



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ESTKIN DEVELOPMENTS LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

CNLC-MT, OLC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Manufactured Home Park Tenancy Act (Act) for:

- an order cancelling the 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park (Notice) issued to them by the landlord;
- an order extending the time to file an application disputing the Notice issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the filing fee.

The tenants, the landlord's representative (landlord), and the landlord's advocate (advocate) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

- Has the landlord submitted sufficient evidence to support the 12 Month Notice or should it be cancelled?
- Are the tenants entitled to an order extending the time to file an application disputing the Notice issued by the landlord?
- Are the tenants entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement?
- Are the tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The tenants submitted that their tenancy in the manufactured home park began in 1991 or 1992.

The advocate submitted that the landlord here was not the original owner/landlord. The evidence showed the current landlord took ownership in or around 2019.

The subject of this dispute is the 12 Month Notice to End Tenancy. The Notice in this case, was dated December 8, 2020, with a listed end of tenancy date of December 31, 2021. The evidence shows the Notice was served to each tenant separately via registered mail on December 8, 2020. The reason indicated on the Notice is that the landlord intends 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. Filed into evidence was a copy of the Notice.

The tenants confirmed that they received the Notice on December 11, 2020, and it is noted that their application in dispute of the Notice was filed on December 22, 2020, within the 15 days after service allowed by the Act to dispute the Notice.

### **Landlord's submissions –**

In support of the Notice, the advocate submitted that the landlord here recently purchased the manufactured home park, with the intention of converting the park to residential housing. The landlord has reached an agreement with the residents on 113 of the 114 manufactured home sites to end their tenancies, with offers of assistance in

moving their homes and compensation in excess of what the landlord is legally required to pay. The advocate submitted that the tenants here were offered the same compensation and re-location of their home at no cost, but they have refused the landlord's offer.

The advocate referred to their documentary evidence, which included case law, *Howe v. 3770010 Canada Inc.*, 2008 BCSC 330, (the *Howe* case) Residential Tenancy Branch (RTB) prior decisions, the local municipality's Rezoning Guide, the landlord's application information regarding re-zoning the relevant property, a Development Permit approved by the local municipality, and site plans.

The advocate said the landlord's position, supported by their evidence and case law, shows that the landlord has received the necessary approvals required to develop the land in question. The advocate submitted that the landlord would not be able to obtain building permits yet until they have raw land, which currently they do not.

### **Tenants' response –**

The tenants submitted that in the original notices, they were told the land would be used for high-density housing, which required building permits. The tenants submitted that they were told by the local municipality that the developer had not received all the building permits and there were a number under review, not approved.

The tenants referred to their documentary evidence, which included a 42 page Inter-Office memo, with attachments, dated July 2, 2020, which dealt with the landlord's engineering requirements to rezone the property. The tenants noted that the applicant, the landlord here, was required to provide the existing tenants in the manufactured home park with an Affordable Housing Program/Relocation Strategy.

As to their request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, in their application, the tenants wrote in their application that their request was to require the landlord to comply with Section 42(1) of the Act, as the landlord did not have all the permits approved.

### **Analysis**

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

The landlord's Notice in this case was issued pursuant to section 42(1)(b) of the Act, which provides "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."

Section 42(4) provides that a tenant may dispute the Notice by making an application within 15 days of receiving it.

The undisputed evidence is that the tenant received the Notice on December 11, 2020, 2020, and filed their application on December 22, 2020, which is within the allowable time frame. It was therefore not necessary to consider the portion of the tenants' application for an order extending the time to file an application disputing the Notice issued by the landlord.

Once the tenants made an application to dispute the 12 Month Notice within the allowable time period, the landlord became responsible to prove the Notice is valid and enforceable.

In this case, I find the landlord submitted sufficient evidence to support their Notice. In making this finding, I refer to the *Howe* case, which I determine to be on point to the case at hand. The applicants/tenants in that case argued that the landlord did not have the necessary building permits to build a residence on the site, nor the permits required to move the manufactured homes from the Park.

Justice Gerow held:

*"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".*

I find the landlord submitted sufficient evidence that the first step they were required to take to convert the manufactured home park to a residential use other than a manufactured home park was to have the land re-zoned, which was approved on December 7, 2020. Further, the landlord was issued a Development Permit, by the local municipality, also on December 7, 2020, and General Development Permit, also on December 7, 2020. The Intent listed on the bylaw to amend the Zoning By-law

permitted the development of medium density, medium-rise multiple unit residential buildings, residential use of the land other than a manufactured home park.

I also accept that the landlord would not have building permits at this stage, as they did not have the raw land until the existing residents have all vacated.

For these reasons, I find the landlord, in good faith, intends to convert all or a significant part of the manufactured home park to a residential use other than a manufactured home park. I find support for finding that the landlord had good faith intentions, due to the lengthy application process for approval and the fact that they have reached an agreement with 113 of the 114 other sites.

As the re-zoning and development approvals were granted on December 7, 2020, I find the landlord had obtained the necessary approvals prior to the issuance of the Notice on December 8, 2020 to convert the land to a residential use other than a manufactured home park.

I therefore find the Notice is valid and enforceable.

As such, I **dismiss** the tenants' application seeking cancellation of the Notice, without leave to reapply.

I find that the landlord is entitled to and I grant an **order of possession** for the manufactured home site effective on the move-out date on the Notice, or December 31, 2021, pursuant to section 48(1) of the Act.

The order of possession for the manufactured home site is included with the landlord's Decision and must be served on the tenants to be enforceable. Should the tenants fail to vacate the manufactured home site by 1:00 p.m., December 31, 2021, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

Additionally, I **dismiss** the tenants' request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement. The tenants requested that the landlord comply with section 42 of the Act, which was the authority under which the landlord served the Notice.

As I found the landlord submitted sufficient evidence to support their Notice, as they had the necessary approvals to convert the manufactured home park, I find this request must also be dismissed.

As I have dismissed the tenants' application, I **dismiss** their request to recover their filing fee.

### Conclusion

The tenants' application is dismissed as I have found the Notice to be valid and enforceable.

The landlord has been issued an order of possession for the manufactured home site, effective at 1:00 p.m. on December 31, 2021.

The tenants' request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and to recover the cost of the filing fee is dismissed, for the reasons listed herein.

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: March 8, 2021

---

Residential Tenancy Branch