

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with joined applications filed by four Tenants to obtain an Order to cancel a 12 Month Notice to End Tenancy for Conversion of a Manufactured Home Park.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served via registered mail. The Landlord confirmed receipt of the hearing packages.

The Landlord, Property Manager and the lead Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Preliminary Issues

The Tenant testified the 12 Month Notice to End Tenancy issued for unit #2, was not issued to the correct person. The Tenant argued the name listed on the Notice is a relative to the owner however does not have an interest in the manufactured home. The Tenant advised that the applicant listed on the application for dispute resolution is the owner of unit #2. The Tenant argued the 12 Month Notice for unit #2 was issued in the wrong name and should be dismissed

Issues(s) to be Decided

Are the Tenants entitled to an Order to cancel a 12 Month Notice to End Tenancy pursuant to section 42 of the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The Landlord testified and confirmed the current owners have owned the property in question for a period of just over the past two years. The Landlord argued it was the owners' intention to bring the property into conformity with the current zoning and change the use from five manufactured home sites to use as a RV campground. The adjoining property owned by the Landlords is operated, in compliance of the zoning, as a RV campground.

The Landlord provided a history, based on his records, of the dates the current owners purchased the manufactured homes as follows: Unit #1 was purchased in November 2008, Unit #2 was purchased in June 2007, Unit #3 was purchased in December 2005, Unit #4 was purchased in October 2004, and Unit #5 was purchased in October 1996.

The Landlord argued that the previous owners did not do their due diligence in informing the owners of the manufactured homes that the zoning of the property where the manufactured homes are located is zoned C-5 and C-2. The C-5 and C-2 zoning permits accommodation including campgrounds, hotels, motels, and one dwelling unit for the owner or manager of the campground and does not permit manufactured home parks.

The Landlord argued it is the owners' intention to formalize the subject property area into a fulltime campground utilizing the power and sewer connections for the newer large motor homes or R.V.'s which require in some cases 30 to 50 amps of power. The Property Manager and Landlord confirmed the current design of the subject property and presence of the manufactured homes inhibits the movement of the larger R.V.'s through the campground and into current R.V. sites.

The Landlord and Property Manager argued that they do not need building permits and do not need to apply for re-zoning as the property where the five manufactured homes are located is already zoned C-5 and C-2 which both provide for campground operations. The Landlord requested the applications be amended to include all five manufactured home sites and that an Order of Possession be granted effective March 1, 2011 in accordance with the 12 Month Notices to End Tenancy.

The Tenant argued sites #4 and #5 are partially in the C-5 and C-2 zones and that sites #1, #2, and #3 fully occupy C-5 zoning.

The Tenant presented the material on behalf of the four applications and argued that the Notices to End Tenancy be overturned, and that all rezoning applications be denied until the park owners have purchased the mobile homes and their improvements. The Tenant confirmed that there was no provision in the Act that he was aware of that requires a Landlord to purchase the Tenant's manufactured homes.

The Tenant testified that it would not be reasonable for the Tenants to ask the Landlord to have items removed to create a clear egress of the manufactured homes. The Tenant referred to his photo evidence, in support of his testimony, to show there were

items such as trees, fencing, and other structures that could be blocking the removal of the manufactured homes.

The Landlord testified that he is willing to work with any transport company hired by the Tenants, who provides the Landlord with written instructions of what obstacles need to be removed, to ensure proper egress is available for the removal of the manufactured homes.

I asked the Tenant if he had evidence to support their request to set aside the notice or that would prove that the notice was issued in a manner that did not comply with the *Manufactured Home Park Tenancy Act*. The Tenant replied that he had no evidence to support either and they were relying solely on my decision to overturn the notices.

Analysis

All of the testimony and documentary evidence was carefully considered.

Unit #1

The Landlord requested to amend the Tenants' applications to include an additional Applicant who is the Tenant in unit #1 and who was served with a 12 Month Notice to End Tenancy at the same time as the other Tenants.

There are no provisions in the Act, Regulations, or the Residential Tenancy Branch Rules of Procedure which provides for a Respondent to add an Applicant to be joined to the existing applications without the consent of the person to be added. If the Landlord wishes to proceed with a request for an Order of Possession for Unit #1 he is at liberty to file his own application for dispute resolution. Based on the aforementioned I dismiss the Landlord's request to amend the Tenants' applications.

Unit #2

Upon review of the 12 Month Notice to End Tenancy issued in connection with Unit #2, I find the Notice not to be completed in accordance with the requirements of the Act as it was issued to a person other than the Tenant who owns the manufactured home. Upon consideration of all the evidence presented to me, and having found the notice not to be issued in accordance with the Act, I hereby cancel the 12 Month Notice to End Tenancy issued in respect of Unit #2 and dated February 20, 2010.

Unit, #3, #4, #5

When a Tenant has filed to cancel a notice to end tenancy for conversion of a manufactured home park, the onus lies on the Landlord to prove the two part “good faith” test as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the tenant(s) vacate the rental pad.

The evidence supports the Landlord has been working, during this past year, to have the property in question operated as an RV campground, in accordance with the current municipal zoning. The Landlord affirmed their intentions several times throughout the hearing. The Tenants were not disputing the Landlord’s intentions or the good faith requirement however they were seeking to have the Landlord purchase their chattel property to avoid having to move them. I note there is no provision under the Act which requires a Landlord to purchase the Tenant’s chattel property, and while the Landlord sympathized with the Tenants situation, the Landlord is entitled to enact his rights provided under the Act. Based on the aforementioned I am satisfied the Landlord has proven the good faith requirement, as listed above.

Upon review of the 12 Month Notices to End Tenancy, issued to Units 3, 4, and 5, I find the Notices to be completed and served upon the Tenants in accordance with the requirements of the Act. Upon consideration of all the evidence presented to me, I accept the Landlord is not required to have permits or approvals to close the manufactured home park and operate the property as a RV campground. Therefore I find the Landlord has proven the following requirements for issuing the Notices pursuant to section 42(1) of the Act: (a) the landlord has all the necessary permits and approvals, if required, by law and (b) 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.

Having found the Landlord has proven the good faith requirement and that the Notices to End Tenancy were issued in accordance with the Act, I must decline to set aside the 12 Month Notices issued on February 20, 2010, and I hereby dismiss the Tenants’ applications.

Section 48(1) of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant’s request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled

hearing. Based on the aforementioned I hereby approve the Landlord's request for an Order of Possession for units 3, 4, and 5.

Having upheld the 12 Month Notices to End Tenancy the Tenants are entitled to compensation under section 44 of the Act as follows:

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.

Conclusion

The 12 Month Notice to End Tenancy issued to Unit #2 and dated February 20, 2010 **is hereby cancelled** and is of no force or effect.

I HEREBY FIND that the Landlord is entitled to Orders of Possession for Units #3, #4, #5, effective **March 1, 2011 after service on the Tenants**. These orders must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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

Dated: April 28, 2010.

Dispute Resolution Officer