

Victoria File No. 236895
Decision Date: 2007-08-10

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78.

between

TERESA ANNE HOWE, and other Tenant(s),

Applicant(s)

and

3770010 CANADA INC., Landlord(s),

Respondent(s)

Re: An application pursuant to section 42 of the *Manufactured Home Park Tenancy Act* regarding the premises at:

2845 Bellenden Road, SHAWNIGAN LAKE, British Columbia

Date of hearing: March 5, April 16, May 28 and July 11, 2007; by conference call.

DECISION AND REASONS

The tenants applied for an Order setting aside Notices to End Tenancy served by registered mail on January 19th and effective on February 1, 2008.

The Notice were given pursuant to Section 42(1) of the *Manufactured Home Park Tenancy Act* that states

- 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.

This was a protracted hearing. The matter was originally scheduled to be heard on March 5th and the hearing could not proceed on that day because the landlord's evidence was not submitted in time. The Rules of Procedure require that evidence be submitted not less than 5 days before the hearing. One of the reasons for this rule is to allow the Residential Tenancy Branch sufficient time to deliver the evidence to the Dispute Resolution Officer. Because the evidence was submitted on the afternoon of Thursday March 1st and the hearing was on the following Monday, the Branch did not have sufficient time to forward the evidence to me. I therefore dealt with preliminary issues and adjourned the hearing.

I reconvened the hearing on April 16 and heard from both parties on the assignment dispute concerning the lead tenant, Teresa Anne Howe. The issue of the Notices given under Section 42 had to be adjourned again.

When I reconvened the hearing on May 28th I learned that the tenant failed to submit her evidence to the landlord in time to comply with the Rules of Procedure. The landlord's counsel argued that I should refuse to consider the evidence. However in order to exercise my jurisdiction to refuse evidence, in accordance with Section 11.5 of the Rules of Procedure, I would have to first consider the evidence – in order to determine relevance - and also make a determination as to whether there was a willful or recurring failure to comply with the Rules of Procedure.

There was an additional preliminary issue presented when the landlord's counsel requested that I recuse myself. He argued that I should disqualify myself because of an apprehension of bias created by the findings that I made in the assignment dispute concerning Teresa Howe. Unfortunately the landlord's counsel did not make a written submission respecting the allegation of bias, or the request for recusal, so neither I nor the tenants' counsel were prepared to speak to this matter. I therefore adjourned the hearing once again and asked the parties to make written submissions on this matter. I received a written submission from the tenants' counsel on this issue.

When I reconvened the hearing on July 11, 2007 I heard arguments from both parties on whether I should disqualify myself. The landlord's counsel did not submit the decision letter on the assignment dispute to support his allegation of apprehended bias. I did not retain a hard copy of the decision because the assignment dispute was a separate file.

I therefore denied the request to disqualify myself. I was not persuaded that there was an apprehension of bias given that I did not recall the findings that I made in the assignment dispute. That decision had been rendered the month before and I had conducted numerous hearings since that time.

I heard oral submissions from the parties and witnesses regarding the Notices given under Section 42 of the Act.

The landlord said that it is no longer financially viable to operate a manufactured home park. He said that he intends to close the Park and build a house on the property - overlooking the lake - so that he and his family can occupy that residence in September of 2008.

The lead tenant and counsel argued that many of the homes can not be moved and that all the tenants will suffer a significant financial loss if the tenancies are allowed to end. She said that she does not believe that the landlord intends to build a residence and that she believes that his true intention is to obtain vacant land so that he can sell the property or subdivide the property. Counsel argued that the landlord did not show good faith by submitting a building or site plan and said that the tenancies should not be ended for the vague intention of building "a house overlooking the lake". They argued that the landlord did not obtain any permits or approvals or investigate the options open to him that would allow him to build a residence without closing the Park. They submitted letters from other tenants about the hardship the tenants will face if they are required to dismantle and move their homes.

All evidence was carefully considered and on the basis of the information before me I accept that the landlord intends, in good faith, to convert the manufactured home park to a residential use other than a manufactured home park. I am satisfied that the landlord is not required to have any permits or approvals to close the Park. Although the landlord requires permits and approvals to build a house on the property I heard from the Deputy Manager of Development Services, Cowichan Valley Regional District, that an application to construct a house would not be accepted until the landlord ceases to operate the legal non-conforming Manufactured Home Park.

Although I noted the tenant's arguments disputing the landlord's good faith intention I am satisfied that the requirement for good faith relates to the landlord's intention to convert the Manufactured Home Park to "a residential use other than a manufactured home park". I am not persuaded that the landlord is required by law to have an intention – good faith or otherwise – for the eventual use of the land.

Being satisfied that the landlord intends to convert the manufactured home park to a residential use other than a manufactured home park I must decline to set aside the subject notices.

This decision raises the issue of when the tenancies end. The Notices are corrected by Section 46 of the Act because of the landlord's error in specifying a termination date that is the day that rent is owed (February 1, 2008) rather than the last day of a month. Although the previous legislation allowed a Notice to back-date by one day in this situation - in this case to January 31, 2008 – I do not see that provision in the Manufactured Home Park Tenancy Act. I therefore find that the Notices correct to be effective on the last day of the month specified on the Notice. The tenancies therefore end on February 29, 2008.

I have issued Orders for Possession to be effective at 1:00 P.M. on February 29, 2008.


The Orders should be served on each tenant in person. Should a tenant fail to comply with this Order the landlord may register the Order with the Supreme Court for enforcement by the Court Bailiff.

The parties are advised that Section 43 of the Act allows the tenants to end their tenancies earlier than February 29, 2008 after giving not less than 10 days written notice to the landlord. The right to compensation under Section 44 of the Act is not affected when a tenant ends the tenancy pursuant to Section 42 and 43 of the Act.

I have declined to award costs to the tenants.

As no further action is required the files will be closed accordingly.

Dated August 10, 2007.


A. LAFLEUR
Arbitrator



**ARBITRATOR
RESIDENTIAL TENANCY ACT
BOX 9298 STN PROV GOVT
VICTORIA, BC V8W 9J8**

SENT BY ARBITRATOR: Loyleur

LOCATION: Nanaimo

NBR PAGES FAXED: 4 TIME/DATE: August 10/07

SENT TO: _____
Phone: _____ Fax: _____

ATTENTION: _____ original to follow Y
N

- Sybil Corle 905-702-9515
- Dunward Tillie 250-748-1496
- Jessica Howe 250-360-1153
- Roger Botchelor 250-474-7172

Here is the decision letter. I have sent
an original copy to each of you and to
each tenant.

I have enclosed the orders for Possession with
the copy sent to Mr. Tillie, for service on the
tenants.

Dispute Resolution Hearing

BETWEEN:

Teresa Anne Howe (et al)

APPLICANT

AND:

3770010 Canada Inc.

RESPONDENT

STATEMENT OF TERESA HOWE

**CNL – CANCEL A NOTICE TO END TENANCY GIVEN FOR LANDLORD'S
CONVERSION OF MANUFACTURED HOME PARK TO OTHER USE**

**FF – RECOVERING FILING FEE FROM THE LANDLORD FOR THE COST OF
THIS APPLICATION;**

On January 24, 2007 I was served with a 12 month eviction notice. The eviction was based on the *Manufactured Home Park Tenancy Act* s.42 on form #RTB – 5/06 Therefore, **I respectfully request that this arbitration hearing be governed under the *Manufactured Home Park Tenancy Act*. For the following reasons:**

1. This is a Manufactured Home Park as defined by the Manufactured Home Park Tenancy Act.
2. This Parcel of land known as Mason's Mobile Home Park since the 1970's is "**legal non-conforming**" (**grandfather**) status, and was established and operating as a Manufactured Home Park prior to the zoning Bylaws of 1975 and 1986 . The property continues to be a Manufacture Home Park to the present day.
3. All legal documents pertaining to this parcel of land, recognize this as being a Manufactured Home Park and is referred to as such through the ***Land Title and Survey Authority***. The Property Assessment Report's legal description references this parcel as Mason's Mobile Home Park and the actual use is referred to as Manufactured Home Park. This parcel of land is taxed as a Manufactured Home Park.

Attached marked exhibit "G" is a copy of the BC *Assessment Report* for the parcel of land.

4. Each unit situated on the Mason's Manufactured Home Park is assessed for property taxes for the provincial and local government to calculate our property taxes through

the BC *Assessment* assessed value. The property description is defined as: Shawnigan Land District, Manufactured Home, containing an individual registry number and referred to as Mason's Manufactured Home Park.

Attached marked exhibit "H" is a copy of the BC Property Assessment for unit #7.

UNDER THE MANUFACTURED HOME PARK TENANCY ACT SECTION 42, ALL NECESSARY PERMITS AND APPROVALS REQUIRED BY LAW NEED TO BE IN PLACE AND ACCORDING TO THE FOLLOWING, THEY ARE NOT:

5. According to the CVRD, in order to develop the property, the owner would need to obtain a development permit under the *Riparian Areas Regulation*. This issue is noted in Mike Tippett's (MCIP Deputy Manager Development Services) letter dated January 25, 2007: The topical map clearly demonstrates that the property line runs adjacent to the creek.

"If any portion of the land proposed to be subdivided lies within 30 meters of the natural boundary of Shawnigan Creek or any other water course, a development permit application under the Riparian Areas Regulation will also be required, prior to subdivision approval. To date, no such application has been received".

Attached marked exhibit "B" is a copy of the Shawnigan bylaw OCP No. 1010.

Attached marked exhibit "C" highlighted the last paragraph in Mike Tippett's Letter.

Attached marked exhibit "D" a topical map highlighted in yellow showing the property line run along the creek.

6. I contacted Mike Tippett (MCIP Deputy Manager Development Services) at the CVRD and requested the status of any permits and/or approvals that the Landlord had obtained to justify the eviction, as he had not posted any re-development signs. Mr. Tippett wrote me a letter confirming no permits have been obtained, and only information had been forwarded to the Landlord.

Attached marked exhibit "N" is a copy of the letter dated January 25, 2007 from Mr. Tippett.

7. On February 6, 2007 Alan Budreau, a local building contractor and close friend who also had done my renovations, contacted Mike Tippett and Grant Breckenridge (the building inspector for Shawnigan District). Both men told him that to their knowledge no permits have been applied for, nor approvals granted for the Park.

Attached marked exhibit "O" is a copy of the letter from Alan Budreau, dated February 6, 2007.

8. I just received today, May 14th, 2007 an affidavit sworn by Michael Tippett Deputy Manager of Development Services for the CVRD. Paragraph 10 reads:

"That in order for the CVRD to issue a Building Permit for the R3 zoned portion of the property that area must be vacant, that is no manufactured homes can remain on the site".

9. In paragraph 9 of Michael Tippett's affidavit, clearly Mr. Carle would have to obtain permits for water and sewage. I believe that he would not be able to obtain permits for the sewer until he has decommissioned the old sewer system, and has plans to replace it. To date he has not made any applications through the *Ministry of Health*.

"That the only requirement to build such a single family dwelling is that the owner obtains a Building Permit and meets the requirements in the Building Permit for provision of water and sewer".

10. In paragraph 7 of Michael Tippett's, the current septic system is a septic tank system and the owners would need to decommission and replace with community septic system and there is no community septic system available for that parcel of land. I believe that he should obtain at the very least a permit for the septic system in good faith to demonstrate that he does fully intend to build one (1) house for him.

"...and also provides for a minimum lot size of .02 hectares (approximately 1/2 acres) providing that sewer and community water is available as opposed to a septic tank system and well".

11. On May 10, 2007 Alan Budreau contacted Grant Breckenridge (the building inspector for Shawnigan District) and as to date no building permit applications of any kind have been received pertaining to this property. Mr. Budreau contacted Ross Deveau (*The Ministry of Highways* official for the area) who informed Mr. Budreau that no applications for highway access to this property have been made since 1999. Mr. Budreau also contacted Alan Rideout (*The Ministry of Health* Official for the area) who also confirmed there have been no applications received.

Attached marked exhibit "P" is a copy of the letter from Alan Budreau, dated May 10, 2007.

12. In Mr. Carle's evidence he is citing sections of the *Manufactured Home Park Tenancy Act (ANNOTATIONS: 42(1):01 generally)*. He may not need every single approval necessary to complete a project (i.e. water hookup, sewer hookup, hydro hookup etc.) in order to be allowed to begin construction, but he must have a building permit.

**Attached marked exhibit "Q" is a copy the excerpt from the
Manufactured Home Park Tenancy Act (ANNOTATIONS: 42(1):01
Generally).**

THE MANUFACTURED HOME PARK TENANCY ACT SECTION 42 GOES ON TO SAY "... AND INTENDS IN GOOD FAITH, TO CONVERT ... " THE FOLLOWING LEAVES SOME DOUBT AS TO THE 'GOOD FAITH' REQUIREMENT:

13. Mr. Carle, Lori and Jamison Pollock have changed their position with respect to what their plans are with the Park many times. Lori Pollock and her husband attended both my home and others in the Park in April of 2005. They introduced themselves as owners stated their message was to alleviate concerns over the future of the park. They stated they had no alternate plans other than to maintain and improve the park. They also acknowledged they could appreciate our concerns over possible re-development of the land, but they reassured us that this was not their plan.

Attached marked exhibit "I" is a letter from Ian and Cathy tenants that occupy site #7.

14. In early January of 2006, Alan Budreau was outside doing some improvements to my home. Syl Carle and Jamison Pollock approached and informed him that they were planning on having the property surveyed in order to define the lots. They stated the purpose for this was to bring in more mobile homes. They further told Mr. Budreau that my buildings were taking up too much space, and that my shed and gazebo would have to be moved. They offered that if I were to pay double pad rent, the need to add an additional home on my lot would not necessary.. Mr. Budreau asked if they had a survey company in mind and they didn't so Mr. Budreau referred them to Kenyon & Wilson. Mr. Carle contacted Kenyon & Wilson who subsequently came and provided an estimate, but they never heard from Mr. Carle again. Their plans to bring in more mobiles further gave me confidence that their intention was to improve and maintain the park.

Attached marked exhibit "J" is letter from Alan Budreau detailing the conversation with Syl Carle and Jamison Pollock (the owners).

15. On November 16, 2006 @6:27 p.m., phone number 416-305-9901, I personally called Syl Carle. The purpose of the call was to enquire why I had not received his signature on a Lease Assignment Agreement, a necessary document for mortgage financing. During the conversation Mr. Carle stated point blank that it was his intention to evict everyone from the Park He told me that he already had an application accepted through the CVRD. Needless to say, I was completely shocked. In my desperation I reminded Mr. Carle that when he had purchased the property they had assured all tenants that they intended to maintain and improve the park, and that they had even gone through preliminary steps to bring in more mobiles. He continued that he was going to "hire a high profile lawyer" to get rid of the residents of the park and he intended to "build 11 houses".

Attached marked exhibit "K" is a copy of my phone bill for November 16, 2006.

16. The cruelty Mr. Carle is exhibiting is immeasurable. At this point, two tenants have been forcefully removed from the park. I have never seen an individual treat people in such an inhumane way in all my life. Mr. Carle was able to obtain a few writs of Possession against some residence, though I don't know the whole story, but I do know that a little 12 year old girl came home from school one day and was greeted by the Sheriff and bailiffs blocking her from entering her home. Certainly this little girl witnessed a harsh side of human nature when she was not able to enter her home to obtain even the most basic personal belongings. Mr. Carle is quoted in the April 6 issue of the Cowichan Valley Citizen, "...all precautions were taken to protect the unsupervised child returning home during a recent eviction". I witnessed no precautions, and without the intervention by neighbors in the park, she was effectively homeless. Mr. Carle also had no interest in hearing the human side of the Sagaskies (unit #6) story. Mr. Peter Sagaskie was suffering from advanced stages of cancer and hospitalized in Ontario. While hospitalized, Mr. Sagaskie didn't respond to providing current insurance docs and an updated oil tank inspection. The direness of the situation was explained to Mr. Carle, but he still bulldozed through legal means to evict this family. For years we residents have lived in peaceful and quite enjoyment with no evictions. Since the new owners took possession two (2) years ago, there have been three (3) forced evictions, and frivolous eviction notices based on minor infractions that could have been easily resolved without the drastic measure of serving evictions.

Attached marked exhibit "S" are a few letters from the tenants.

Attached marked exhibit "T" news paper article Wednesday April 4, 2007.

Attached marked exhibit "U" new paper article Friday April 6, 2007.

17. My own storey is Mr. Carles unreasonable refusal to allow my tenancy. This issue has become a long and extremely stressful process. I have provided all permits pursuant to Mr. Carles requests. After seeing that I have met every one of his demands, Mr. Carles changes his tact and has now demanded from Russ MacArther (Chief Inspector for the CVRD) that he *revoke* my permits. The very same permits that he demanded I produce.

May 12, 2007

Teresa Anne Howe