



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the joined Applications for Dispute Resolution filed by the Tenants under the *Manufactured Home Park Tenancy Act* (Act):

- To dispute a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park (Notice).

Only the parties on the covering page appeared.

This hearing commenced on May 7, 2024, July 18, 2024, and October 7, 2024, by conference call. The hearing was adjourned for final written submissions of the parties. The interim decisions should be read in conjunction with this Decision.

Issue(s) to be Decided

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

Background and Evidence

The Tenants confirmed at the hearing that they received the Notice from the Landlord served on February 28, 2024, with an effective date of March 31, 2025.

Landlord written submission in part reads:

Convert All or Significant Part of Park

The lands the Manufactured Home Park (Park) is located on is part of a larger, multi-phase development project encompassing multiple parcels of land. The entire Park will be redeveloped, and more than half of its lands will be used for multi-unit residential buildings and surrounding grounds and amenities. A portion of the first phase of development will partially occur on lands occupied by the Park and is anticipated to create approximately 317 residential homes. As part of this larger development, the

Landlord has already donated a parcel of undeveloped land which was used to build 58 affordable housing units for seniors in conjunction with Capital Region Housing Corporation. The Landlord arranged for 14 tenants of the Park (who are not applicants) to move into these units in 2022.

Landlord Exhibit 4 - Spencer Lands Conceptual Overview

Landlord Exhibit 5 - Phase I Park Lands Plan

The portions of the Park which will require tenants to be relocated or removed consisted of two areas: the area of the Park where portions of structures relating to the first phase of the redevelopment are to be located (the “**Phase I Area**”); and the area of the Park where structures relating to the second phase of the redevelopment are to be located (the “**Phase II Area**”). Site 53 (rented by applicant tenants Ken and Sally Nentwig) is located in the Phase I Area. The Sites rented by the remaining applicant tenants are located in the Phase II Area.

Landlord Exhibit 2 - Triway Park Map

Landlord Exhibit 4 - Spencer Lands Conceptual Overview

Landlord Exhibit 5 - Phase I Park Landlord Plan

The land the Park is situated on (the “**Lands**”) is subject to two covenants (CA8359371 and CA8359367). A portion of the existing Park will be refurbished and remain a manufactured home park, per covenant CA8359367. Per City of Langford Bylaw No. 1885, s 6.53C.04(3)(b), the refurbished park must maintain a minimum of 40 manufactured or modular housing units. The Landlord obtained a development permit (the “**Development Permit**”) from the city of Langford on February 22, 2024, which allows for the conversion of the Park. It authorizes 48 manufactured home sites in the refurbished park.

Landlord Exhibit 6 - Combined Covenant Document

Landlord Exhibit 7 - Langford Bylaw No. 1885

Landlord Exhibit 8 - Development Permit

The Landlord has agreed to relocate a number of existing tenants of the Park to this refurbished area. None of the applicant tenants are renting Sites in the area of the Park to be refurbished or have entering into agreements to relocate to this refurbished area despite the Landlord’s renewed offers to these residents.

Good Faith

The Landlord has made extensive efforts to complete the redevelopment of the Park and the surrounding lands over the last several years. The fact that it has obtained such an extensive Development Permit from the City of Langford should allay any doubt that

the Landlord does not intend to undertake the proposed conversion. The purpose of issuing the Notices was solely to move the development process forward.

The Landlord has worked with the tenants of the Park, including the applicant tenants, for over four years on the redevelopment. In their applications, the applicant tenants have not raised the issue of good faith in any of their submissions to the Branch, presumably because they agree that the Landlord intends to carry forward with this project.

Landlord Exhibit 4 - Spencer Lands Conceptual Overview

All Necessary Permits and Approvals

In order for the Notices to be valid, the Landlord must show that it has all necessary permits and approvals to convert a significant part of the Park. This does not mean that all permits necessary to complete all parts of the proposed redevelopment must be obtained. Rather, the landlord needs only the permits required for converting the Park to another residential use. RTB Policy Guideline 2B states:

The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. For instance, a landlord can issue a Notice to End Tenancy under section 42 of the MHPTA if they have the permits and approvals required to convert the park to a residential use other than a park, even if they do not yet have all of the permits required to build the planned single-family home on that land.

[emphasis added]

Landlord Exhibit 21 - RTB Policy Guidelines 2B

Additionally, the Landlord must establish that they have completed all the steps required for the planned conversion under the Development Permit authorizing the conversion up to the point of requiring that the tenancies be ended. The Development Permit does not allow for the Landlord to commence building the development without further steps that require vacant possession of the Sites.

Landlord Exhibit - 8 Development Permit

Landlord Exhibit 9 - City of Langford Email Regard Scope of Development Permit

Covenant CA8359371 requires the Landlord to conduct an archeological impact assessment before any new building will be permitted on the lands. The Landlord has

obtained Heritage Inspection Permit # 2023-0163 (the “Heritage Permit”) to undertake this work. The Heritage Permit was issued May 30, 2023, and expires December 31, 2024. It authorizes an archaeological impact assessment for parts of the Lands, including where the Park is located. A request to renew it was made on April 16, 2023. This is a common and straight-forward administrative request, and no issues with receiving the extension are expected.

Landlord Exhibit 10 - Heritage Permit Application

Landlord Exhibit 11 - Heritage Permit Issuance

Landlord Exhibit 12 - Heritage Permit Renewal Request

Landlord Exhibit 15 - Statement from Engineering Company - Archeological Impact Assessment

The Landlord has also retained a qualified biologist to conduct a study required by covenant CA8359371. The biologist did not indicate that any of the land upon which any of the Sites are located should be protected from development. The Landlord also obtained approval from the City of Langford to raise funds for a future stormwater overflow pipe that is required by the Development Permit for the full redevelopment.

Landlord Exhibit 13 - Environmental Assessment by Professional Biologist

Landlord Exhibit 14 - North Langford Storm Drainage DCC Bylaw No 2023

The engineering company engaged to make the archeological impact assessment has identified the “area of archeological potential” as covering a small portion of the Phase II Area. None of the applicant tenants’ Sites are located within this area. However, the engineering company expressed concern with respect to testing in an area that has been confirmed to contain contaminated soil. They suggest that the archeologist participate in an initial phase of contamination delineation with the remediation contractor to better understand the area of contamination.

Landlord Exhibit 2 - Triway Park Map

Landlord Exhibit 15 - Statement from Engineering Company - Archeological Impact Assessment

Phase II Area Sites Required to Be Vacant

Many of the Phase II Area Sites formerly had above-ground oil tanks situated on them, which allowed oil to leech into the soil below. A Phase II Environmental Site Assessment made in 2023 recommend that further testing occur at Site 75, and that soil remediation occur at Sites 65, 71, and 73. The author of that report clarified that in order to undertaking this testing is to break up the concrete pads located at those Sites. The

Sites must be vacant before this can occur. Additionally, at minimum, the Sites immediately adjacent to Sites 65, 71, 73, and 75 need to have any manufactured homes removed to allow for the remediation and testing to be completed. Site 76 is occupied by an applicant tenant and is directly adjacent Site 75. The City of Langford has confirmed that no permits beyond the Development Permit are required for the destruction of the concrete pads or the soil remediation.

Landlord Exhibit 16 - June 2023 Fuel Storage Tank and
Surficial Soil Assessment Report
Landlord Exhibit 17 - Environmental Assessment Summary Letter
Landlord Exhibit 9 - City of Langford Email Regard
Scope of Development Permit

Covenant CA8359371 requires that a municipal road (the “Municipal Road”) must be dedicated as a public roadway before the construction of any new building is permitted. The Municipal Road is planned to cut through the Phase II Area in order to connect with an existing road to the west of the Park. The City of Langford has approved the point where the Municipal Road will connect to the existing road.

Landlord Exhibit 6 - Combined Covenant Document
Landlord Exhibit 18 - WATT Technical Memo – Approved
Landlord Exhibit 19 - Municipal Roadway Phase Map

Before the Municipal Road can be built, the land upon which it will rest must be, among other things, regraded. No permits are required to start this regrading (the “**Regrading Work**”).

Landlord Exhibit 6 - Combined Covenant Document
Landlord Exhibit 9 - City of Langford Email Regard Scope of Development Permit
Landlord’s Exhibit 20 - Engineering Letter regarding Construction Access

The Development Permit contemplates a “Haul Road” be constructed for use during the development process for the purpose of transporting materials and equipment. The Municipal Road will be built atop the Haul Road. Before the Municipal Road or the Haul Road can be built, the Regrading Work must be completed. No permits are required for this regrading.

Landlord’s Exhibit 20 - Engineering Letter regarding Construction Access
Landlord Exhibit 6 - Combined Covenant Document
Landlord Exhibit 9 - City of Langford Email Regard Scope of Development Permit

In order to undertake the Regrading Work, the Phase II Area must be vacant. The Municipal Road is anticipated be built on the land occupied by Sites 77, 79, 80, and 84A. To facilitate the Regrading Work, additional parts of the Phase II Area need to be vacant. Specifically:

- Sites 71 and 73, to allow for a secured area to store construction materials.
- Sites 67, 68, and 69, to allow for a secure staging area containing a portable site office, trade parking, and additional secured storage. This location is preferred as it will be clear of the future municipal road, utilities construction and likely will be one of the last portions of the lands to be developed, which will avoid having to relocate these facilities during the development.
- Sites 79, 80, 83A, and 84, to allow for a storage area for topsoil that has been stripped (a component of the Regrading Work) which will later need to be reused for landscaping and backfilling. Storing the topsoil in this location avoids having to transport soil off and then back to the Park. The Municipal Road is not planned to run across these Sites.

Landlord's Exhibit 20 - Engineering Letter regarding Construction Access
If further soil monitoring is required as a result of the soil contaminant testing mentioned
above, it will not delay the Regrading Work.

Landlord's Exhibit 20 - Engineering Letter regarding Construction Access

Phase I Area Site Required to be Vacant

Site 53 is the only Site occupied by an applicant tenant in the Phase I Area. Vacant possession of this Site is required before any permits necessary to move forward with Phase I of the redevelopment can continue. Specifically, the Landlord must obtain a building permit for the building which will be constructed in part of the Phase I Area. The plans for this building cannot be finalized until the path of the Municipal Road is finalized.

The path of the Municipal Road will follow cannot be determined until the Regrading Work is completed. As such, the landlord cannot make any further progress towards developing the Phase I Area.

In Summary

In order proceed with Phase I of the redevelopment, the Landlord requires vacant possession of the Sites in both the Phase I and II Areas. The Landlord does not require

a permit to conduct soil testing, demolish the concrete pads, or undertake the Regrading Work. It has the permit required to undertake the archeological assessment. The Landlord cannot obtain a building permit in the Phase I Area because it cannot finalize the building's plans, as it does not know where the Municipal Road will run and cannot finalize where this road will run until the Regrading Work is complete.

The applicant tenants raise the issue of the lack of permits for the refurbished portion of the Park where the Landlord has offered to relocate the applicant tenants as the basis for cancelling the Notices. This objection is misplaced. The Landlord does not have an obligation under the MHPTA, the tenancy agreements, Development Permit, or any covenant to relocate any of the applicant tenants. Any offers made to relocate them are incentives offered by the Landlord to obtain mutual agreement to end tenancies from the applicant tenants. Accordingly, there is no basis to cancel the Notices due to a lack of permits associated with the relocation

Witnesses for Landlord

Witness1 testified the following:

They are the SVP of development for Starlight Investments and Starlight Development and look after the development and have been involved in this file from the beginning of the time of acquisition back in October of 2020 and I have witnessed to all the development activities even prior to the acquisition when it was going through the zoning amendment process and subsequent permits and approvals. When the land acquisition occurred in October 2020, the lands had been rezoned to permit development and the redevelopment on a higher density.

Phase I area will have 317 units that is going to be developed within a mid rise development. Phase II area is a subsequent phase of development that will be the future of 48 homes in total. The adjacent lands that was dedicated to the CRD to allow BC housing to develop a 58 unit building and many of the individuals that were residing in the current Park are now currently living in that building.

Phase I area, the land has a public right of way that will be dedicated to the municipality in order to enable development and servicing, which currently doesn't exist today, so would have to be constructed before the 317 units are built and will help to delineate the different phases of the buildings and developments which was part of the master plan necessary to enable the first building permits.

Right now we do not have building permits in place to construct any of the buildings that are defined on attachment five. What we do have is a development permit that enables us to go ahead and move dirt, grade the site, remove trees. Essentially this is to enable the development of the land so these buildings can be built in the next phase.

The ultimate plan for us is to enable the housing as we know we are in a crisis and we want to go ahead and deliver as many houses as we can in the Community and our ultimate goal would be to be in a place where we could enable development for 2025, the density as was shown on Exhibit 5.

Co-counsel for the Landlord submits the following:

That their background is a development lawyer and deal with developers large and small on Vancouver Island and on the mainland, and it is important to understand the development process and the various documents because they are quite complicated. The documents referred to as exhibits, 6, 7, 8 and 9. Exhibit 6 is the registered covenants against the title to the property, which includes the Park. Exhibit 7 is the bylaw currently in place, which is part of the zoning bylaw specifies what use is permitted in that area. Exhibit 8 is the development permit, which was issued in February of 2024. Exhibit 9 is just a clarifying e-mail from the City of Langford.

That you cannot obtain building permits without the land first being developed which means until certain things happen to the land, such as protection of sensitive areas, archaeological impact assessment for signs of previous indigenous inhabitants, the public road dedication, soil remediation, there is frontage improvements and there are stormwater management.

The Archaeological impact assessment they have an idea of where it is located as it was identified as the Phase II area where most of these particular tenants reside and you cannot determine how far this assessment will go because you have to work to make sure artifacts or potential remains are not disturbed and you have to deal with the environmental issues, the archaeological issues and to grade the road requires vacant possession of these areas.

Once grading has started this impacts access to these areas by the general public and it's going to be very difficult to get a fire truck or an ambulance down these roads once they start clearing and grading.

The rezoning was completed at the end of 2020 and the rezoning is important because it allows for the land to be used for a purpose other than a manufactured home park,

subject to the provisions of the covenant. Once rezoning has been approved, the next step in the process is the development permit, which was received on February 3, 2024.

The development company has gone as far as they could go without moving these tenants out of this area and the Notices were issued to the Tenants that are impacted.

Witness 2 testified the following:

They are senior archaeologists and are familiar with the Park and obtained a heritage inspection permit on behalf of the developer, which that permit was awarded until December 31, 2024 and has been extended to December 31, 2025.

A heritage inspection permit is a permit that an archaeologist must apply for and must obtain before we hit the field to complete what is commonly referred to as an archaeological impact assessment, which allows us to test areas that is perceived to have a high archaeological potential. To identify any potential archaeological sites and conflict with the development and to ensure any artifacts or human remains that may exist are protected.

However, the contaminated soil within the area of high archaeological potential is a concern and the remediation experts will have to be involved concurrently with them to ensure that their staff can remain safe and also protect any potential archaeological sites in that zone, which sites 72 and 73 are vacant, which is their best guess. Should it extend past this area to other site pads and those sites would have to be removed.

Witness 3 testified the following:

They are the director of the environmental due diligence and Remediation Group in BC and are familiar with the Park. The company was hired to conduct an environmental assessment of the site, and they focused specifically around the above ground storage tanks related to heating oil and collected a series of samples from soil samples. In order to determine where the likely presence of contamination existed on the site. And have provided some recommendations related to that.

This document they provided is a summation of the investigation they conducted on the land, detailing the soil samples collected, the locations in which they've collected. highlighting, where we found elevated concentrations of hydrocarbons and our recommendations for further investigation and remediation.

That they found the contamination near the above ground storage tanks for sites 65, 71, 73 and 75 and is most likely result of leaks or spills or other forms of release of heating oil associated with those tanks. Site 75, the source sample we collected was reported by the laboratory as having significant amounts of hydrocarbon exceedances, meaning that they were above regulatory standard, which was a higher concentration than we had anticipated based on field screenings, which they had the laboratory re analyzed, which came back with concentrations of below the standards. So our recommendation would be to repeat the analysis in order to determine whether or not there is contamination. And if there is in fact contamination, then they would group it with the other three sites.

Final environmental status assessment dated April 25th, 2020. This document re looks at that same information re summarizes the information from the previous exhibit. And then expands with some additional details regarding how we would recommend conducting additional investigations indicating that sites 65, 71, 73, 75 would hinder our ability to conduct the investigation as we would want to sample beneath those mobile sites due to the proximity of the oil tank to the mobile home structures and that we would recommend the removal of those mobile homes prior to us conducting that investigation work, because when hydrocarbons hit the ground, it tends to spread out in a lateral direction as they move downward as well It is very likely that that contamination will have extended below the sites. so we would want to come out with drill rig or other heavier equipment in order to collect the appropriate samples and we could not do that without moving those manufacture homes out of the way properly. Once we have determined the extent of the contamination, we would recommend remediating the soils.

It would be very difficult to come from the side to go underneath the pad as there is a high likelihood of us damaging the mobile homes due to structural issues as we would be coming at quite a steep angle and in most cases there is not the space to have the drill rig boom angled without hitting one of the other nearby mobile homes. In addition the vibration caused by the drill rigs, could cause damage to the mobile homes, and we would strongly recommend against that approach as it is a safety issue. Coming vertically above the soil to do the testing and remediation is the correct way to do the testing, and the pad or a portion of the pad would have to be removed to drill beneath the pad.

The archaeological work that needs to be done and we will work in conjunction with the archaeologists. Some of this work has to be done before the regrading can be done, but if there's substantial contamination, then that some of that contamination and any groundwater investigation could be done.

Witness 4 for the Landlord testified the following:

That they are a civil engineer and Principle of the company, and they lead the group of civil engineers and is familiar with the Park and surrounding lands. Witness 4 stated that they have been engaged to work on the property to assist with preparing a master plan for the development and have been involved with the Park. First started off putting in a sewage pump station in order to decommission a septic field and make way for the CRD housing project.

The development stage is more like deconstruction as once the mobile homes have been moved, then the demolition of foundations would happen. The concrete, rebar and underground utilities would have to be taken out. The contaminated soil that's been identified would be collected and stockpiled and dealt with appropriately. Trees would be removed. This all happens in this first stage and then once this is completed there would be what they call a lay down area where contractors set up their site trailers to secure products and tools and it would also be an area to stockpile the organic upper layer of soil to be reused.

The general route of the road through the Park is generally known because you have to connect the points A to B in order to build the road, the land needs to be cleared, that will involve stripping of the organic topsoil, stockpiling it, and then once that is done, then surveyed and then grading of the road will be started and then adjust the elevation to get it to its final building elevation. Paving may be left until the end of the project, so it does not get damaged.

There are three general areas, the top area will be used for the excavated material that will be reused for back filling around future buildings, as it is important to keep them within the development permit area. There will be an area for trade parking and sites for offices, and first aid trailer. This area was selected to be the most suitable as the trades can use the area almost until the end of the project and the development permit encompasses these areas.

Cross-examination of witness 4 by the Tenant's legal counsel, with the following responses

The road could not be completed without vacant possession; however, some of that work could begin and there has been work on that road that is off the subject property as there has been work done on the intersection.

That there has been a topographic survey completed for the road, but as far as staking out the road it probably is premature but could be done by staking out wood stakes in the ground at various stations where the road would be.

That some areas of soil excavation work could begin, but not in its entirety as that would require vacant possession. RR confirmed that they believe that there are 6 vacant sites. RR confirmed to the best of their knowledge no trees have been removed; however it would be easier to take down trees with vacant possession.

That some of the work could be started, but it could not be completed in its entirety, so it would be efficient to do the whole thing in one project rather than start it a little and then have to stop.

Redirect by the Landlord's legal counsel with the following responses of witness

4

That a project of this size they try to do everything all at once to complete the phase that there would be excavators, dump truck which are fairly loud, which is not necessarily a factor, but they want to make sure to keep people not related to the construction project out of that area. That falling trees would be safer if there were no homes.

Tenants' submission

Tenant KN testified the following:

They are a tenant on site 53, which is in the area Phase I of the Park, where the road is to go through, and they are the last site in that area. KN stated that they bought their unit in February 2012, and it had been moved from another site and they were able to have some renovations done.

That all the other sites in their area are vacant except for one, which has been sitting empty since January 2024. That 34 residents have moved away from the Park since January of 2021, and the Landlord had purchased those homes.

As far as redevelopment goes, we understand that the planning has been undertaken and we have received some information. Residents could leave the Park has been in discussion off and on through those 3 1/2 years, we understood that the preference was not to give eviction notices, but rather to have an agreement to either relocate or leaving the Park.

In the very early stages we had some issues that we needed to answer this for, and we dealt with the municipality on the development of the covenant and how that was going to work. And in August of 2020, that was passed through and there were some issues that we have been following up on as to continuity of it and what is presented to us to be a protective covenant, and our feeling is that we have been prisoners as a result of it. Rather than being protection for them, it has caused us to be more prisoners.

As residents we talk about these things a lot together, but in our mind has always been that the covenant would be protective of the tenants; however, that feeling is gone since it just does not seem to be of value anymore that the that the covenant is there. The discussions we have had were with JK as we were directed to speak to him and on a number of occasions we talked to him about what our plans were. The initial talks was that our preference to stay or to relocate our initial preference is to stay in the Park to take the relocation if it works out, but we need a lot more information and that particular statement has been made clearly every discussion with JK.

That they do not oppose the development, and we recognize that Landlord Starlight has had plans to redevelop the park since it's purchased in 2020.

Cross- Examination of KN by the Landlord's legal counsel with the following
responses

That they are aware that relocation is not an entitlement under the Act, and they did not enter into any agreement with the Landlord because nothing was offered.

We gave the Landlord the relocation agreement revision almost a year now and nothing has come of it. We have incurred legal fees. But they did not send anything back, it is a one-way discussion.

That they were not 100% sure about permits, but they were looking at any kinds of connections for sewer, and nothing was in place.

Tenant BM testified the following:

That they reside on site 68 with their spouse since October 2013 and they had purchased a new modular home and had it put on site. This was going to be their forever home. When they had first talk to the first developer probably about five years earlier they had promised buyouts and JK the Landlord's agent had asked them questions such as if we want a buyout or to move in the Park. BM stated that they told

them unless we could stay on the site we wanted the buyout, and they wanted to sell at that point.

That after they received the Notice and had a meeting with JK, they were told the buyout was off the table, which was their number one option because they could not sell on the open market as there would be no site available.

That since February 28, 2024, the only things that has been done for the redevelopment is that vacant sites have had the homes removed; however, there are still some vacant sites, that the homes have not been removed; however, no digging has taken place.

That this is frustrating and being in limbo and seeing what they want to give us versus what the home is worth, has been unfair.

Cross-Examination of BM by the Landlord's legal counsel with the following responses

That JK the Landlord's agent, verbally acknowledged that the assessed value, plus 10% and a year's rent would be given to them, and this was discussed over the course of the last few years by different representatives at different meetings, and that is why we have been led to believe that that is the case. However, they did not receive any documents presenting the offer. JK confirmed that there was no written document that indicated any agreement, just information they had received in past meetings.

Tenant JR testified the following

That they reside on site 71, and has resided in the Park, since 2011. That they attended all the meetings, and all they wanted was to be relocated, and nothing materialized. That they promised us a relocation or a buyout, plus 10% + 1-year free pad rent. As far as relocation, I was promised that everything I have at my location would be moved over to the new location. But nothing came of those talks.

That they had thought about selling and getting out of the Park and when they had approached a realtor, they were told the way things were chopped up and that my home not having a place to go there was no way they could sell my trailer under those circumstances and that went nowhere, and they cannot sell their home on the open market. They have invested their life savings and a lot of time making it their retirement home.

That soil remediation has not occurred on their site; however, the only thing they have done for development is moved trailers out all around their site. That they bought everyone's home around them and across from them and those homes were moved out about three months earlier.

That they never had anything in writing because nothing ever came back from JK discussions. That they confirmed that they received the accompanying letter with the Notice, and they thought they were still being relocated, and thought that they are confused. However, they think the Landlord has been dishonest and have been lying to them from the start. So were other residence of the Park, when 35 other homes were relocated and or move to different areas of the Park and six of them were destroyed as they broke in half when moved. That they were told their home could be moved but would not trust them after seeing what was done so far.

That they did get a copy of a relocation agreement and thought it had things missing and they took it, as a group, to a lawyer to have it read and it was rewritten so that it would look after our needs and expectation, and we delivered it back to the Landlord and we never heard from them.

Cross-Examination of JR by Legal counsel for Landlord with the following responses

They understand that the Act does not contain any provisions which would require the Landlord to relocate the manufactured home. JR stated that they want to sell their home at the assessed value but cannot as a realtor said they cannot sell it because they don't know where the trailer is going to be.

Tenant JI testified the following:

That they are the Tenant on site 80 and they purchased the home in 1998.

That they have talked to JK numerous times, and he seemed like a very honest person, and we got to be pretty good friends .And the last time I spoke with him they just wanted to let me know what this was happening and told him I wanted to be bought-out and was told the Landlord was not buying anymore, especially after the taxation department refused to devalue their property.

My daughters figured that at my age I should just have the house moved and stay in the Park and I agreed. I said to JK, I decided that I would stay in the Park and he said, good. But I said, if I stay here I expect to have all my stuff on my property, my carport,

my workshop and move to a lot big enough and he said absolutely and there were further discussion and that they had been expected to moved June 2023.

That they received the Notice in person by JK and was told by JK that they would receive another notice in the mail and to make sure you open it as there might be money for you. Well I opened the mail, and it was just another copy of the notice that I had received earlier, which just confused me.

That no work has been taken on their site. However, there are survey pins all over the park that was put in months ago.

That they attended a couple presentations or meetings, and they saw where the new site would be, and they were so small, probably only big enough to park their motorhome.

Selling their home is something that is not going to happen because there's nobody going to buy it because there is nowhere in the Park that they are going to put it. Obviously at this point no one is going to buy it if you have to move it out of the Park when there's no place to go.

I am not opposed to the redevelopment that why I was planning on staying there. I thought I was happy that we could be moved to a new site all set up.

Cross-examination of JI by Landlord Legal counsel with the following responses

I never had the chance of being entered into any agreement whatsoever. And it was just on the verbal understanding. Where I assume that they were telling me the truth.

Final Closing Written submission which I have read and only the Conclusion is reproduced in this Decision.

Tenant's written conclusion as amended on November 8, 2024, which were accepted by the Landlord's legal counsel reads as follows:

Conclusion

89. The redevelopment of the Triway Park Manufactured Home Park and lands is not disputed.
90. The Applicant Tenants submit that the Respondent Landlord has a dishonest

motivation or purpose for ending the tenancy by March 2025 and has prematurely issued the 12- Month Notices to End Tenancy without the necessary permits in approvals in place.

91. The Notices were issued on February 28, 2024, apparently evincing the Respondent Landlord's good faith intention to develop the lands. That good faith is disputed by the evidence.
92. The Respondent Landlord should re-issue the 12-Month Notices to End Tenancy when the redevelopment of Triway Park is actively undertaken, vacant possession is required, all the necessary permits and approvals are in place for the new sites in the refurbished inner area so that the Applicant Tenants may have the benefit of the full 12 month notice period they are entitled to under Section 42(2) of the *Manufactured Home Tenancy Act*.
93. There is no concomitant prejudice to the Respondent Landlord if the Notices are reissued as no work has been undertaken on the development since issuance of the Notices on February 28, 2024 and is estimated to take 10-12 ~~months~~ months.
94. There are no sites available or under construction for relocation at this time, and no work has started or is permitted to create those new sites in the refurbished area of Triway Park.
95. If the 12-Month Notices to End Tenancy are upheld, the statutory requirement of good faith as described in the RTB's own policy will not be taken into account given the dishonest conduct of the Respondent Landlords towards the Applicant Tenants.
96. The Notices should be cancelled, and reissued at the date of ruling, with the 12 month Notice period fairly applying and beginning so that the Applicant Tenants have the entirety of their lawful 12 month notice period to decide if they wish to:
 - a) relocate their homes to the newly "to be" refurbished area of Triway Park;
 - b) to move their homes off-site;
 - c) to sell their homes on the open market; and

- d) fundamentally, to be given the opportunity to have confirmation of their legal rights and entitlements under the Covenant -

89. The redevelopment of the Triway Park Manufactured Home Park and lands is not disputed.

90. The Applicant Tenants submit that the Respondent Landlord has a dishonest motivation or purpose for ending the tenancy by March 2025 and has prematurely issued the 12-Month Notices to End Tenancy without the necessary permits in approvals in place.

91. The Notices were issued on February 28, 2024, apparently evincing the Respondent Landlord's good faith intention to develop the lands. That good faith is disputed by the evidence.

92. The Respondent Landlord should re-issue the 12-Month Notices to End Tenancy when the redevelopment of Triway Park is actively undertaken, vacant possession is required, all the necessary permits and approvals are in place for the new sites in the refurbished

Landlord's s written conclusion filed on October 18, 2024, reads as follows:

Conclusion

Starlight has all the necessary permits and approvals to convert the Converted Use Area for a non-manufactured home park use.

Under the MHPTA, "all necessary permits and approvals" means those permits and approvals necessary *for the conversion* of the Park, and not to undertake all of the ensuing work. Starlight only needs to show that it cannot obtain any further permits or approvals for this project without the Converted Use Area being vacated. Applied to this case, in brief:

- Starlight cannot obtain building permits in the Phase I Area until a Municipal Road required by the Covenants is dedicated.
- The Municipal Road cannot be dedicated until its precise route is known. The precise route cannot be known until the path of the Haul Road, used during construction, within Converted Use Area is known.
- The Haul Road path cannot be determined until the Phase II Area is regraded.
- The Phase II Area cannot be regraded until environmental contamination in the soil is remediated and an archeological survey is conducted.

- The soil remediation and archeological survey can be done concurrently.
- The soil remediation will require some of the Sites in the Phase II Area to be vacant.
The Regrading Work will require the Phase II Area to be vacant.
- Additionally, once regraded, the Phase II Area will be used as a staging area for the overall redevelopment project of the Spencer Road Lands.

Starlight intends in good faith to convert the Converted Use Area. Under the MHPTA, “good faith” relates to the Starlight’s *intention* to undertake the conversion. Starlight’s intention in this regard has not been disputed.

The “good faith” requirement does not relate to Starlight’s alleged conduct during relocation discussions with tenants in the years leading up to the Notices being issued, as suggested by the tenants. There is no obligation at law for Starlight to relocate the tenants. The “good faith” requirement does not relate to discussions or negotiations about relocation or mutual agreements to end the tenants’ tenancies.

RTB Policy Guidelines 2A and 2B, and the cases cited therein are clear that the “good faith” requirement when issuing a notice for landlord’s use of property is restricted to their intention for ending the tenancy.

In this case, there is no suggestion that the Starlight has any reason for ending these tenancies other than to achieve the planned redevelopment, a redevelopment which the tenants do not dispute is planned and do not oppose.

Accordingly, the Notices are valid and the tenants’ applications to cancel them should be dismissed without leave to reapply.

As such, per section 48(1) of the MHPTA, Starlight is entitled to orders of possession for each of the Sites.

Given the length these proceedings, if the Notices are upheld, to afford the tenants certainty, Starlight would agree to the effective dates of any order of possession granted be September 30, 2025 (as opposed to the effective date of the Notices: March 31, 2025). Starlight requests that if this is ordered, the date by which compensation is paid to the tenants per section 44(1) of the MHPTA be similarly extended to September 30, 2025.

Analysis

Based on the documentary and oral evidence and on the balance of probabilities, I find the following:

Section 42(1) of the Manufacture Home Park Act states, 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.

Under section 42 of the Manufactured Home Park Tenancy Act, a landlord can end a tenancy agreement for landlord use if the landlord 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. The landlord must have all the necessary permits and approvals required by law before the notice to end is issued.

RTB Policy Guideline 2B states:

The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) **or the planned conversion**. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. For instance, a landlord can issue a Notice to End Tenancy under section 42 of the MHPTA if they have the permits and approvals required to convert the park to a residential use other than a park, even if they do not yet have all of the permits required to build the planned single-family home on that land.

Significant Part "Significant part" means "consequential", "considerable", "material", "noticeable" and "important". An arbitrator may consider the size of the redevelopment or conversion, and its size in relation to the park as a whole. A landlord cannot use this provision to end an individual tenancy under this part unless the park contains one site or one occupied site where the landlord plans to convert to another use. A landlord cannot end a tenancy on a site that is not part of the redevelopment or conversion, unless the site must be vacated for the redevelopment or conversion to proceed.

Good faith means a landlord is acting honestly, **and they intend to do what they say they are going to do**. It means they are not trying to defraud or deceive the tenant; they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement.

I accept the evidence of both parties that the plan to convert these areas of the Park is a significant part of the Park and has been planned for many years. The land was approved for another purpose other than a manufactured home park before the Landlord purchased the property in 2020. The development of the Park and lands is not

disputed by the Tenants. I find the Landlord has approval for the planned conversion of the said portion of the Park.

The development permits issued on February 22, 2024, allows for earthwork, soil remediation, and tree removal in the subject area, basically to decommission the land and prepare it in order to obtain building permits

While I accept none of the work for regrading, soil remediation, tree removal and the archeological assessment has not commenced; this is not a requirement of the Act. Further, I find it would be unreasonable for the Landlord to actively start the work, such as road grading, soil remediation only to stop that work. This would also have a significant impact on the remaining Tenants. This does not lead me to believe that the Landlord has an ulterior motive for ending the tenancies.

The Landlord has been in the process of removing at least 34 of homes from the sites for development purposes. This supports that the Landlord is intending to do what they say they are going to do.

The Tenants primary reason for disputing the Notice is they believe it was not issued in good faith, which are related to negotiation to either moving to a new site, in an area of a Park to be refurbished, that has not been created or a buyout that is greater than an amount under the Act.

I have no authority under the Act to consider any pre-negotiations. Further, at the May 7, 2024, hearing, I specifically adjourned this matter for the sole purpose of attempting the parties to reach a settlement agreement, which was unsuccessful for reasons that I am not privy to. I cannot force parties to enter into a settlement agreement, if they are not willing to do so.

Further, approximately 34 residents have vacated their sites, under a settlement agreement with the Landlord, which is approximately 75% of the subject sites, before the Landlord had issued the Notices. Leaving 11 remaining residence, subject to this application. This leads me to believe there was not any dishonesty.

In this case, the Tenants' lawyer argues that the Notices, were issued prematurely and should be reissued on the date of the ruling to give the Tenants the opportunity to - relocate their homes to the newly "to be" refurbished area of the Park; to move their homes off-site; to sell their homes on the open market; and fundamentally, to be given the opportunity to have confirmation of their legal rights and entitlements under the Covenant.

I do not agree with these arguments for the following reasons:

The Tenants were offered a relocation agreement, which was not accepted by the Tenants on the Landlord's terms and redrafted by the Tenants to meet their own needs. The Tenants' confirmed at this hearing that they are aware that the Landlord is under no obligation to relocate them. Therefore, I find it would be unreasonable for me to cancel the Notices to relocate their homes as it is not a requirement of the Act.

The Notices were issued on February 28, 2024 and the Tenants still have until March 31, 2025 to move their homes off site, if moveable. The Landlord is only required to give the Tenants 12 month notice. I find it would be unreasonable for me to cancel the Notices for this purpose.

The Tenants can sell their homes on the open market, if moveable, there is nothing stopping the Tenants from doing so. While I accept this may be more challenging and may not be of interest to some real estate agents because they are selling a home without land. However, it is up to the Tenants to find an alternate solution as there are other ways to sell a home. This is not the responsibility of the Landlord. I find it would be unreasonable for me to cancel the Notices for this reason.

The Covenant was granted in August 2020 at least one of the Tenants indicated that they were involved in the very early stages and since passed they have been following up on as to continuity of it and what is presented to us to be a protective covenant. This was an option for all Tenants to do so. I find the Tenants have had sufficient time to determine their right under that Covenant. I find it would be unreasonable to cancel the Notices for this reason..

Based on the above, I find the Landlord does have the approval and permit for redevelopment. I find the Landlord has no ulterior motive to end the tenancy, such as to avoid their obligations under the Act. I dismiss the Tenants' application to cancel the Notices. I find the Notices to end tenancy are valid and remain in full force and effect. I note in the Landlord's conclusion they were agreeable to give the Tenants until September 30, 2025 vacate the sites, this is an addition 6 months extension, which I find reasonable. I grant the Landlord an Order of possession for the subject sites effective September 30, 2025.

Conclusion

The Tenants' applications are dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: December 2, 2024

Residential Tenancy Branch