Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0545094 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

On June 27, 2018 a hearing was held to deal with three joined Applications for Dispute Resolution filed by tenants to cancel the *12 Month Notice to End Tenancy for Conversion of Manufactured Home Park* served upon them on April 12. A decision was issued on July 9, 2018 whereby the Arbitrator upheld the Notices and issued an Order of Possession for each of the sites with an effective date of April 30, 2019.

The tenants made an Application for Review Consideration and on July 18, 2018 the reviewing Arbitrator ordered a new hearing on the basis the tenants provided new and relevant evidence that was not available at the time of the original hearing. The tenants were instructed to serve the landlord with a copy of the Review Consideration decision and notice of this review hearing. Both parties were instructed to serve each other and the Residential Tenancy Branch with any evidence they intended to rely upon at the review hearing.

On September 21, 2018 the review hearing commenced. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

The landlord is a corporation and that was represented by an agent and a lawyer. Reference to landlord in this decision includes the corporation and the landlord's agent. There were multiple tenants appearing at the hearing with respect to the three Notices under dispute. I have referred to the tenants by the site they rent where necessary or appropriate to differentiate between the tenants.

I explained the review hearing process to the parties, and more specifically, that I am tasked with confirming, varying, or setting aside the original decision of July 9, 2018. The parties indicated that understood this and the parties were given the opportunity to ask questions about the process.

I explored service of documents as ordered and authorized in the Review Consideration decision. I was satisfied that the tenants had sufficiently served the landlord with notification of the review hearing, including a copy of their Application for Review Consideration. I was also satisfied that the landlord served each of the tenants with the landlord's responses to the tenants' request for review hearing.

The tenant of site 3 stated that she had also submitted/served a few letters for the review hearing. The landlord confirmed receipt of these letters; however, at the time of the review hearing I was unable to locate the letters. The tenant stated that she authored the letters so I instructed the tenant to provide me with testimony in lieu of the letters. After the teleconference call ended I located the subject letters and I have read them and considered them in making my decision.

The tenants of site 7 indicated the spelling of the male tenant's first name was incorrect on the original decision and they requested that it be amended to reflect the correct spelling. There was no objection by the landlord. Accordingly, I have reflected the corrected spelling of the tenant's name in the style of cause of this decision.

The tenants pointed out that the addresses appearing on the Notices of Hearing prepared by the Residential Tenancy Branch contain an incorrect street number in the address of the rental sites; however, I confirmed that the original decision and the review consideration decision contained the correct address. I also confirm that this decision contains the correct street address.

I also noted that the tenant's Application for Review Consideration indicated the names of two tenants, one rental site number, and one file number as being the subject of review consideration yet all the tenants for all three rental sites were present for this review hearing. All of the tenants were of the position they sought review of the original decision issued for each of their rental sites. The tenants explained that the Application for Review Consideration does not have sufficient space to indicate all of their names, and site numbers and that they had confirmed with Residential Tenancy Branch staff that only one Application for Review Consideration was necessary since there was one "parent" file and the other two files were joined to it. As such, they indicated the "parent" file in making their Application for Review. I noted that in the landlord's written response to the review hearing the landlord had identified all three rental sites and the tenants for all three rental sites as being subject to this review hearing. The landlord had also served all of the tenants for all three rental sites with its responses. I confirmed with the landlord that there was no objection to considering all three rental sites as being the subject of this review consideration decision.

On another procedural matter, the landlord's lawyer noted that this was a review hearing to address the new and relevant evidence submitted by the tenants and suggested the submissions and evidence already heard at the original hearing were not for reconsideration. For the sake of clarity, the Arbitrator reviewing the tenants' Application for Review Consideration ordered a new hearing and did not limit the scope of the review hearing. Accordingly, it is before me to review and consider all submissions and evidence submitted by both parties for the original hearing and the review hearing, or ordered.

I have been provided a considerable amount of submissions and evidence, all of which I have considered; however, with a view to brevity in writing this decision, I have only summarized the parties' respective positions and the most relevant evidence.

Issues to be Decided

Should the original decision of July 9, 2018 be confirmed, varied or set aside?

Background and Evidence

The manufactured home park has 15 sites identified on its site plan; however, six sites are currently vacant or being used as septic fields, leaving only 9 sites in the park that have manufactured homes located on them. The landlord seeks to close down the park in two phases. The first phase is the area containing sites numbered 1 through 10 ("phase 1"). There are six sites containing manufactured homes in phase 1and the landlord's associated company owns two of manufactured homes leaving only four tenant-owned manufactured homes affected by the closure of phase 1. The tenants of three tenant-owned manufactured homes located on sites #3, #7 and #9 disputed the Notices to End Tenancy served upon them.

The tenancy for the tenants occupying site #3 started in 1997 and the tenants are required to pay rent of $150.00 on the first day of every month. The tenancy for the tenants of site #7 started in approximately 1994 under an oral agreement with a former landlord; however, a written agreement was executed in 2009, and the tenants are currently required to pay rent of $254.88 on the first day of every month. The tenancy for the tenants of site #9 started in 2007 and the tenants are currently required to pay rent of $324.35 on the first day of every month.

The landlord served the tenants appearing before me with a *12 Month Notice to End Tenancy for Conversion of Manufactured Home Park* dated April 12, 2018 requiring them to vacate their sites by April 30, 2019 ("the Notices"). The reason for ending the tenancies, as stated on the Notices is:

- 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.

Landlord's position

The landlord submitted that the landlord seeks to close the park and leave the land vacant for the foreseeable future and that permits and approvals are not required to do this. The landlord explained that the reason for closing the park in two phases is due to the costs of closing the park, including compensation payable to the tenants and cleaning up the property after the tenants vacate.

The landlord submitted that the park has been operating at a loss since the landlord purchased the property in 2011 and the landlord cannot be expected to continue to operate the park at a loss. The landlord submitted that when the property was purchased from the former owner, the landlord relied upon the seller's representations with respect to operating costs and condition of the property as there was heavy snow cover at the time; however, after the snow melted the landlord found issues with the septic systems, among other issues. The landlord submitted copies of documents that appear to be income statements for the park for the years of 2014 through 2017 that reflect annual losses between $17,000.00 and $24,000.00 (rounded). The landlord also provided a breakdown of rents received for all of the occupied sites to demonstrate that the annual income statements include site rental received from the associated company that owns three of the manufactured homes.

The landlord submitted that it had made an Application for Additional Rent Increase in 2012 in an effort to raise the rents but the application was dismissed.

Also a major factor in the landlord's decision to close the park is that the infrastructure, for the most part, is approximately 45 years old and not built to last this long, is non-conforming with current standards, and on the brink of failure. The cost to replace the old infrastructure with new infrastructure that would comply with current standards is very costly. As an example, the landlord provided an estimate for a septic system that would service one manufactured home as being approximately $15,000.00; however, the landlord submitted that some sites are not even capable of accommodating a new septic system given the size of the manufactured homes and accessory buildings located on the sites.

To illustrate: there were only 8 septic systems for 15 sites. When the septic system for site #9 failed, the new system was installed in 2008 on site #8 leaving site #8 un-rentable. Similarly, site #14 uses site #13 for a septic field and site #12 uses site #11 for a septic field meaning the property is not capable of accommodating 15 homes for this reason alone and limits the amount of income that may be derived from the park.

In describing the old infrastructure, the landlord also referred to old galvanized iron water line(s) that have only one shut off for the entire park that has also experienced rusty coloured water in 2017and is subject to failure at any time. The landlord also submitted that the current electrical system should be shut down, as opined by an electrician. Further, the roadway is in poor

condition with numerous deep and wide depressions from construction that does not take into account frost heaves.

The property is a legal but non-conforming manufactured home park. As a result, the landlord is unable to bring in manufactured homes to the park or relocate manufactured homes that are already in the park to other vacant sites due to the use of septic fields described above but also other inadequate servicing. The landlord submitted that in order for manufactured homes to be moved to currently unused sites, the septic system(s) would require upgrading and the by-laws require many other things that do not exist currently, such as: a concrete foundation, roof structures to carrying the significant snow load in the region; storage area for tenants; and, a playground or park area within the manufactured home park.

The landlord also submitted that the current use and zoning is inconsistent with the official community plan for city and the city would rather see the park gone. The park is located to next to property now used as a ski destination and high-end developments.

Given the limited earning capacity, the on-going losses, and the impending failure of the infrastructure which would require a significant capital investment, the landlord has decided to cease operating a manufactured home park on the land and leave the land vacant for the foreseeable future. The landlord confirmed that the landlord has no intention to make a new manufactured home park on the property; that the landlord has not sought any building permits or redevelopment approvals or rezoning permits with the city. The landlord acknowledged that at some point the property is likely going to be redeveloped but submitted that doing so would require significant resources and that is not in the foreseeable future.

The landlord pointed out that even the tenants characterized the property as a “money pit” and acknowledged the expenditures incurred to keep the park running as seen in communications they have written.

The landlord also submitted that it has offered the tenants compensation equivalent to 24 months’ of rent which is well over and above what the Act required. Included in the landlord’s evidence was a letter that appears to have accompanied the Notices. The letter indicates that the landlord was offering the tenants the equivalent of 24 months of rent if they vacated their site by October 31, 2018 and 18 months of rent if they vacated their site by April 30, 2019.

As for the new fiber optik lines that were being installed after the previous hearing, the landlord explained that a large cable/internet provider came the city a few years ago with a purpose to replace an inferior system with their new fiber optik cables and permission was given to the service provider, or their contractors, to replace the old copper lines with new fiber optik years ago. The service provider was replacing old copper lines in all the multiple unit properties, even other manufactured home parks that are vacant. The landlord submitted that it was the service provider, or its contractor, who determined the timing of the replacement of the old lines, not the landlord. The landlord instructed the contractor to not bother installing new lines to the vacant

lots in the park but the contractor's response was that they were required to replace all old copper lines. As for the occupied sites, the landlord stated that those tenants would benefit from the new fiber optik lines as the old system is slated to shut down in October 2018 and their tenancies are expected to last until April 30, 2019. The landlord provided documentation to demonstrate the cable/internet provider came to the city a few years ago to replace the old system and to demonstrate that it is the service provider who was responsible for the timing of installing the new fiber optik lines.

In addition to verbal testimony, the landlord provided a large organized written submission including relevant case law, income statements, estimates and opinions regarding the infrastructure, and other documents and evidence in support of its position.

Tenants' positions

The tenants were of the position that the landlord, and its associated companies, are land developers and the landlord's true intention is to redevelop the property. The tenants appear to acknowledge that the end of the manufactured home park is in the foreseeable future but they seek compensation that is more fair and equitable such as that payable to tenants in these circumstances under the recently changed law. The tenants are of the belief that the landlord is unfairly targeting them and has referred to them as "hillbillies". Included in the evidence were copies of text messages that include the term "hillbillies". Following that text though was another text sent stating the landlord was not referring to them as hillbillies but that the autocorrect changed the word.

The tenants submitted that the landlord's evidence concerning the impending failure of the infrastructure is not sufficiently supported and pointed to a vague letter written by an electrician. Also, the tenants submitted that their septic systems are working fine.
The tenants of site #3 acknowledged they had a portable toilet brought in during the past summer but explained it was to accommodate a large number of family members that had come to visit on a long weekend. The tenant of site #7 stated that they have had no issue with their septic system and that is evidenced by the fact that their septic tank has never been pumped out. The tenants of site #9 pointed out that their septic system was replaced more recently in 2008 and is not in danger of failing. With respect to rusty coloured water that appeared in the parks water system, the tenants acknowledged that they had made a complaint about the water but explained that it was attributed to heavy equipment operating nearby and the water subsequently cleared up.

The tenants of site #3 pay only $150.00 in rent per month. The tenant pointed out that the rent was set at that rent pursuant to a previous dispute resolution proceeding but that the landlord failed to include their site when the Additional Rent Increase application was made and the landlord has not issued annual rent increases which would have reduced the landlord's operating losses somewhat. The tenants of site #3 are of the belief the landlord has intentionally left their rent low so that they get very little compensation when the tenancy ends.

The tenant of site #7 alluded to the landlord paying too much for the purchase of the park and now the tenants are paying for that decision.

The tenants also questioned amounts appearing on the income statements including whether the rent for the sites containing the manufactured homes owned by the landlord's associated company are accounted for. Also, there is an expenditure for snow clearing on the income statements, but the landlord's agent does the snow clearing by attaching a plow to his truck.

The tenants were of the position the landlord, or its agent, are not suffering financially as the landlord claims considering the landlord, or its associated companies have purchased other properties. The tenants suggested the landlord's income statement is distorted since is reflects only one company and fails to take into account the financial status of all of the associated companies together.

The tenants were of the position that installing the high speed fiber optik cables is inconsistent with returning the property to "raw" land as described by the landlord. The tenants pointed out that the definition of "raw" land means land with no improvements whatsoever and is different than vacant land.

The tenants submit that it does not make sense to close the park in phases since it means the landlord is going to go with less rental income while still operating a manufactured home park.

The tenants testified that the closure of the park is devastating for them as it means losing their homes and rent they will pay elsewhere will be much greater.

As an alternative position, the tenants requested that if the Notices are upheld, the tenants be permitted more time to vacate their sites as there may be snow on the ground in April. The landlord responded by stating that usually the snow has melted by April but the landlord's agent deferred to my discretion in setting the vacate date.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove that the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is the civil standard which is: on the balance of probabilities.

With respect to the relevant legislation, the tenants referred to changes to the legislation that came into effect shortly after the landlord issued the subject Notices. The Notices were served on April 12, 2018. On June 6, 2018 changes were made to the legislation to significantly increase the amount of compensation payable to tenants affected by a manufactured home park

closure. The changes to the legislation were not retroactive and apply to a 12 Month Notice to End Tenancy issued after June 6, 2018. Accordingly, the Notices before me are subject to the legislation as it was written before June 6, 2018 and I am bound to apply the legislation that was in effect when the Notices were served to the tenants before me.

I have confirmed that the Notices before me are in the form approved at the time of service, includes the names and addresses of the tenants and the landlord, the landlord's signature and date of signature, and the stated effective date complies with the notice requirements.

The reason for ending the tenancy, as indicated on the Notices served upon the tenants, is provided under section 42 of the Act. Where a manufactured home park is set to close, section 42(1) is the relevant provision in the Act that permits closure. Section 42(1) permits a landlord to end a tenancy where:

> **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.

In this case, I heard that the landlord intends to cease operating the manufactured home park by closing the park in two phases. The subject of this proceeding is the closure of phase 1 which encompasses sites numbered 1through 10 of the 15 site property, or 6 occupied sites of the 9 occupied sites in the park. Upon review of the site plan for the park, and considering these ratios, I accept that closing phase 1 represents a "significant part" of the manufactured home park as required under section 42(1).

The landlord submitted that it will return the land in phase 1 to unoccupied vacant land while continuing to operate the other portion of the park for as long as financially feasible. I accept that leaving the land in phase 1 as unoccupied and vacant is "non-residential or a residential use other than a manufactured home park" as required under section 42(1).

The landlord submitted that closing the park, or a significant part of the park, and leaving the land vacant does not require permits or approvals. The landlord pointed to *Howe v. 3770010 Canada Inc., 2008 BCSC 330* ("the Howe decision") where the court upheld the Arbitrator's decision to uphold Notices to End Tenancy issued under section 42 of the Act and found, in part:

> *It follows that "approvals" 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.*

The tenants did not dispute the landlord's assertion that approvals or permits are not required to close a significant portion of the park and leave the land vacant. The landlord submitted that it has not applied for or obtained any building, rezoning or redevelopment permits with the city and there was no evidence before me that would contradict that assertion. Rather, the tenants' focus appears to be on the eventual use of the land which would likely involve redevelopment. As I stated during the hearing, most land within city limits will eventually be developed or redeveloped and I find it would be unreasonable and premature for the landlord to have to address eventual use of the land when permits or approvals to build, rezone or redevelop have not even been applied for. I also note that my finding is consistent with the decision that was the subject of the Howe decision, which was upheld by the court, and included a finding that the landlord is not required "to have an intention – good faith or otherwise – for the eventual use of the land."

Under section 42(5)(b) of the Act, and in effect when the Notices were served, when a manufactured home park tenancy ends, it is the tenant that is required to leave the rental site vacant. This would include the removal of the tenants' manufactured home and other possessions. Moving or demolishing a manufactured home or other accessory building erected by the tenant would likely require a permit but that would be upon the tenants to obtain, not the landlord. Depending on the condition the sites are left when the tenants leave may require landlord to demolish buildings left behind but I find it would be premature to require the landlord to obtain a permit for demolition before the Notices were issued.

Although the parties spent a great deal of the hearing time making submissions concerning the landlord's operating loss and the status of the infrastructure it is important to note that suffering or anticipating a financial loss is not a specific criteria the landlord must prove in order to close a park. A landlord may decide to close a manufactured home park for various different reasons. Financial losses that are on-going or anticipated may be a motivation for closing that park and I find a landlord's motivation speaks to the landlord's good faith intention which I will address below.

With respect to the infrastructure, the tenants questioned the landlord's assertion that the infrastructure is on the brink of failure. While the systems may be currently functional, I accept the landlord's evidence that the infrastructure is very old given it was installed in the 1970's for the most part with some exceptions, and is non-compliant with current building standards and by-laws. Given its age, and possible temporary or non-compliant repairs of the past, I accept the landlord's evidence that the current infrastructure is, for the most part, at the end of its useful life. I further find that it would be unreasonable to require the landlord to wait for the systems to actually fail before giving the tenants a 12 Month Notice since it that takes at least 12 months for such Notices to take effect.

As for the income statements provided by the landlord, I note that the statements appear to be prepared by a non-professional accountant and the amounts are not corroborated by receipts, invoices, statements or the like. The tenants questioned whether the reported rental income

includes the rent the landlord receives from the manufactured homes owned by the landlord's associated company; however, I note that included in the rent breakdown the landlord did include pad rents for all occupied sites including the sites occupied by a manufactured home owed by the associated company. The landlord, as the owner of the land, would not be required to include the rent received for the manufactured homes owned by other entities, including an associated company. Rather, the landlord would only be entitled to and expected to report pad rent from the associated company. The tenants also questioned the expenditure for snow clearing, claiming the landlord's agent merely attaches a snow plow to his truck; however, I find this assertion is not inconsistent with the landlord reflecting an expenditure for snow clearing since the labour is being supplied by an individual (not the corporation) and machinery generally come at a cost.

While the tenants question the logic of closing the park in phases which would result in less rental income for the landlord while it continues to operate the second phase, I find the landlord provided an explanation for doing so that is within reason. The landlord will undoubtedly face costs to close the park, including compensation payable to tenants and clean-up of the property, and I accept that doing so in phases may be more manageable financially. Also of consideration is that without occupied sites in phase 1 the landlord would not have the costs of maintaining or replacing infrastructure that fails or is about to fail for those sites.

As for the installation of new fiber optik cabling that replaces for the old copper lines, I find the documentation provided by the landlord sufficiently demonstrates that it was the cable/internet provider, or its contractor, the determined when the new cabling would be installed and not the result or indicative of the landlord preparing to redevelop the property.

In light of the above, I find I am satisfied that the landlord's intention to close phase 1 of the park is based a reasonable business decision the landlord is entitled to make having taken into account on-going operating losses, the anticipation of significant repair costs if the park remains open, and the costs to close the park rather than retaliation or some other ulterior motive. Therefore, I find the landlord has satisfied me that it has a good faith intention to close phase 1 of the manufactured home park.

While I accept the closure of this phase 1 will have a significant impact on the tenants, especially financially, their personal circumstance is not a basis to prohibit the landlord from closing this portion of the park and require the landlord to continue operations.

Based on all of the foregoing, I find I am satisfied the landlord has demonstrated that the Notices should be upheld and the tenants' applications dismissed. This decision is consistent with the decision issued originally on July 9, 2018 and I confirm that portion of the original decision.

The tenants requested that the tenants be given more time to vacate their sites if the Notices are upheld, citing snow as being the reason for their request. The landlord left the vacate date decision to my discretion. To accommodate the tenants concerns about snow, I permit the tenants one additional month to vacate; however, they are required to pay rent for that additional month. Accordingly, I vary the original decision to reflect an end of tenancy date and an Order of Possession for each of the sites that is effective at **1:00 p.m. on May 31, 2019**. The Orders of Possession issued with this review hearing decision replaces the Orders of Possession issued with the July 9, 2018 decision.

The original decision provided that the landlord confirmed it would compensate the tenants the equivalent to 24 months of rent and the Arbitrator made that binding upon the landlord. The landlord did not revisit this issue during the hearing before me. Accordingly, I do not vary or set aside that portion of the original decision except to take into account the varied date for the end of tenancy. I order the landlord to pay to the tenants the equivalent of 24 months' rent on or before May 31, 2019.

Conclusion

I confirm the original decision to uphold the Notices to End Tenancy and dismiss the tenants' applications. I also confirm that the requirement for the landlord to pay the tenants the equivalent of 24 months' of rent. I have varied the effective date the tenancies shall end and the date the landlord is required to pay the tenants' their compensation to May 31, 2019. The landlord is provided Orders of Possession for each of the subject sites that are effective at 1:00 p.m. on May 31, 2019 that replace the Orders of Possession issued on July 9, 2018.

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: October 3, 2018

Residential Tenancy Branch