Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST RESPONSE INDUSTRIAL LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNLC, LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park (the Notice) pursuant to section 40; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant presented almost all of the evidence related to their application, relying occasionally on assistance from their spouse. The tenant's advocates provided support for the tenant, but were not relied upon to any significant extent in the tenant's presentation of the tenant's position.

As the tenant confirmed that they were handed the landlord's Notice on May 11, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 14, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Both parties, including the tenant's spouse, interacted with one another during the hearing in a courteous and respectful manner. They also tried diligently at the commencement of this hearing to resolve this dispute in a way that could meet both of their needs. Unfortunately, they were unable to reach a settlement during the course of

this hearing; however, with more time and after seeking additional information there remains the possibility of their coming to some type of accommodation with one another.

Issues(s) to be Decided

Should the landlord's Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued against the landlord with respect to entry to this manufactured home pad rental site?

Background and Evidence

This tenancy for a manufactured home site on a multi-use 12 acre property commenced in June 1995. The tenant and their spouse own the manufactured home and have made a number of upgrades and improvements to the home, some of which were undertaken within the past year. The tenants gave undisputed sworn testimony that the most recent assessed value for property taxes for their home was $57,000.00. The current monthly pad rental for this site is $285.00, payable in advance by the first of each month.

The landlord purchased this multi-use property at the beginning of May 2018. The landlord gave undisputed sworn testimony that prior to entering into this purchase, the landlord required an assurance from the previous owner and the Regional District that a portion of the property could be used for a concrete batch plant. Once the landlord received confirmation that the current zoning of the property allowed for this type of use of the property, which now makes specific reference to a concrete batch plant as a permitted use, the landlord proceeded with the finalization of the purchase of the property.

The landlord initially believed that the three existing manufactured home sites on this property were not in a manufactured home park as defined under the *Act.* By the time of the commencement of this hearing, the landlord accepted that these long term rentals to tenants fell within the *Act* as the premises were considered a manufactured home park for the purposes of the *Act.* The landlord testified that there are two other manufactured home sites on this property, both of which have had manufactured homes located there for a very long time. The landlord testified that they have possession of one of these manufactured homes now, and have issued a similar 12 Month Notice to the owner of the other manufactured home.

The landlord plans to have the manufactured homes cleared from this property to make way for additional commercial uses of the property as are permitted through the current zoning established by the Regional District. Near the tenant's manufactured home site, the landlord has entered into an agreement with a firm that plans to operate a concrete batch plant. This type of plant is a secondary site, which would not require the construction of a building. The landlord gave undisputed sworn testimony that this type of plant has a silo erected on Allen blocks with machines present to mix gravel and load cement trucks that arrive at the site. Both parties agreed that the Regional District has confirmed with them that no building permits would be needed from the Regional District to arrange for the use of a concrete batch plant on this property.

The landlord maintained that any additional permits or approvals required to make use of part of the property as a concrete batch plant would not be required until the plant was in place and poised to begin operations. The landlord relied on conversations they had held with various government officials, none of whom were willing to put anything into writing, which the landlord could enter into written evidence. The landlord noted that the concrete batch plant would have to be in compliance with the Code of Practices for owners of concrete batch plants, which is monitored and approved by the BC Government. Two days prior to this hearing, the landlord spoke with a representative of the provincial government who had come to the property. Based on that conversation and with other public officials, the landlord understood that the only additional government approvals necessary would not be required until the plant was "set up" and ready to begin operations. The landlord testified that then, and only then, would the company that would be operating the plant need to obtain a Licence to Operate, which would allow operations to begin.

The landlord agreed that there would be a problem if the plant or its operations were encroaching on a riparian zone; however, they maintained that the plant would not encroach on any riparian zone.

The landlord maintained that the proposed concrete batch plant and its operation would stay away from areas affected by a BC Hydro easement and a Ministry of Transportation easement that run across part of the property. The landlord testified that there is an existing road that has been used for years, so did not believe there would be a problem in obtaining consent from the holders of these easements to modify the use of the existing road to enable concrete trucks to obtain concrete from the batch plant.

In a summary document that the tenant submitted a few days before this hearing, the tenant outlined a number of reasons why the tenant was seeking cancellation of the

Notice. Although this summary was presented well after the date for submitting evidence, the landlord confirmed that they had received and reviewed the document. As I found this document drew together many of the objections raised by the tenant in the tenant's extensive and somewhat disparate submissions, I accepted this late evidence as it assisted all parties in understanding the tenant's position.

In that summary document, the tenant identified the following remedies the tenant was seeking in their application:

1. *... (the "**Tenant**") seeks an order to set aside the 12-Month Notice to End Tenancy for Conversion of Manufactured Home Park (the **"Eviction Notice"**) on the following grounds:*

a. *Contrary to s. 42 of the Manufactured Home Park Tenancy Act, the Landlord has not obtained all the necessary permits and approvals required by law prior to issuing the 12-Month Notice to End Tenancy; and*
b. *The Eviction Notice was not issued in good faith;*

2. *The Tenant also seeks an order that to suspend or set conditions on the landlord's right to enter the manufactured home site...*

As noted above, one of the tenant's two reasons for seeking a cancellation of the Notice was that the landlord's Notice was not issued in good faith. This was because the tenant observed that legislative changes to the *Act* recently introduced in the BC Legislature could entitle the tenant to greatly expanded compensation should the landlord delay in issuing a Notice. In this regard, the landlord maintained that they were unaware of the impact that the changes would have on his proposal to convert the manufactured home park to other uses including the concrete batch plant until after the tenant raised this issue with him after the Notice was issued. At that point, the landlord testified that they consulted with their lawyer and confirmed that the current Notice would fall within the previous legislation, but a new Notice issued after the date when the legislative amendments gained Royal Assent would be reliant on the new legislative provisions. As the tenant did not dispute the landlord's testimony in this regard, I asked the tenant to focus on other aspects of their objection, primarily their claim that the Notice had been issued without having gained all of the necessary approvals.

In the summary document and in sworn testimony, the tenant outlined their position that the landlord did not have all of the necessary permits and approvals required by law as follows:

1. *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.*

2. *While the Landlord states he is not required to obtain a permit under the Environmental Management Act to build and operate a concrete batch plant, the Tenant submits that this does not mean no permits are required at all. The Tenant has provided evidence to show that there are 3 restrictive covenants, an easement, and a right of way registered against the title of the property. (See Tenant's evidence, under "Land Title Act").*

3. *The Tenant submits that the location of her manufactured home sits within the covenants registered against the title of the property.*

4. *The Landlord must obtain written agreement from the holder of these charges in accordance with s. 219 of the Land Title Act in order for the covenants to be discharged or modified.*

5. *The Tenant also understands that the Landlord is required to apply to BC Hydro for "compatible use" approval if he intends to develop on or adjacent to BC Hydro's "right of way" that is registered against the title of the property.*

6. *The Tenant has spoken to a representative from BC Hydro, who confirmed that the Landlord cannot put any roadway or equipment on or through the hydro "right of way" without a compatible use permit and a section 219 covenant permit, which specifically covers the right of way through which the creek runs.*

7. *Further, the Tenants submit that the land which the Landlord intends to develop is covered under the Riparian Act, and is additionally covered under the SCRD covenant registration #...*

8. *The creek by the property is protected by the... Regional District covenant (see Tenant's evidence, under Land Title Act). As such, the landlord is prohibited from making any changes to or around the creek. (which is already taking place)*

9. *A Riparian Assessment is required prior to any development on any part of the property, due to its potential effects on the creek and surrounding habitats.*

According to the Riparian Areas Regulation Assessment Methods, a Qualified Environmental Professional (QEP) is required to provide an opinion in an Assessment Report that a proposed development will not result in a harmful alteration of riparian fish habitat.

10. *The Tenant understands that First Nations (... Band) consultation is required prior to any development on any part of the property where there is potential transfer risk or impact on a habitat, especially a fish habitat.*

11. *The Landlord has not provided any evidence that any of these permits or approvals have been obtained, or that the covenants registered against the title of the property have been modified or discharged.*..

At the hearing, the tenant gave detailed sworn testimony regarding most of the above allegations. The tenant compared the documents they had provided with those entered into written evidence by the landlord. The tenant gave undisputed sworn testimony that a letter entered into written evidence by the landlord noted that the firm with whom the contract to create and operate the concrete batch plant had been entered into had advised the landlord that they needed a minimum of two acres to launch this endeavour. At the hearing, the tenant reviewed maps, covenants and easements, including the landlord's own diagram of the proposed site. The tenant asserted that the proposed operation could not occupy a two acre footprint without impinging upon at least one and likely more of the easements and covenants that would require approval by a range of public bodies. The tenant noted that their own 0.4 acre manufactured home pad rental site had been "grandfathered" to adhere to the existing set back restrictions from a streambed that would regularly run within about 25 feet of that pad site. Based on the tenant's discussions with the bylaw officer for the Regional District, the tenant understood that a proper riparian assessment would need to be undertaken in order to accommodate a change in use of the property this close to the streambed to the proposed concrete batch plant. The tenant also maintained that the landlord's diagram located the proposed concrete batch plant on top of the streambed. The tenant gave undisputed sworn testimony that the landlord proposed filling in what he described as "a ditch" to accommodate his plans for the concrete batch plant.

The parties presented conflicting evidence with respect to the status of the streambed in question. The tenant submitted copies of covenants labelling the streambed as "Unnamed Creek", which the tenant maintained as a recently as a few years ago was a six foot wide streambed. The tenant said that an upstream landowner had diverted this stream course without authorization to do so, and that this had led to this becoming a

dried out streambed. The tenant claimed that a number of government bodies are actively involved in forcing the upstream landowner to remove the stream diversion and return this stream to its traditional course which runs into a named creek, which flows into the ocean. The tenant gave an undisputed estimate that there are between four to six culverts that have been constructed over the years on this creek. The landlord did not dispute the tenant's testimony with respect to the actions that government bodies are involved in as the landlord maintained that the former stream has been running across the other side of the road for a number of years. The landlord believed that the "Unnamed Creek" may have been misidentified on the covenants supplied by the tenant, as he thought it was likely an incorrect reference to an upstream part of the named creek that led into the ocean.

The tenant disputed the landlord's claims that the easements over this property held by BC Hydro and the Ministry of Transportation would be minor obstacles to overcome. The tenant testified that she had spoken with a BC Hydro official on June 26, 2018, who assured her that any crossing of the BC Hydro right of way would require the proper permits and approvals to be obtained. The tenant maintained that the existing road referred to by the landlord reduced to a narrow dirt track near the portion of the property proposed for the concrete batch plant. The tenant claimed that specific permission. a section 219 covenant permit under the *Land Title Act* would have to be obtained to secure Ministry of Transportation approval to access the Ministry of Transportation right of way and to upgrade to accommodate use by concrete trucks.

The tenant also read into the record the contents of a June 21 email they had received from the bylaw officer from the Regional District, which touched upon the mapping and riparian assessment issues. As the tenant obtained this email after the deadline for submitting written evidence had expired, they were unable to enter this document into written evidence. However, as I find the contents of that email, as read into sworn testimony by the tenant, instructive, I have reproduced the tenant's account of that email as follows:

> *I have attached three maps which may help you. One shows generally where the creek runs (thin blue line). But I have to caution you, that those maps are not necessarily 100 % accurate, but they are close. The other two maps show development permit areas which are coloured green. They tend to follow the general route of the creek. Any development in those areas would require a development permit which may also require an environmental assessment. You may want to take some pictures and rough measurements of where he is*

> *developing and come in and show them...for their opinion on development permits.*

The tenant's spouse testified that the tenants are very aware of the multitude of obstacles facing any proposed additional commercial development on the portion of the property near them because they had looked into the possibility of purchasing the property themselves. The tenant's spouse claimed that they had discovered that the multiple easements and covenants on the property render it very difficult, if not impossible, to make more effective use of the property without obtaining a range of approvals from public bodies that would be hard to obtain.

The tenant's advocate's only substantive observation during this hearing was that the section 219 covenant permit was a standard requirement to traverse any Ministry of Transportation rights of way.

Analysis

Although a significant portion of the overall property is already being used for uses separate from a manufactured home park, there is little doubt that the existing three pad rental sites do qualify this property as a manufactured home park for the purposes of the *Act*.

Section 42(1) of the *Act* reads as follows:

> ***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.*

Although this is the tenant's application, once a tenant applies within the 15 day time limit to cancel the Notice, the burden of proof rests with the landlord to demonstrate that the landlord's Notice complies with section 42(1) of the *Act*.

I should first note that I am somewhat surprised to have learned that no building permit would be required from the Regional District for the conversion of part of this property to a concrete batch plant. It also seems somewhat surprising that approvals would only have to be secured immediately prior to consideration of the issuance of a Licence to

Operate. However, both parties agreed that they received similar information from the Regional District, so I accept that this is so.

Based on the evidence before me, I accept that the landlord does in good faith intend to convert a significant part of this property to use as a concrete batch plant. While the tenant has questioned the landlord's good faith in the timing of the issuance of the Notice, I find no reason to disbelieve the landlord's sworn testimony that the landlord was unaware of the changes to the legislation surrounding compensation for the issuance of section 42(1) Notices to End Tenancy until after the tenant raised concerns with them.

The issue in dispute thus narrows to whether the landlord had at the time the Notice was issued on May 11, 2018 "all the necessary permits and approvals required by law" to convert the manufactured home park to non-residential use.

As outlined above, the parties presented considerable sworn testimony in this 108 minute hearing and submitted an impressive array of written evidence in support of their respective positions. At different times in this hearing, both parties expressed similar frustrations in being unable to receive written responses or replies from the public officials they had consulted in seeking information about this matter. The relatively short time frame between the tenant's launching of their application and the date of this hearing likely compounded this situation as does the understandable reluctance of officials to make definitive determinations without a field visit and careful examination of the various documents that pertain to these issues.
At one level, both parties presented a great deal of written evidence that provided useful background upon which a decision can be made. Despite the many maps, covenants, Codes and other documents presented by the parties, I find that far too much of the arguments presented by both parties relied on their own handwritten diagrams, their own interpretation of the locations of various important features (e.g. the location of the Unnamed Creek, roads, the plant itself, etc.,) and their accounts of recent conversations they claim to have had with various public officials.

Information provided over the phone by public officials to one of the parties with a vested interest in the matter before me is not nearly as convincing as written evidence, complete with a copy of the question or request raised by the party contacting the public official. A response provided by a public official over the telephone is dependent on how a telephone request is phrased or whether the person making the telephone request has been fulsome and accurate in their description of the nature of the request.

As the testimony provided by the parties is second hand testimony, it is also very possible that the party reporting the contents of their telephone call with a public official may have genuinely heard the response they wanted to hear. They also may have entered into sworn testimony only those portions of their conversations that were supportive of their positions.

The more nuanced nature of reports of these types of interactions between public officials and members of the public involved in such matters is somewhat revealed in the more cautious approach that was contained in the sole written feedback that any of the public officials provided, the email from the bylaw officer from the Regional District. For the most part, the tenant is correct in asserting that this email is generally supportive of her position. However, even this email, which the tenant read into the record of this hearing, is cautious with many caveats expressed and dependent upon where the development is actually located. This email is not nearly as definitive as it could be, and could, in fact support the landlord's position, depending on the accuracy of the maps and the actual location of the streambed.

After reviewing many documents, covenants and maps, much of the tenant's position narrowed to a request for reliance on accepting that their interpretation of the location of the proposed concrete plant from the landlord's diagram and the tenant's interpretation of the location and permanency of the streambed close to their pad site. Similarly, the landlord offered only anecdotal sworn testimony to refute some of these claims, but did not dispute the tenant's claim that the proposed concrete batch plant was to be placed over the top of what he described as a ditch, which he would have to cover in order to locate there. While the tenant provided dates of their various recent phone conversations with public officials, for the reasons outlined above, I find this type of oral testimony of less value than written statements from officials who had examined the circumstances and could offer an informed opinion for the record. I find the landlord's sworn testimony of their conversations with public officials was even less specific, and subject to similar concerns.

I have reservations about the evidence presented by both parties with respect to the positions they have taken in this matter. The burden of proof in such matters rests with the landlord. In this case, the tenant has raised many concerns that call into question the extent to which the landlord has truly demonstrated that the landlord has obtained all of the permits and approvals necessary to undertake the conversion of this part of the manufactured home park to use as a concrete batch plant. While the landlord may indeed be correct in assuming that BC Hydro and the Ministry of Transportation would have no objections to the proposed use of the property, I find on a balance of

probabilities that the landlord has not demonstrated to the extent required that the landlord has obtained all of the permits and approvals necessary prior to issuing the Notice. The status of the Unnamed Creek is also very much at issue and may very well hinder the landlord's plans if this remains a water course requiring proper setbacks and potentially an environmental assessment. Again, I find that the landlord has not demonstrated to the extent required that these approvals are unnecessary and that his Notice has fulfilled all of the requirements of section 42(1) of the *Act*. For these reasons, I allow the tenant's application and set aside the Notice.

As the landlord had no objection to the issuance of an order requiring them to provide the tenant with 24 hours written or emailed notice of any requirement the landlord may have to enter the manufactured home site, I issue an order requiring the landlord to provide this notice to the tenant. The tenant agreed that written or emailed notice would be sufficient for the tenant's purposes.

Conclusion

I allow the tenant's application to cancel the Notice, which is now set aside and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order the landlord to provide the tenant(s) with 24 hours notice by email or in writing should the landlord need to access the manufactured home pad rental site.
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 1, 2018

Residential Tenancy Branch