



# 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 was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 17, 2020 (the “Application”). The Tenants applied to dispute a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park dated September 01, 2020 (the “Notice”). The Tenants also sought to recover the filing fee.

The Tenants appeared at the hearing with J.C. as their representative. P.A. appeared at the hearing for the Landlord and appeared with Legal Counsel and the Articling Student. I explained the hearing process to the parties and answered their questions in this regard. The Tenants, J.C. and P.A. provided affirmed testimony.

The parties confirmed the correct site address which is reflected on the front page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Legal Counsel confirmed receipt of the hearing package September 24, 2020 and the Tenants’ evidence October 27, 2020 and October 28, 2020. J.C. confirmed receipt of the Landlord’s evidence November 03, 2020.

J.C. sought to submit further evidence to refute a statement made in P.A.’s Affidavit in evidence. J.C. advised that the Tenants have bank records showing the Landlord cashed their rent cheques from 2007 to 2018 contrary to P.A.’s statement that he has not cashed any of their rent cheques since 2007 because he considered the Tenants to be guests.

Legal Counsel submitted that the bank records are not relevant to the issues before me. P.A. testified as follows about this issue. Rent cheques were not cashed to his knowledge. Rent cheques may have been cashed inadvertently. He does not know if rent cheques were cashed in 2018. He has not been accepting the Tenants' rent. His secretary would be the one cashing the cheques, he does not cash cheques for the Landlord.

I asked J.C. if the Tenants have evidence to show P.A. would have known about the rent cheques being cashed. J.C. said the only evidence showing this is the volume of rent cheques cashed.

I told the parties I would consider this issue further during the hearing and let them know my decision at the end of the hearing. I proceeded with the hearing. My decision on this issue is set out below.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The parties agreed there have been two prior RTB files in relation to this tenancy, File Numbers 1 and 2. I note that File Numbers 1 and 2 were provided by J.C. File Number 2 appears to be incorrect as it relates to a different file in the RTB system. However, the decisions were submitted and I have reviewed them.

The parties agreed on the following. There is no written tenancy agreement in this matter. A prior Arbitrator found a tenancy has existed between the parties since November of 2007. This is a month-to-month tenancy. Rent is \$100.00 per month due on the first day of each month.

The Notice is in evidence. It has an effective date of September 04, 2021. The reason for the Notice 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.

J.C. testified that the Tenants received the Notice September 03, 2020 in person and by email. Legal Counsel agreed the Notice was delivered September 03, 2020.

J.C. advised that there is no issue with the form or content of the Notice.

This matter involves a piece of land which has 11 buildings on it including some manufactured homes and some non-manufactured homes. The Landlord's position is that the site the Tenants occupy is the only part of the land that is governed by the *Manufactured Home Park Tenancy Act* (the "Act"). The Landlord submits that they intent to put a modular home on the site and have C.A., a family member, live in the home.

P.A. provided an Affidavit which states in part the following. The land currently has mobile homes on it which are used for either employee logging camp accommodation or permanent homes for his immediate family. All of his children, other than one daughter, have homes on the land. His family does not pay rent as occupation of the homes is part of their family inheritance.

P.A. has summarized the use of each of the 11 buildings on the land and stated as follows. Building 11 is owned by the Tenants and was placed there when the Tenants were employees of the Landlord. Building 11 is the only structure on the land not owned by the Landlord. The Tenants' employment was terminated in 2007 and it was expected that they would leave.

P.A.'s Affidavit further states as follows. He served the Tenants a 12 Month Notice January 21, 2020 as he is converting the site to a residential use other than a manufactured home park. The RTB determined that he did not have the necessary permits in place.

P.A.'s Affidavit further states as follows. He wishes to build a home for his grandson, C.A., on the site so that C.A. can start a family in the community. C.A. works for the Landlord. C.A. will not be charged rent, similar to other family members. He has

negotiated the purchase of a new home to put on the site. The Landlord will own the home. He has obtained a building permit to do this. He re-served the Notice on the Tenants.

Legal Counsel made the following submissions.

The site is on a parcel of land which is 12 acres. There are 11 homes on the parcel of land. The land has always been used under a special use permit to operate a logging camp. The Affidavits in evidence outline what the 11 homes are used for. Not all of the homes are manufactured homes, there is a mixture of manufactured and non-manufactured homes.

The only home on the property captured by the *Act* is the Tenants' home and site. The Tenants are the only people who live on the land who are not employees of the Landlord or family of P.A. The statements from employees in evidence show that the tenancies with employees are, at best, covered by the *Residential Tenancy Act*, and terminate with employment. The family members are permitted to stay in the homes as part of their family inheritance. The family members do not pay rent and are shareholders of the Landlord. It is clear from the statements and Affidavits in evidence that the Tenants are the only ones who own their manufactured home and pay pad rent. The fact that there are other manufactured homes on the land does not mean the entire land is a manufactured home park. Since the Tenants are the only ones who pay a pad rental, it is only their site which makes up the manufactured home park. By changing the use of the Tenants' site, the Landlord is changing the use of 100% of the manufactured home park. A home will be put on the site which will be owned by the Landlord and not C.A. and therefore the site will not be a manufactured home park.

The Landlord never intended to have a manufactured home park. The Landlord is in the business of providing lodging and housing to employees and family members. The Landlord allowed the Tenants to bring their own home onto the land which is what has led to this situation. The evidence submitted shows the land is not zoned for a manufactured home park and in fact a manufactured home park is not permitted on the land. Removing the one tenancy which falls under the *Act* harmonizes the use of the land. If the Tenants' tenancy ends, there will no longer be a manufactured home park on the land. If this occurs, it will be a 100% change to the use of the site which is substantial change.

The necessary permits and approvals for the proposed use of the site are in place.

In relation to the good faith requirement, the history of the land is important. The land has been used for decades for employees of the Landlord. The proposed use of the site is consistent with every other use of the land. The proposed use is consistent with what is currently occurring on the land as shown in the statements in evidence. The proposed use is consistent with both past and present use of the land. The Landlord does not have an ulterior motive and in fact ending the tenancy will harmonize the use of the land and bring the use into compliance. The Tenants have not provided any evidence of an ulterior motive.

If the Tenants are saying the Landlord could choose another location for C.A., this misses the point. The Landlord should not have to change their business operations to allow the Tenants to remain. The Landlord does not have to take all possible steps to avoid eviction. The Landlord does not have to establish that the proposed plan is the best use of the site. The Landlord can use the site how they want provided they are acting in good faith. The statement of C.A. and his father T.A., the copy of the building permit and the evidence of the home the Landlord is looking to put on the property all show good faith.

The site will be converted into something other than a manufactured home park. C.A. is not becoming a replacement tenant under the *Act*. The site is the best place for C.A. Building in relation to the site will commence once the Tenants vacate.

P.A. confirmed the statements made by Legal Counsel. P.A. reiterated that the Landlord is in the logging business, not the manufactured home park business. P.A. confirmed he is going to acquire a home which he will own and which he will not be renting to C.A. P.A. stated that the arrangement will be the same as what is provided to the other children.

The Landlord submitted sworn statements from the occupants of the buildings on the land. The Landlord submitted documents relating to the modular home P.A. intends to place on the site.

J.C. made the following submissions.

The Landlord has made multiple attempts to move the Tenants from the site as shown in the prior hearings. There are other options for C.A. which would not require the Tenants to be evicted. There are other places on the land a home for C.A. could be placed and there is a vacant home. This calls into question the Landlord's motivation. The Landlord is specifically targeting the Tenants. The Tenants are not saying the

Landlord must exhaust all other options. The Tenants question the good faith requirement given there are other options for C.A.

The Tenants dispute the statements about the past use of the land. There is a history of occupants owning their homes and paying pad rent on the land. D.H. purchased building 7 in 2019. The Tenants do not have confirmation of this, but they believe D.H. is the owner of the home he resides in and, if he is not currently the owner, he was recently. D.H. was paying pad rent. The Tenants do not know if he still is. D.H. might also fall under the *Act*. Further, there is a history of at least six or seven others having tenancies under the *Act*. The Tenants are not saying the history of tenancies under the *Act* make it a manufactured home park. The Tenants are simply disputing the comments that the land has always been used for logging purposes.

While zoning does not permit a manufactured home park, the current structures were permitted to stay, and additional homes are permitted. Both past and current zoning is not relevant in relation to harmonizing the use of the land. Communications with D.W. in evidence state as much.

The Tenants question whether the Landlord is choosing this course of action to evict the Tenants instead of to accommodate C.A. However, the Tenants are not saying that they disagree C.A. will put a house on the property and move in, they are just saying there are other options for C.A.

As stated at the outset, paragraph 11 of P.A.'s Affidavit is inaccurate in relation to not cashing rent cheques.

The Tenants acknowledge the Landlord has all necessary permits and approvals required by law for the proposed change.

In relation to the requirement that the Landlord intends in good faith "to convert all or a significant part of the manufactured home park to...a residential use other than a manufactured home park", J.C. confirmed there are two issues. First, the history of people who owned their homes and paid pad rent on the land. Second, the position that D.H. owns his home and pays pad rent.

Legal Counsel made the following submissions in reply. There is no question that over time there have been manufactured homes owned by employees of the Landlord on the property. The point is that the Landlord never intended to own a manufactured home park. There are no other buildings currently on the property that are governed by the

*Act*. The Landlord owns the home D.H. lives in. There is a statement in evidence from D.H. confirming he is required to leave the home upon termination of his employment. In relation to the zoning, just because manufactured homes are permitted does not mean a manufactured home park is permitted. One of the locations where the Tenants say C.A. could place a home is where the septic system is going and so a home could not be placed there. The vacant home is being used for future employees of the Landlord.

At the end of the hearing, P.A. confirmed that it may be that rent cheques from the Tenants have been cashed from 2007 to 2018.

### Analysis

The Notice was issued pursuant to section 42 of the *Act* which states:

42 (1) Subject to section 44...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) A notice to end a tenancy under this section must end the tenancy effective on a date that

(a) is not earlier than 12 months after the date the notice is received, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 45 [form and content of notice to end tenancy].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

The Tenants had 15 days to dispute the Notice. There is no issue that the Tenants received the Notice September 03, 2020 as the parties agreed on this. The Tenants filed the Application September 17, 2020, within time.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord who has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

There are two requirements in section 42 of the *Act*:

- (1) The Landlord must have all necessary permits and approvals required by law to do the proposed conversion; and
- (2) The Landlord must 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.

There is no issue that the Landlord has all necessary permits and approvals required by law to do the proposed conversion as the parties agreed on this.

The Tenants raised issues in relation to good faith. Policy Guideline 2B deals with good faith and states at pages two to three:

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

**Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.** This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent **without carrying out** renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.



If evidence shows the landlord has ended tenancies in the past for renovations or repairs **without carrying out** renovations or repairs of an extent or nature that required vacancy, this may suggest the landlord is not acting in good faith in a present case...

The onus is on the landlord to demonstrate that the planned renovations or repairs require vacant possession, and that they have no other ulterior motive.

(emphasis added)

Although much of the focus of the above is on renovations or repairs, the point behind the statements applies more broadly.

I am satisfied on a balance of probabilities that the Landlord is acting in good faith and intends to use the site for the purpose stated. I am satisfied of this based on the testimony of P.A., Affidavit of P.A., sworn statement of T.A., sworn statement of C.A., documents relating to the modular home P.A. intends to place on the site and agreement of the parties that all necessary permits and approvals are in place for the proposal. I am satisfied this evidence together is compelling evidence of good faith and an intention to do what the Landlord says they are going to do with the site. Further, I find the Tenants, through J.C., acknowledged that the Landlord intends to do what they say they are going to do with the site. I am satisfied the Landlord has met their onus to show a good faith intent to use the site for the stated purpose.

Further, I am not satisfied the Tenants have submitted sufficient compelling evidence to overcome the evidence outlined above and their own acknowledgement that the Landlord intends to use the site for the stated purpose. I am not satisfied the Tenants' evidence shows a lack of good faith, that the Landlord is attempting to defraud or deceive the Tenants, that the Landlord has an ulterior motive for issuing the Notice or that the Landlord is trying to avoid obligations under the *Act* or tenancy agreement.

I am not satisfied based on the prior RTB hearings that the Landlord is not acting in good faith or not intending to use the site for the stated purpose. I acknowledge that the Landlord has shown a desire to have the Tenants vacate the site. However, I am not satisfied based on the prior decisions or the evidence before me that this is for a reason other than that the Landlord wants to use the site for C.A. I acknowledge that this was not stated in File Number 1; however, the decision does show that the Landlord required the site as they were running out of space. In relation to File Number 2, the Landlord sought to end the tenancy for the same reason stated in this hearing and I find

the testimony provided in that hearing, as described in the decision, consistent with the testimony and evidence provided in this hearing.

In relation to the submissions that there are other options for C.A., I am not satisfied the Landlord is required to show that using the site is the only option. I acknowledge that there may be circumstances where there is another option open to a landlord that is so obviously equivalent to the option chosen that this raises questions about good faith and intent. However, I am not satisfied based on the evidence provided that this is such a case. First, I am not satisfied the evidence clearly shows an equivalent option and the parties disagreed about whether there is an equivalent option. Second, in these circumstances we are dealing with the placement of a home, which I find involves numerous considerations. Third, I find there is compelling evidence showing the Landlord intends to use the site for the stated purpose and a lack of compelling evidence showing bad faith or an intent to use the site for something other than the stated purpose. I am not satisfied the possibility of another option for C.A. overcomes the evidence of good faith and an honest intent.

There is a further requirement that the Landlord intend 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. Here, the intention is to convert the site to a residential use and therefore I will consider whether the intent is to convert the site to a residential use other than a manufactured home park.

Section 1 of the *Act* contains the relevant definitions which are as follows:

"manufactured home park" means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

"manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

I note at the outset that it is the current use of the land, and whether the current use falls under the *Act*, that I find relevant.

The Landlord's position is that the Tenants are the only ones living on the land who own their home and pay pad rental. The Tenants submit that they believe D.H. also owns or

owned his home and pays or paid pad rental. Again, what is relevant is what currently falls under the *Act*.

I am satisfied based on a balance of probabilities that D.H. does not own his home or pay pad rental for the following reasons. I found it clear from how J.C. worded these submissions that the Tenants simply believe it is possible D.H. owns his home and pays pad rental and do not actually know whether D.H. owns his home and pays pad rental. Legal Counsel denied that D.H. owns his home or pays pad rental. The sworn statements in evidence support that the Landlord owns the homes on the land. There is no evidence before me, other than the submission of J.C., that D.H. does own his home or pay pad rental. There is a sworn statement from D.H. before me which tends to support the Landlord's position rather than the Tenants' position.

In the circumstances, I am satisfied the Tenants are the only people living on the land who own their home and pay pad rental. Therefore, I am satisfied the Tenants' site is the only manufactured home site on the land. Therefore, I am satisfied the manufactured home park consists of the Tenants' site alone.

As stated, I am satisfied the Landlord intends to use the Tenants' site for a home for C.A. I am satisfied based on the testimony of P.A., Affidavit of P.A., sworn statement of T.A., sworn statement of C.A. and documents relating to the modular home P.A. intends to place on the site that the Landlord will own the home and C.A. will not pay rent. Therefore, I am satisfied the proposed arrangement will not meet the definition of a manufactured home site or manufactured home park in the *Act* and will no longer be a manufactured home site or manufactured home park. Given this, I am satisfied the Landlord intends in good faith to convert the site and manufactured home park to a residential use other than a manufactured home park.

Further, given the Tenants' site makes up the entire manufactured home park, I am satisfied the conversion of the site constitutes conversion of the entire manufactured home park which is "all or a significant part of the manufactured home park" as required by section 42(1) of the *Act*.

Given the above, I am satisfied the Landlord had grounds to issue the Notice. The Notice is upheld. The Tenants' dispute of the Notice is dismissed.

I note that I did not allow the Tenants to submit further evidence to refute the statements in P.A.'s Affidavit about their rent cheques. After hearing from the parties, I found this to be a minor issue. I accept that documentation refuting statements in P.A.'s Affidavit

may have changed my analysis if the only evidence submitted to support the Notice was the testimony or Affidavit of P.A. However, my decision is not based on the testimony or Affidavit of P.A. alone. In these circumstances, I was not satisfied the documentation was sufficiently relevant such that the Tenants should be permitted to submit it after the hearing.

I have reviewed the Notice and am satisfied it complies with section 45 of the *Act* as required by section 42(3) of the *Act*.

Pursuant to section 42(2) and 46 of the *Act*, the corrected effective date of the Notice is September 30, 2021.

Pursuant to section 48(1) of the *Act*, the Landlord is entitled to an Order of Possession effective September 30, 2021.

Given the Tenants were not successful in the Application, I decline to award them reimbursement for the filing fee.

### Conclusion

The Landlord is issued an Order of Possession effective September 30, 2021. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed and enforced in the BC Supreme 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 *Act*.

Dated: November 17, 2020

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Residential Tenancy Branch