Victoria Parent File No. 716002
Joint Files No. 716023, 716024, 716040, 716041
Decision Date: 2008-06-25

In the matter of the *Manufactured Home Park Tenancy Act*, SBC 2002, c. 77., as amended

between

Joan Kathleen Auld, Terrence Charles Auld, Alice Walter, Robert Devine, Norman Street and Betty Birrell, Tenant(s),

Applicant(s)

And

WCY Rentals Ltd., Landlord(s),

Respondent(s)

Re: Applications pursuant to sections 42 of the *Manufactured Home Park Tenancy Act* regarding the rental unit at:

2A, 12, 1A, 3 and 10, 11255 Chemainus Road, Ladysmith, British Columbia

Date of hearing: June 04, 2008, by conference call.

Appearances:
Alice Walter, Tenant
Joan Auld, Tenant
Terrence Auld, Tenant
Robert Devine, Tenant
Norman Street, Tenant
Betty Birrell, Tenant
Lee Gilroy, Landlord
Tom Anderson, Witness
Sherry Dumford, Witness

DECISION AND REASONS

PRELIMINARY MATTERS

1. This hearing dealt with multiple, joined Applications for Dispute Resolution, filed by the Tenants, to cancel a Notice to End Tenancy issued under the Manufactured Home Park Tenancy Act (the "Act").

2. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

3. This hearing proceeded by telephone conference call. The group of Tenants making the Application were initially under the understanding that they could attend the hearing in person, with the Landlord attending by telephone conference call.

4. I determined prior to the hearing, pursuant to section 74 of the Act, that this was not an appropriate method for the hearing to be conducted. I based this determination on the potential for bias at the hearing, where I would be face to face with the Applicants, yet on the phone with the Respondent. In my opinion, this would put the parties on an uneven ground. For example, at one or two times during the hearing a few Applicants were laughing during the Respondent's testimony. I am not sure what they were laughing or giggling at, however, had I been in the room with them, out of sight of the Respondent, it could give rise to the apprehension of bias, or improper conduct on my behalf.

5. I explained at the outset of the proceeding that both parties would be attending the hearing by telephone conference call to ensure a fair process. One appointed Tenant represented the Applicants during the hearing. The Tenants' representative stated she understood my reasons for conducting the hearing with all parties on the telephone and did not object. During the course of the hearing no party expressed an inability to hear the other participants over the phone. Finally, if other Tenants in the room with the representative were unable to hear the proceedings, it would not have affected their representation by her, nor have made a difference if they were participating by phone or in person.

FACTS AND BACKGROUND

6. The Tenants occupy a manufactured home park known as the Seaside Trailer Park (the "Park"). Some have occupied their rental sites, or pads, for many years. There are five Tenants who filed these Applications and 12 rental sites in the Park.

7. The Park was purchased by the current Landlord approximately two years ago. Shortly after he purchased the Park property, the Landlord met with the Tenants and explained his intent to live on the property and shut down the Park. The evidence indicates there is a single family dwelling on the property, which he testified he and his family intend to live in.

8. In early November of 2007, the Landlord met with the Tenants to discuss his plans for the Park. Meetings and discussions took place over a few days. There was initially a proposal that the Landlord would purchase alternate property to develop a new manufactured home park for the Tenants to move to. This proposal did not succeed, apparently due to costs and the inability to have all parties agree.

9. On April 14, 2008, the Applicant Tenants and all other occupants of the Park received a Notice to End Tenancy from the Landlord. The effective date of the Notice is May 31, 2009. It is agreed that along with the Notice, all

Tenants and other occupants were each issued cheques in an amount equivalent to 12 months of rent payments for their site.

10. The reason indicated by the Landlord in the Notice is set out as:

> "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."

ISSUES

11. The Tenants' position is that the Landlord does not have all the necessary permits and approvals required by law to have issued the Notice, and therefore the Notice should be cancelled. The Landlord's position is that no permits or approvals are required by law and therefore the Notice is valid.

12. Therefore, the issue is:

> Does the Landlord have the necessary permits and approvals required by law, in order to have validly issued the Notice to End Tenancy?

ANALYSIS AND FINDINGS

13. Section 42 of the Act sets out one of the few methods a landlord may use to end a tenancy:

> **Landlord's notice: landlord's use of property**
>
> (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.
>
> (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 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, and
>
> (b) if the tenancy agreement is a fixed term tenancy agreement, is not earlier than the date specified as the end of the tenancy.
>
> (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.

> (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
>
> (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
>
> (b) must vacate the manufactured home site by that date.

14. Section 44 sets out the compensation required under section 42:

> **Tenant's compensation: section 42 notice**
>
> (1) A landlord who gives a tenant notice to end a tenancy under section 42 *[landlord's use of property]* must pay the tenant, on or before the effective date of the notice, an amount that is equivalent to 12 months' rent payable under the tenancy agreement.
>
> (2) In addition to the amount payable under subsection (1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 42 within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 8 times the monthly rent payable under the tenancy agreement.

15. Section 44(2), above, also contains a provision for further compensation to the tenant(s) should the landlord not take the steps to accomplish the stated purpose under the Notice within a reasonable period after the effective date of the Notice.

16. According to the documentary evidence submitted, the Park is located in Electoral Area G, in Ladysmith, and subject to Saltair Zoning Bylaw No. 2524, provision 5.5 MP-1 – Manufactured Home Park Zone 1. Under this bylaw the permitted uses are set out as:

> "1. Permitted Uses
>
> The following principal uses and no others are permitted in the MP-1 Zone:
>
> (a) single family dwelling;
> (b) manufactured home park;
> ..."

17. The Tenants have submitted a letter from the municipal authority in the area, Cowichan Valley Regional District (the "CVRD"), indicating it has, "... not received any applications for demolition of existing buildings, or applications for permits to construct any structures on the [subject] property."

18. The Tenants have submitted that this means the Landlord has not complied with the legislation in section 42, in that he has not made application for permits or approvals. Nevertheless, the Tenants have not shown, either in

their evidence or testimony, what permits or approvals are required by the Landlord to occupy the dwelling on the property.

19. The author of the above quoted letter, Mr. Tom Anderson, Manager, Development Services Department CVRD, was called during the hearing to be a witness. He explained that the zoning information for the Park was correctly identified as set out in 5.5 MP-1, which allows for a single family dwelling on the property. He explained the Landlord does not require a permit or zoning approvals to live in the single family dwelling on the property. However, if the Landlord chose to make structural alterations to the dwelling, or construct another building on the property, or develop the property, or demolish the dwelling, there would be permits or approvals required.

20. During the course of Mr. Anderson's affirmed testimony a question arose regarding whether or not removal of the manufactured homes on the property is equivalent to demolition, requiring a permit pursuant to zoning laws. Mr. Anderson wished to seek advice from his office on this matter. On June 17, 2008, I received a letter from Mr. Anderson (a copy of which is enclosed with this Decision), indicating that manufactured homes are exempt from the requirements of the BC Building Code, and therefore, removal of a manufactured home is not considered a building demolition. Simply put, no demolition permit is required prior to removal of a manufactured home. (I do note though, the Tenants are responsible for obtaining permits to move and transport the manufactured homes.)

21. The Tenants did not raise the issue of the good faith intentions of the Landlord, however, in his own testimony he stated he had a good faith intention to occupy the dwelling on the property. I do not find that the testimony or evidence of the Tenants indicates the Landlord has dishonest or ulterior motives in ending the Tenancies, nor did I perceive such motives in the Landlord's testimony.

22. The Tenants did explain the Landlord had removed some trees on the property without the required permits. The Landlord testified that the trees were dead, however, I understand that issue is being dealt with by the CVRD. Nevertheless, I do not find that this should cause the Landlord to be considered as having bad faith intentions in the closure of the Park.

23. Based on the evidence and testimony provided, and on a balance of probabilities, I find that the Landlord does not require permits or approvals to carry out his stated intentions to shut down the Park and live in the dwelling with his family.

24. The Tenants' position in this matter is understandable, in that they have interpreted the legislation to mean that permits or approvals to convert the property to a use other than a manufactured home park are required and must be obtained. This indicates a presumption that permits or approvals are required in all instances.

25. With all due respect, I find this is not the correct interpretation of section 42. In this case, and as set out above, the property is already zoned for a single family dwelling and/or a manufactured home park. There is no evidence submitted which indicates the Landlord has to have a permit, or that the property needs to be rezoned, for the use intended by the Landlord. The Landlord intends to move into the dwelling that already exists there and cease operating the manufactured home park. The bylaw cited above allows for this intended use of the property already.

26. As an aid to interpreting section 42, I also refer to *Howe v. 3770010 Canada Inc.*, 2008 BCSC 330, a decision of the honourable Madam Justice Gerow, in the Supreme Court of British Columbia and dated March 18, 2008, at paragraph 33:

> "Section 42(1) of the ***MHPTA*** refers to "all the necessary permits and approvals required by law ... to convert all or a significant part of the manufactured home park to ... a residential use other than a manufactured home park." In my view, the reasoning in ***North Shore Motels (1977) Ltd. v. Gould*** applies in this case. The plain meaning of the words in s. 42 is that the approvals and permits are those that are required to convert or change the use of the property to a residential use other than a manufactured home park."
>
> [Underlining added.]

27. Applying all of the foregoing, and based on the above interpretation of section 42, I find that no approvals or permits are required by the Landlord to convert the Park to the intended use other than the manufactured home park, as the bylaw already allows the Landlord to occupy the single family dwelling.

CONCLUSION

28. I find that the Landlord does not require permits or approvals to carry out his stated intentions to shut down the Park and live in the dwelling with his family.

29. I find that the Notice to End Tenancy is valid and therefore, I dismiss the Applications of the Tenants.

30. The Notice to End Tenancy remains in full force and effect.

Dated June 25, 2008.

E. Letain
Dispute Resolution Officer