



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M. Allen Logging Co. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNLC FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park (12 Month Notice) pursuant to section 42; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The landlord was represented by their counsel MB as well as the landlord's agent, PA, in this hearing. The tenants attended the hearing with, and were represented by, their counsel TM. As the outset of the hearing, the names of the tenants were confirmed, and as neither party was opposed, the tenants' application was amended to include their names. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application. In accordance with section 82 of the *Act*, I find that the landlord was duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 81 of the *Act*.

As the tenants confirmed receipt of the 12 Month Notice dated January 21, 2020, I find that this document was duly served to the tenants in accordance with section 81 of the *Act*.

Issues

Should the landlord's 12 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord in this dispute operates a logging company, and the tenants reside on the 12 acre property in their manufactured home. The tenants have been residing there since August 1998, with RH being a former employee of the landlord. The tenant's employment ended in 2007, but the tenants continued to reside on the property, paying the landlord \$100.00 per month in pad rental.

The landlord, in their evidentiary materials, provided a diagram of the property including photos of the various housing structures on it. The landlord testified that the primary purpose of this property was not to be operated as a manufactured home park, but to provide housing for employees of the logging company, as well as family members, many of whom are also employed by the company. The landlord's sons reside on the property in various buildings, with the grandson currently residing with his father in one of the homes. The landlord testified that the tenants in this dispute are the only tenants on the property under the *Manufactured Home Park Tenancy Act*.

The landlord issued the tenants a 12 Month Notice to End Tenancy on January 21, 2020 in order for the grandson, also employed at the logging company, to move there, either into a manufactured home or a new home. The landlord testified that the grandson would not be paying rent, and that ending this tenancy would essentially end the landlord's role as a landlord under the *Manufactured Home Park Tenancy Act*. The landlord testified that the land was acquired in 2008 before the current zoning bylaws were enacted in 2012, and that no permits are currently required or can be obtained.

Analysis

Section 42 of the *Act* provides that upon receipt of a notice to end tenancy the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they, in good faith, are ending the tenancy in order to convert all or a significant part of property to a non-residential use or a residential use other than a manufactured home park, and have the necessary approvals or permits to do so.

Residential Tenancy Policy Guideline #2b: Good Faith Requirement When Ending a Tenancy states:

“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 had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

RTB Policy Guideline #2b also addresses the requirement of having all the permits in place before a Notice under section 42 (1) of the *MHPTA* is issued to the tenants.

B. PERMITS AND APPROVALS REQUIRED BY LAW

“When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.

“Permits and approvals required by law” can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose. For example, if the landlord is converting the rental unit to a hair salon and the current zoning does not permit that use, the zoning would need to be changed before the landlord could give notice.

If a required permit cannot be issued because other conditions must be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to obtaining vacancy.

If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy. “

I find that it was undisputed by both parties that the landlord has not obtained any permits at the time of the hearing. As stated above, RTB Policy Guideline #2b requires that all the permits be acquired before the 12 Month Notice is even issued. If a permit is not required, then the landlord must provide evidence that a permit is not required for the work necessitating this vacancy. I am not satisfied that the landlord has provided sufficient evidence to support that permits would not be required for this specific conversion.

Furthermore, I have considered the sworn testimony and evidence submitted by the landlord, and although the landlord testified that they are ending this tenancy so the grandson could reside in his own home, I find that the testimony brings into question the good faith intent of the landlord. The landlord testified that the grandson currently resides in another residence on the property, but did not provide compelling evidence to support why this specific tenancy must end in order for the grandson to move out of his current residence and reside there. Furthermore, the landlord's evidence did not contain specific detail of the plans for the site, such as timelines or building plans, other than the fact that the grandson would be residing there in some sort of home. The landlord gave a vague description of the intended plans which may entail a permanent structure or some sort of modular home.

I find that the landlord has not met their burden of proof to show that they, in good faith, are ending the tenancy in order to end this tenancy for the reasons provided on the 12 Month Notice.

Accordingly, I allow the tenants' application to cancel the 12 Month Notice. The landlords' 12 Month Notice, dated January 21, 2020, is hereby cancelled and of no force and effect. This tenancy is to continue until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for this application.

Conclusion

The tenants' application to cancel the landlord's 12 Month Notice is allowed. The landlord's 12 Month Notice, dated January 21, 2020, is cancelled and is of no force or effect. The tenancy is to continue until ended in accordance with the *Act*.

I allow the tenants' application to recover the filing fee for this application. I allow the tenants to implement a monetary award of \$100.00 by reducing a future monthly rent payment by that amount.

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: April 7, 2020

Residential Tenancy Branch