenancy Branch; mortgage; taxes; water and sewer costs; repairs; removal of abandon homes; filling potholes; cleaning the park; power demands; and repairing vandalism.

The landlord submits that her intention is to remove all existing infrastructure and maintain the property as a green space. The landlord also acknowledges that she had bid to obtain an adjacent piece of crown land in the hopes of converting that area to a manufactured home park but that she has 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 that after extensive research they have determined there are no requirements for any permits for the demolition of the park infrastructure.

The tenants submit 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 tenants did not provide any testimony or evidence confirming a need for any specific permits that would be required by local, provincial, or federal authourities.

The tenants advocate questioned the landlord regarding the plans for the site. The landlord clarified that her intention is to convert to green space with no other intention.

The landlord, in response to the advocate, reiterated that at this time there is no long term plan for the site other than conversion to green space and since there is currently no longer an opportunity to obtain the adjacent crown land or any guarantee that she

will be able to obtain the adjacent land after the moratorium has ended she is uncertain as to what her long term plans for the property will be.

While reference was made to all of the landlord's evidence the tenants' advocate relied substantially on issues raised in a letter dated October 6, 2014 from the landlord's engineer. The letter provides a chronological explanation of events related to the engineers work with the landlord. The letter provides the following conclusion:

> "Since the cessation of construction, we are informed that Stonecliff Properties has decided to close the existing manufactured home park, so that the existing park can be vacated and the reconstruction works resumed in a safe manor without any safety concerns. When the existing manufactured home park is closed, following a one year notice period, the remaining mobile homes can be removed and/or relocated, so that the required reconstruction works can proceed in all areas of the manufactured home park. With the removal of all existing mobile homes and appurtenances, the existing manufactured home park can be upgraded and renovated in accordance with the new District of Port Edward Manufactured Home Park Bylaw.
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> Summary
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> In summary, the planned upgrading and reconstruction of the existing manufactured home park has been a slow, inefficient and costly process as a direct result of the refusal of the existing tenants to facilitate the reconstruction process. The MHP reconstruction was possible with the existing tenants remaining in place. Now, with the planned closure of the manufactured home park, the construction process will be delayed, but will be safer and less costly in the long run." [Reproduced as written]

The tenants' advocate submits that this passage shows the landlord's intention is to not close the park but rather evict the tenants; complete the upgrades and then re-rent sites in the park.

The landlord's legal counsel submits that the closing paragraphs had not been vetted by the landlord prior to submission and that the statements made are conclusions drawn by the engineer and not reflective of the landlord's intent to close the park and convert it to green space.

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 that there is no evidence before me 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 tenants 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 I have considered all of the evidence and testimony submitted I find the letter from the landlord's engineer dated October 6, 2014 requires additional scrutiny. The tenant's advocate pointed to several paragraphs throughout the text of the letter and proposed that based on that text the landlord still had plans to upgrade the park once all tenants had been removed from the park.

For the most part, I find that the October 6, 2014 letter contains only a description of events that he has been involved with in relation to the landlord's purchase and ownership of the park, including events already described by the landlord that led to her decision to close the park.

However, in his closing paragraphs, as noted above, the engineer submits that once the park is closed and any remaining manufactured homes are removed the landlord can begin reconstruction of the park. As the engineer was not present at the hearing so that questions could be asked about what led him to these conclusions, I find that these conclusions are those made solely by the engineer and provide no insight into what are the landlord's true intentions.

I accept that the engineer's conclusions are accurate and that once the park is completely vacated the landlord *would* be able to complete construction of a new/upgraded park in a "safer and less costly" manner than it would have should the tenancies continue. However, I am not convinced that these conclusions are predicated on the landlord's plans for the park.

While the tenants have raised the issue of good faith, I find, based on the evidence and testimony of all parties, that there is no evidence before me that the landlord does not

intend, in good faith, to convert the park to green space or that the landlord has a dishonest purpose or ulterior motive.

For the reasons noted above, I dismiss the tenants' Applications for Dispute Resolution and I find the 12 Month Notices to End Tenancy for Conversion of Manufactured Home Park issued on August 20, 2014 to be valid and enforceable.

Section 48(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice.

As I have dismissed the tenants' Applications for Dispute Resolution and the landlord verbally requested orders of possession should the tenants be unsuccessful in their Application I find, pursuant to Section 48(1) the landlord is entitled to an order of possession for each of the sites named in this Application.

Conclusion

Based on the above, I grant the landlord orders of possession effective **August 31, 2015 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: December 12, 2014

Residential Tenancy Branch