BRITISH COLUMBIA
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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

File No: 240407, 240408, 240409, 240410, 240411, 240412, 240413, 240414, 240416, 240417, 240420, 240425, 240428

In the matter of the *Manufactured Home Park Tenancy Act,* SBC 2002, c.78., as amended

Between

CAROL ANN GREEN, IAN SUTHERLAND, SECELA DUTTON, WAYNE POLLARD and JILL ANN POLLARD, ED KRAP and FAYE LOUISE KRAP, DUSTIN TILLEY-STURGEON and DAVID DUQUETTE, ALICE JONES, LETISSIA POLONIA and MARC BOUCHARD, XAVIER KOPIN, STEPHANIE WONG and JIADA HUANG, FLORENCE CHIROWSKA, BARBARA YOUNG and KENNETH YOUNG, and DENNIS WESTENDALE, Tenants,

Applicants

And

SEAVIEW DEVLOPMENTS CORP and JEFF ZIGAY, Landlord(s),

Respondents

Regarding manufactured home sites: **102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 115 and 118 – 6647 Sooke Road, Sooke, BC**

Date of Hearing: November 19, 2008 and January 6, 2009, by conference call

Date of Decision: February 5, 2009

Attending:

For the Landlord: Jeff Zigay, Landlord
Stephen King, Legal Representative
John Alexander, Legal Representative (January 6, 2009 only)
Shayne Fedosenko, Witness
Don Lidstone, Legal Representative for District of Sooke (January 6, 2009 only)

For the Tenants: Carol Ann Green, Tenant, Lead Applicant and appearing on behalf of tenants: Secela Dutton, Florence Chirowska, and Ian Sutherland (January 6, 2009 only)
Ian Sutherland, Tenant (November 19, 2008 only)
Wayne Pollard, Tenant
Jill Ann Pollard, Tenant
Ed Krap, Tenant
Faye Louise Krap, Tenant
Dustin Tilley-Sturgeon, Tenant
David Duquette, Tenant (November 19, 2008 only)
Alice Jones, Tenant
Marc Bouchard, Tenant (November 19, 2008 only)
Xavier Kopin, Tenant
Stephanie Wong, Tenant
Jiada Huang, Tenant
Barbara Young, Tenant
Kenneth Young, Tenant
Dennis Westendale (January 6, 2009 only)

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Interim Decision

Dispute Codes: CNLC, FF

Introduction

This hearing was scheduled to deal with 13 joined Applications for Dispute Resolution, filed by the tenants, to cancel the *12 Month Notice to End Tenancy for Conversion of Manufactured Home Park* (the Notice) served upon them under the *Manufactured Home Park Tenancy Act* (the Act). A hearing was held on November 19, 2008 to deal with preliminary matters and the hearing was reconvened for January 6, 2009. The tenants appeared on their own behalf at both hearing dates or were represented by the lead applicant that was identified during the hearing of November 19, 2008. The landlord appeared and was assisted by legal representation at both hearings. All parties that appeared were given the opportunity to be heard and respond to the other party's submissions.

Preliminary Matters – November 19, 2008 hearing

During the conference call of November 19, 2008 the landlord's representative requested an adjournment. The landlord's representative suggested that the scheduled hearing be used to address preliminary matters. The adjournment was granted on the basis of the landlord was incapacitated due to recent surgery. Besides the adjournment request, the following preliminary matters were identified:

1. Appointment of lead applicant;
2. Landlord's request for a Summons to Testify;
3. Landlord's request for detailed submission from the tenants;
4. Landlord's request for face-to-face hearing;
5. Status of applications where applicant not in attendance at hearing; and,

6. Landlord's request to serve the landlord's evidence upon the lead applicant only.

In summary, the issues identified above were addressed as follows. A lead applicant was identified during the hearing. The landlord's request for a face-to-face hearing was denied as the teleconference call forum was shown to be sufficient to hear from the parties and resolve this matter. The landlord was instructed to serve the landlord's evidence upon all of the tenants that filed a dispute.

A Summons to Testify was provided to the landlord to serve upon the Acting Director of Planning for the District of Sooke. The landlord was informed that it was the landlord's responsibility to follow the Rules of Procedure with respect to requiring the third party's attendance at the reconvened hearing.

With respect to the landlord's request for a detailed submission from the tenants, the landlord was advised that the tenants needed sufficient information from the landlord as to the landlord's intention to convert the manufactured home park to a use other than a manufactured home park without permits or approvals. The parties were provided the opportunity to make written submissions and submit additional evidence up to five days prior to the date of the reconvened hearing.

Where applicants do not appear at the hearing(s), the parties were informed that I would accept that the lead applicant as acting on their behalf unless I was informed otherwise.

Issue(s) to be Decided

1. Are there grounds to set aside and cancel the *Notice to End Tenancy for Conversion of Manufactured Home Park.*
2. Recovery of the filing fees paid by the applicants.

Background and Evidence

Upon review of the evidence before me, I make the following findings. The tenants occupy a manufactured home park that was created in the 1960's and is located on a 3.7 acre parcel of property in the District of Sooke (the District). The property has two different types of zoning, also known as "split zoning". There are 17 manufactured home sites located on the upper part of the property in a zone described as "Mobile Home Park Zone" (RM-1) by the District. The lower portion of the property is ocean front and is zoned as "Village Commercial" (C-2) by the District. The zoning map indicates that the RM-1 zone is larger than the C-2 zone in area.

In addition to the manufactured home sites there are four dwellings located on the property with two being in the RM-1 zone. The two dwellings located in the RM-1 zone are legally non-conforming and are currently tenanted. The park has been owned by a limited corporation (herein referred to as the owner) since approximately 2001. The person identified as the landlord on the Notice is one of three shareholders of the limited corporation who is involved in the day to day operations of the park and dealings with the tenants (herein referred to as the landlord).

I also find that of the 17 manufactured home sites currently tenanted, 16 tenancies are on a month-to-month basis and the remaining tenancy is for a fixed term. The month-to-month tenants were served with a Notice to End Tenancy on or about October 17, 2008. The Notices have an effective date of October 31, 2009. Of the 16 Notices served by the landlord, the tenants of 13 sites filed applications to dispute the Notices. During the conference call of January 6, 2009, the tenant of manufactured home site #118 expressly withdrew his Application for Dispute Resolution (file no. 240417). The withdrawal of that application was accepted and the remainder of this decision does not apply to that rental site.

The Acting Director of Planning for the District did not appear at the January 6, 2009 hearing despite the Summons to Testify provided to the landlord. I found that the landlord had not served the third party until January 5, 2009. Since it was the landlord's obligation to ensure the third party appeared I have accepted and considered as evidence the correspondence written by the third party and provided to the tenants. The District did have their legal representative appear at the January 5, 2009 hearing.

Tenants' position

The tenants submitted that the landlord requires permits or approvals in place in order to end the tenancies for landlord's use of the property and that the landlord does not have any permits in place.

The tenants alleged that the landlord is trying to avoid the District's new Manufactured Home Park Redevelopment Policy (the policy) that was before the District for consideration shortly before the landlord served the Notices upon the tenants and was adopted by the District shortly thereafter, on October 28, 2008. The tenants submitted that District's policy entitles them to compensation equivalent to the assessed value of their manufactured homes or relocation to a new park and that the policy still applies to them. The tenants called into question the landlord's good faith intention to convert the park and provided a copy of the District's policy as evidence.

The tenants were also of the position that the landlord had not informed them of his intentions to close the park when they purchased their manufactured homes. One tenant explained how his financial institution had actually recommended the landlord's park to the tenant approximately 12 years ago since the park had been in existence for a long period of time. Another tenant testified that he had enquired with the landlord about the family orientation of the park when he purchased a manufactured home in the park in 1998 but that the landlord did not indicate the park would be closing.

Most of the tenants have resided in the park for several years and their manufactured homes are old and cannot be moved, or, if they can be moved, there are no alternative parks in the same area in which to move their manufactured homes. Many of the tenants believe they will have to leave their manufactured homes behind since they cannot be moved and that the tenants will suffer great financial loss. The tenants are of the position that the landlord stands to gain a tremendous amount of money by redeveloping the park and that the compensation of 12 month's rent is insufficient to compensate them for their losses.

Landlord's position

The landlord testified that the park has been operating at a loss in the past few years and that the infrastructure is very old and failing. The landlord provided copies of the Balance Sheets and "Profit & Loss" statements prepared for the owners of the property for the fiscal years ended May 2006, May 2007 and May 2008. The Profit & Loss statements show that the owners of the property had incurred net losses in the past three years. As a result of the operating losses, the landlord has been exploring different ideas to better utilize the property as continuing to operate the park will likely lead to bankruptcy for the landlord.

The landlord testified that in August 2008 the landlord and the District had discussions with respect to the future of the property and that the district would be requiring the landlord to connect the property to the sanitary sewer system. Around this same time, the water line servicing the property also suffered another leak. At that time, the landlord decided that he would close the park and use the land to operate his home-based business. The landlord confirmed that he intends to reside in one of the existing dwellings located on the property in the RM-1 zone, use the other building in that zone for the home-based business and the land would be used for a showcase area for the

home-based business and customer parking. It is the landlord's position that the land where the park is currently situated will be used for residential use other than a manufactured home park. It is also the landlord's position that the landlord does not require any permits or approvals to close the park and use the existing dwellings for his residence and home-based business.

The landlord explained that he is unable to obtain more financing from the bank in order to pay for the installation of the sanitary sewer system and make the necessary upgrades to the infrastructure. The landlord provided a copy of an estimate from an engineering firm that opined the installation of the sanitary sewer system, the water line upgrade and replacement of the driveway would cost approximately $458,000.

The landlord is of the position that he intends to develop only the lower portion of the property that is in the C-2 zone. The landlord acknowledged that a rezoning application was initially submitted for the entire property; however, it was subsequently learned that a rezoning application could be submitted for only the lower portion since the property has "split zoning". Therefore, on October 14, 2008 the rezoning application was amended to apply to the lower portion of the property only and not the portion currently used for the park.

The landlord called a licensed realtor as a witness. The witness testified that he has been involved in 3 to 4 offers to purchase manufactured homes in the park in the last 4 or 5 years and that all but one of the deals collapsed because the landlord would not provide reassurance to the prospective tenants as to the future of the park. The witness suggested that all of the tenants that have disputed the Notices either had purchased their manufactured home more than a few years ago, or if they had purchased their homes more recently, that they should have been more diligent in ensuring they were satisfied about the future prospects of the park when they purchased their manufactured homes.

In summary, the landlord submitted that he is not rezoning the part of the property currently used for the park and that he intends to use that part of the property for his own residence and home-based business. The landlord provided excerpts of the District's zoning bylaws as evidence that the permitted uses of RM-1 zoning is a single family dwelling and home-based business. The landlord is of the position that since the park will be closed and an existing dwelling will be used as his residence, he does not require any permits or approvals to use the property for a residential use other than a manufactured home park. The landlord also submitted that the timing of the issuance of the Notices was not to avoid the District's new policy as the policy does not apply to this situation since the manufactured home park is not being rezoned.

During the hearing, the landlord's representative verbally requested that Orders of Possession be provided to the landlord.

Analysis and Findings

The Notice to End Tenancy issued to the tenants was made under section 42(1) of the Act, which provides,

Landlord's notice: landlord's use of property

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.

[my emphasis added]

As stated in the Residential Tenancy Guideline 33: *Ending a Manufactured Home Tenancy Agreement – Landlord Use of Property*, section 42 of the Act is intended to protect the security of tenure of tenants while permitting the landlord to take advantage of legitimate business ventures.

Section 42 pertains to the *landlord's* intended use of the property. In this case, the landlord is identified as an individual on the Notices yet it has been presented to me that the owner of the property is a corporation. The landlord is a minority shareholder of the corporation. I have considered the meaning of "landlord" in rendering this decision. The Act defines landlord, in part, as

> **"landlord"**, in relation to a manufactured home site, includes any of the following:
>
> (a) the owner of the manufactured home site, the owner's agent or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> [my emphasis added]

I find that the individual identified as the landlord on the Notices and as the respondent for this proceeding meets the definition of a landlord under the Act. Therefore, I have considered that individual's good faith intention to convert and use the property as described by him.

I have reviewed the Notices served upon the tenants and find them to be in the approved form and otherwise correctly prepared and sufficiently served upon the tenants. Therefore, it is before me to determine whether the landlord has all the

necessary permits and approvals required by law in order to convert the manufactured home park to a residential use other than manufactured home park and that the landlord has a good faith intention to convert the park.

From the submission of the tenants, I understand that the tenants are of the position that the legislation requires the landlord to obtain permits or approvals in all instances. However, with all due respect, I do not find this to be the correct interpretation of section 42(1) of the Act. Section 42(1) requires that all necessary permits and approvals be acquired. I find that the inclusion of the word "necessary" means that if permits or approvals are not necessary to convert the manufactured home park to a residential use other than manufactured home park, then the landlord is justified in ending the tenancy to convert the manufactured home park without permits provided the landlord has a good faith intention and a significant portion of the land will be used for the new purpose.

There is no dispute that the landlord does not have permits and approvals in place; therefore, I must consider whether permits and approvals are necessary in order to convert the manufactured home park for a use as described by the landlord. The landlord stated that he will reside in one of the existing dwellings and use the other dwelling for his home based business. I am satisfied that at least one of the dwellings in existence on the land is inhabitable as I heard testimony that the dwellings are currently tenanted. I did not hear evidence that permits are required to make the dwelling inhabitable by the landlord. I did not hear evidence that permits are required to use the other dwelling for the home-based business. While the District will likely require a business license, obtaining a business license before the Notices were issued and the business has commenced on the property would be premature and unnecessary. Therefore, I am satisfied that the landlord's intention to use one of the dwellings as a residence and one of the dwellings for his home-based business did not require a permit or approval at the time the Notices were issued. I am also sufficiently satisfied

that a significant portion of the property will be used for the purpose of a residence for the landlord and his home based business.

Although the tenants provided an e-mail from the Acting Director of Planning for the District which indicates that construction of a single family dwelling would only be permitted in the RM-1 zone if a manufactured home park existed, I find this case is distinct since the property already contains a single family dwelling. I find it extremely unlikely that the District would require the landlord to demolish the dwellings and construct new buildings in order for the landlord to reside on the property. Therefore, I find it likely that the landlord can inhabit one of existing dwellings as he stated he intends to do.

I have duly considered the tenants' position with respect to the good faith intention of the landlord. The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. Where the landlord's good faith intention is called into question, the onus is upon the landlord to satisfy me that he truly intends to use the park as he described and that he is not ending the tenancies for dishonest or ulterior motives.

From the evidence before me, I am satisfied that the continued operation of the park is economically unfeasible and that the landlord is acting in a prudent manner to limit the financial losses for himself and the owners of the land by finding an economically viable alternative use. Upon review of the evidence submitted by the landlord, including financial statements and the engineer's estimate to connect the park to sewer, the landlord has satisfied me that his reasons for closing the park are to avoid incurring further operating losses and that the park cannot continue to operate much longer without a significant cash injection to upgrade the inadequate infrastructure required for

a manufactured home park. Essentially, I accept that the park and its infrastructure is at, or near, the end of its useful economic life and without evidence to the contrary, I do not have any reason to disbelieve the landlord that his financial institution will not advance sufficient funds to carry out the infrastructure upgrades. I am of the opinion that removing the park from the land will substantially reduce the cost of upgrading the infrastructure if in fact the requirement to connect to sewer will remain once the manufactured homes are removed. I am satisfied that the landlord can and will inhabit one of the dwellings and use the land for his home based business in a more economical manner than the continued use as a manufactured home park. Therefore, I am satisfied that the landlord has met the first part of the good faith intention test.

For the second part of the good faith intention test I have considered whether the District's anticipated policy indicates that the landlord was acting with dishonest or ulterior motives when he served the Notices upon the tenants. Upon review of the District's policy that was submitted as evidence by the tenants I am satisfied that the policy applies to rezoning applications submitted for manufactured home parks. Since the landlord has amended his rezoning application to apply to the C-2 zone only and not the RM-1 zone, where the park is located, I find the landlord's position that the landlord did not issue the Notices to avoid the policy is reasonable and that the landlord has reason to believe that the policy does not apply to his intended use of the park.

For clarity, it is not within my jurisdiction to determine the applicability of the District's policy upon the landlord or to enforce the District's policy against the landlord. That is a matter the parties are at liberty to take up with the District. However, my review of the policy was with the limited view to evaluate the landlord's submission that he was not trying to avoid the policy as alleged by the tenants.

In light of the above analysis, I find that the landlord has sufficiently met his burden to prove that he intends, in good faith, to convert the manufactured home park to a

residential use other than a manufactured home park. Accordingly, the requirements of section 42 have been met and I find no basis to set aside the Notices served upon the tenants.

Since the Notices remain in effect, the tenants are informed of their right to compensation under section 44 of the Act. Section 44 provides,

Tenant's compensation: section 42 notice

44 (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 6 times the monthly rent payable under the tenancy agreement.

I do **not** find sufficient grounds under the Act to set aside the Notices to End Tenancy and the tenants' applications are dismissed. I make no award with respect to the filing fees paid by the applicants. Each party is responsible for the costs they incurred for this proceeding.

As the tenants' applications have been dismissed, under section 48 of the Act the landlord is entitled to receive the Orders of Possession as requested. The landlord is provided with Orders of Possession with effective dates of October 31, 2009.

C. Reid
Dispute Resolution Officer

Corrected: February 10, 2009

Conclusion

The tenants' applications to set aside the Notices to End Tenancy are dismissed and the Notices are upheld. The landlord is provided with Orders of Possession effective October 31, 2009.

February 5, 2009

Date of Decision

C. Reid
Dispute Resolution Officer

Victoria File No. 240408
Decision Date: 2009-02-05

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

Between

CAROL ANN GREEN, Tenant,

Applicant(s)

And

SEAVIEW DEVELOPMENT CORP and JEFF ZIGAY, Landlord(s),

Respondent(s)

Re: An application pursuant to sections 42 and 48 of the *Manufactured Home Park Tenancy Act* regarding the manufactured home site at:

113 – 6647 Sooke Road, Sooke, British Columbia

Date of hearing: November 19, 2008 and January 6, 2009, by conference call.

ORDER of POSSESSION

I AUTHORIZE AND ORDER YOU, CAROL ANN GREEN, tenant, and any other occupant of the manufactured home site to deliver full and peaceable vacant possession and occupation of the above noted manufactured home site to **SEAVIEW DEVELOPMENT CORP and JEFF ZIGAY, landlord(s)**, not later than **October 31, 2009.**

Dated February 5, 2009.

C. REID
Dispute Resolution Officer