Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNLC, OLC, LRE, FFT**

Introduction

This hearing dealt with applications for dispute resolution (collectively the "Applications") filed by four Tenants relating to five homesites pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"). The Applications were treated as "joiner" applications and set down to proceed as one hearing.

Tenant RF made two applications, seeking combined relief for:

- cancellation of a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park dated January 24, 2022 ("12 Month Notice") pursuant to sections 42 and 48 of the Act;
- an Order the Landlord comply with the Act, *Manufactured Home Park Tenancy Regulation* ("Regulation") and/or tenancy agreement pursuant to section 55(3) of the Act;
- an order to suspend or set conditions on the Landlord's right to enter the rental site pursuant to section 23 of the Act; and
- authorization to recover the filing fee of the Tenant's application from the Landlord pursuant to section 65(1) of the Act.

("RF's Applications")

Tenant DS made an application for:

- cancellation of a 12 Month Notice pursuant to sections 42 and 48 of the Act;
- an Order the Landlord comply with the *Regulation* and/or tenancy agreement pursuant to section 55(3) of the Act;
- an order to suspend or set conditions on the Landlord's right to enter the rental site pursuant to section 23 of the Act; and

- authorization to recover the filing fee of the Tenant's application from the Landlord pursuant to section 65(1) of the Act.

("DS's Application")

Tenant MM made an application for:

- cancellation of the 12 Month Notice; pursuant to sections 42 and 48 of the Act;
- an Order the Landlord comply with the Act, Regulation and/or tenancy agreement pursuant to section 55(3) of the Act; and
- an order to suspend or set conditions on the Landlord's right to enter the rental site pursuant to section 23 of the Act.

("MM's Application")

TD made an application for:

- cancellation of a 12 Month Notice pursuant to sections 42 and 48 of the Act;
- an Order the Landlord comply with the Act, the Regulation and/or tenancy agreement pursuant to section 55(3) of the Act; and
- authorization to recover the filing fee of the Tenant's application from the Landlord pursuant to section 65(1) of the Act.

("TD's Application")

The four Tenants ("DS", "MM", "RF" and "TD"), an agent for the Landlord ("BS") and legal counsel for the Landlord ("AB") attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Tenant RF testified, and the landlord confirmed, that the tenants served the landlord with their notices of dispute resolution proceeding packaged and supporting evidence in accordance with the Act. The landlord testified, and the tenants confirmed, that it served the tenants with copies of its documentary evidence in accordance with the Act. I am satisfied that all parties have been served properly.

Preliminary Issue – Severance and Dismissal of Claims made by Tenants

All five of the Applications sought an order for cancellation of the 12 Month Notices. DS's Application, RF's Applications and MM's Application sought authorization to recover the filing fees for their respective applications from the Landlord. All of the Applications sought an order that the Landlord comply with the Act, Regulation and/or tenancy agreement (the "Claim for Compliance"). DS's Application, MM's Application, RF's Applications sought an order to suspend or set conditions on the Landlord's right to enter the home sites (the "Claim for Entry Conditions").

Rule 2.3 of the RoP states:

> 2.3 **Related issues**
>
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Applications was whether the tenancy would continue or end based on the 12 Month Notice and in DS's Application, RF's Applications and TD's Application whether the Tenants were entitled to recover the filing fee of their Applications. As such, I severed the Claim for Compliance from all of the Applications and dismissed those claims with leave to reapply. I also severed the Claim for Entry Conditions from each of DS's Application, MM's Application and RF's Applications and dismissed those claims with leave to reapply.

Issues to be Decided

- For all the Applications, are the Tenants entitled to cancellation of the 12 Month Notices?
- For each of DS's Application, RF's Applications and TD's Application, are the Tenants entitled to recover the filing fee of their Applications?

- For each the Applications, if the Tenants are not entitled to cancellation of the 12 Month Notices, is the Landlord entitled to Orders of Possession pursuant to section 48(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Applications and my findings are set out below.

DS and BS agreed the tenancy for the home site DS is occupying commenced on March 1, 2014 with current rent of $360.00 payable on the 1st day of each month. DS and BS agreed the current rent for the home site occupied by DS is $360.00 per month. I find there is a tenancy between DS and the Landlord for the home site DS is occupying.

MM and BS agreed the tenancy for the home site MM is occupying commenced on July 1, 2009 with current rent of $360.00 payable on the 1st day of each month. I find there is a tenancy between MM and the Landlord for the home site MM is occupying

RF and BS agreed the tenancy for one of the two home sites RF is occupying commenced on October 1, 2020 with rent of $525.00 payable on the 1st day of each month. RF and BS agreed the tenancy for the second of the two home sites RF is occupying commenced on May 1, 2021 with rent of $525.00 payable on the 1st day of each month. I find there are two tenancies between RF and the Landlord for the two home sites RF is occupying.

TD and BS agreed the tenancy for the home site DS is occupying commenced on June 1, 2011 with current rent of $360.00 per month payable on the 1st day of each month. I find there is a tenancy between TD and the Landlord for the home site TD is occupying.

BS submitted copies of the three 12 Month Notices that were served on DS, MM and TT and the two 12 Month Notices served on RF. BS stated all five of the 12 Month Notices were served on the Tenants on January 24, 2022 by registered mail. BS submitted a signed and witnessed Proof of Service on Form RTB-34. BS submitted the Canada Post tracking numbers for service of each of the five 12 Month Notices on the Tenants. TD acknowledged the Tenants were served with the 12 Month Notices. I find the five 12 Notices were served on the Tenants in accordance with the provisions of section 81 of

the Act. Pursuant to section 83 of the Act, I find the 12 Month Notices were deemed to have been received by the Tenants on January 29, 2022.

AB stated the property on which the manufactured home park ("Park") is located is currently zoned by the municipality as "RM-3" which permits the property to be used for multi-family residential use. AB stated the Landlord intends to build a six-story 80-unit residential apartment building on the Park. AB entered into evidence the zoning Bylaw 5.35 which states:

AB stated the property on which the Park is located is already zoned to permit the conversion of the Park into an 80-unit five story apartment building. AB submitted a copy of section 5.35 of the City Bylaws which states:

5.35 Residential Multiple Three (RM – 3) Zone

Sections 5.35.1 through 5.35.6 apply to any lot in the RM - 3 Zone.

Purpose:

This zone provides for the development of medium to high-rise residences in multiple-family complexes within the highdensity residential designation, typically three to six storey apartment style complexes.

Permitted Uses:

5.35.1 The following uses are permitted:

(a) triplex or threeplex;

Bylaw 3399, 2009 – Replaces "Multiplex with Apartment"

(b) apartment;

(c) community care, or social care facility, or both;

Bylaw 3396, 2009 –Amds Sec. 5.34.1 d)

(d) single-family residential dwelling units existing prior to May 27, 2008, including single wide manufactured homes in accordance with Section 4.19 and identified on Appendix 2.

AB submitted into evidence a copy of a map of the Park from the municipality that discloses the site on which the Park is located is currently zoned RM-3. AM stated all of the property on which the Park is located is being converted in connection with the construction of the residential building.

AB submitted a letter dated November 23, 2021 from the BC Ministry of Forests, Lands, Natural Resource Operations and Rural Development confirming that a permit ("Permit") has been issued to allow for a survey under the BC *Heritage Conservation Act* ("HCA") together with a copy of the Permit. AB submitted into evidence a letter from the Landlord's Consultant dated February 7, 2022 stating that "in order to complete the assessment to provincial standards the removal of the mobiles will be integral to the survey.". AB stated that, until the Archaeological Impact Assessment is completed, no further significant steps can be taken by the Landlord to advance the redevelopment of the Park without removing all manufactured homes from the home sites located on the Park.

AB entered into evidence a signed copy of a Memorandum of Understanding between the Landlord and the local First Nations respecting the archeological survey to be conducted on the Park pursuant to the HCA. AB entered into evidence a copy of a letter dated September 2, 2021 to the municipality that accompanied the multi-family dwelling project for the Park that has been submitted for review.

AB stated the Landlord has dealt with Tenants in an honest and forthright manner. AB stated the Landlord notified the Tenants of its plans for the property well in advance of issuing the notices of termination. AB stated that, before issuing the notices of termination, the Landlord offered to purchase each of the Tenants' respective manufactured homes at a price higher than what would be payable under the Act. AB stated that the tenant of another home site, who did not file an application for dispute resolution to dispute the 12 Month Notice served on that tenant, accepted the terms of the buyout proposed by the Landlord for the buyout of the manufactured home located on that tenant's home site. AB stated that tenant asked the Landlord if they could make the buyout payment before completing the sale of the manufactured home in order to accommodate that tenant's purchase of a recreation vehicle. AB stated the Landlord agreed to make this payment early to facilitate the tenant's purchase of the recreational vehicle. AB stated the settlement with that tenant demonstrated the Landlord had gone above and beyond any requirements for good faith.

AB stated that, since the Landlord purchased the Park, it has always been its intention to convert the Park to a residential use other than a manufactured home park and there has been no bad faith on the part of the Landlord in respect of conversion of the Park to a use other than a manufactured home park. BS stated the Landlord has taken numerous steps in order to move forward with the conversion of the Park. BS

stated the Landlord has spent, as of the date of this hearing, almost $300,000.00 in connection with the conversion and redevelopment of the Park, including surveys, geotechnical and archeological reports, architectural designs and legal expenses. BS stated the Landlord has also incurred approximately $300,000 to put contracts in place in connection with the termination of the tenancies with other tenants of the Park.

As further proof that the Landlord intends in good faith to convert the Park to residential use other than as a manufactured home park, AB submitted a copy of a Restoration Plan dated August 2021 that was prepared for the Landlord by a consultant to provide guidance for revegetation of a creek that runs adjacent to the Park.

In support of the Landlord's position that no other permits were required before serving the 12 Month Notices on the Tenant, AB submitted into evidence two cases of the BC Supreme Court and one case of the BC Court of Appeal. I will refer to those cases more fully under the heading "Analysis" appearing below.

RF stated it was the position of the Tenants that the Landlord was required to obtain a building permit from the City. RF said it was a common-sense thing that, if the landlord cannot obtain the building permit, it would make no sense to take the time and incur the expense of completing an archeological impact study. RF argued that the Landlord needed to have approved municipal permits before it served the 12 Month Notices on the Tenants. RF stated that it could take several years before the Landlord obtained municipal permits for the redevelopment project and complete the archeological survey. RF stated that there is sensitive animal habitat near the Park, including eagle nesting grounds within five metres of the Park. RF stated the Park, located on the former site of a gas station, will require decontamination.

RF stated the archeological survey recommended by the Consultant states the survey will use a 5 metre by 5 metre grid. RF stated that the archeological study being conducted on an adjacent property is using a 2 metre by 3 metre grid. RF stated that, if the archeological study of the Park was done using a 2 metre by 3 metre grid, it would be unnecessary to remove the manufactured homes from the Park to perform the study. RF stated that a study on another nearby property found that property cannot be developed at all due to the environmental sensitivity of the area. RF stated there is a good chance the Landlord will not be able to redevelop the Park due to it's environmental sensitivity. RF argue that the Tenants would be unnecessarily evicted if it turns out that the Landlord is unable to obtain a building permit or was otherwise prohibited from developing the Park due to environmental issues. RF stated it was the position of the Tenants that the Landlord is using a loophole to move forward with its

own agenda. RF stated the Landlord has not negotiated with the Tenants in good faith and, as a result, it has not complied with the requirements of section 42(1). RF stated it was the position of the Tenants that the 12 Month Notices should be cancelled.

Analysis

A. RTB Rules of Procedure

Rule 6.6 of the RTB Rules states:

> **6.6 The standard of proof and onus of proof**
>
> *The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.*
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. *For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.*
>
> [emphasis in italics added]

Subsections 42(1) through 42(4) of the Act state:

> 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.
>
> (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

(b) 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.

(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.

BS stated a 12 Month Notice was served on each of the five Tenants on January 24, 2022 by registered mail. Pursuant to section 83 of the Act, the Tenants were deemed to have received the 12 Month Notice on January 29, 2022. Pursuant to section 42(4) of the Act, the Tenants had until February 14, 2022, being the next business day after the end of the 15-day dispute period, to make an application for dispute resolution to dispute the 12 Month Notice. The records of the Residential Tenancy Branch disclose that one of the Applications was filed on February 7, 2022 and the other four Applications were filed on February 8, 2022. As such, I find all the Applications were filed with the Residential Tenancy Branch within the 15-day dispute period permitted by section 42(4) of the Act.

AB stated the property on which Park is located is currently zoned by the municipality as RM-3 which permits the property to be used for multi-family residential use. AB stated the Landlord intends to build a six-story 80-unit residential apartment building on the Park. AB provided a copy of the relevant municipal Bylaw and a copy of a map of the Park from the municipality to confirm that the Park is already zoned for residential use other than as a manufactured home park.

RF stated it was the position of the Tenants that the Landlord was required to obtain a building permit from the City. RF stated that it could take several years before the Landlord obtained municipal permits for the redevelopment project and complete the archeological survey. RF stated that there is sensitive animal habitat near the Park, including eagle nesting grounds within five metres of the Park. RF stated the Park, located on the former site of a gas station, will require decontamination.

RF stated the archeological survey recommended by the Consultant states the survey will use a 5 metre by 5 metre grid. RF stated that the archeological study being conducted on an adjacent property is using a 2 metre by 3 metre grid. RF stated that, if the archeological study of the Park was done using a 2 metre by 3 metre grid, it would

be unnecessary to remove the manufactured homes from the Park to perform the study. RF stated that a study on another nearby property found that property cannot be developed at all due to the environmental sensitivity of the area. RF stated there is a good chance the Landlord will not be able to redevelop the Park due to it's environmental sensitivity.

Interpretation of section 42(1) of the Act:

To simplify the interpretation of section 42(1), I will break it down into the phrases set out below.

A. Does the Landlord have all the necessary permits and approvals required by law?

AB submitted two decisions of the Supreme Court of British Columbia and one decision of the Court of Appeal of British Columbia, described below, to support the Landlord's position that no other permits or approvals were required when the Landlord served the 12 Month Notices on the Tenants. Those decisions are described below:

(i) *North Shore Motels (1977) Ltd. v. Gold,* B.C.J. No. 1044 *("Gould")*

In *Gould*, McLachlin L.J.S.C (as she then was) considered the wording of section 17 of the *Residential Tenancy Act*, R.S.B.C. 1979, c.365 ("RTA 1979*")*. The case involved a property which was occupied by both a motel and a mobile home park. The entire property was zoned for tourist or commercial use. The landlord had served notices of termination to the tenants of the mobile home park. The rentalsman held that even though the landlord had a bona fide intended to occupy or use the residential premises for a purpose which complied with the RTA 1979*,* the termination notices were invalid because the landlord had failed to obtain the prior approval of the municipality. The rentalsman was of the view that the word "approval" meant something more than appropriate zoning. The issue before the Court was whether the "approval" required in section 17(2) of the RTA 1979 required the landlord to obtain municipal consent to the proposed construction prior to serving termination notices on the tenants. Section 17(2) of the RTA 1979 read as follows:

17(1) Notwithstanding section 15, where a landlord *bona fide* intends to occupy, or use residential premises for the purpose of ….

[…]

(e) converting it into something other than residential premises occupied under a tenancy agreement…

[…]

The landlord shall give not less than 199 days notice of termination of the existing tenancy agreement, to be effective as specified in section 15 or, where the tenancy has a predetermined expiry date, on that date.

(2) Where the approval of a municipality, regional district or the Minister of Municipal Affairs is required before doing one of the things referred to in subsection (1), the approval must be obtained before a notice may be given under subsection (1) unless the rentalsman, before or after the notice is given, and on conditions he considers appropriate, orders otherwise.

In finding that the required approvals related to the change in use such as zoning changes, McLachlin L.J.S.C. stated at ¶11:

> It is important to note that the approval in question is not approval of a construction project, but rather approval required for conversion from residential premises to other premises, in this case tourist-commercial premises. Alteration of existing premises is not inevitably associated with a change from residential to non-residential use. Consider the example of what are often referred to as apartment hotels. Such buildings are often constructed with a view to operation as residential premises for a time, after which they will be used as tourist-commercial premises, without further alterations. Similarly, while it would be unlikely, it might be entirely possible for the Landlord in the case at bar to operate tourist facilities out of mobile homes on its property without ever obtaining municipal consent to new construction. These examples illustrate that conversion of residential premises to other premises - the conversion contemplated by Section 17(1)(e) - does not necessarily entail alteration of the physical premises. While new construction often takes place in such circumstances, it is incidental to the change of use to which Section 17(1)(e) refers. *It follows that "approval" in Section 17(2) as applied to Section 17(1)(e) should not be read as referring to physical changes or new construction, but rather the change in use, such as zoning changes.* Since the land is presently zoned for commercial/tourist use, no

> further approval is required. The Rentalsman, by requiring that "the municipality through the building inspector must give some form of positive indication that the Landlord may construct the motel extension" erred in law by treating Section 17(1)(e) as though it referred to physical changes involving new construction rather than changes in use.
>
> [emphasis in italics added]

Although the wording of then section 17(2) only required the Landlord obtain “approval” and did not include the word “permit”, the *Gould* decision provides context for the two decisions referred to below.

(ii) ***Howe v. 3770010 Canada Inc.*, 2008 BCSC 330 (*“Howe”*)**

In *Howe*, the landlord, 3770010 Canada Inc. served 12 Month Notices on five tenants of mobile home sites to end their tenancies pursuant to s.42(1) of the Act. The tenants disputed the 12 Month Notices and, after the hearing, the Arbitrator declined to set aside the notices and granted orders ofpossession to the landlord pursuant to section 48 of the Act. The Arbitrator accepted the landlord intended to closethe park in order to build single family residences on the property. In the decision, the Arbitrator stated:

> 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.

In *Howe,* the Petitioners made the following submissions and arguments for why the 12 Month Notices should be cancelled as stated in paragraphs 22 through 24 of that case:

> [22] The petitioners submit that there are two possible purposes for ending the tenancy – a broad purpose and a narrow purpose. The broad purpose is to change the Park to a "residential use other than a manufactured home park". The narrow purpose is 3770010's "stated purpose", which is to build a residence on the land. The petitioners argue that in order to be able to make a determination under s. 44, *i.e.* whether "steps have not been taken to accomplish the stated purpose for ending the tenancy under s. 42 within a reasonable time period" pursuant to s. 44(2), the nature of the permits and approvals must be linked to the narrow purpose of the proposed use of the Park, otherwise it would be impossible to know what permits and approvals were required. The petitioners submit that the drafters of the legislation have not stated that the "necessary permits and approvals" are to be linked to the closing of the Park, and if the intent was that the permits and approvals are to simply to change the use of the Park they would have said that.
>
> [23] The petitioners argue that proper statutory interpretation would preclude the meaning provided by the Arbitrator, notwithstanding the fact that there are actually more permits and approvals required before the manufactured homes can be moved under the ***Manufactured Home Act***, S.B.C. 2003, c. 75, ss. 15(1)(b) and (2)(b). Those sections deal with a transport permit to move manufactured homes, and the right of the landlord for possession if a manufactured home is abandoned.
>
> [24] In support of their submissions the petitioners point to the former section of the ***Residential Tenancy Act***, R.S.B.C. 1979, c. 365 dealing with the notice to vacate a manufactured home park which provided:
>
> > 17(1) Notwithstanding section 15, where a landlord *bona fide* intends to occupy, or use residential premises for the purpose of …
> >
> > …
> >
> > (e) converting it into something other than residential premises occupied under a tenancy agreement …
> >
> > …

> the landlord shall give not less than 119 days notice of termination of the existing tenancy agreement, to be effective as specified on section 15 or, where the tenancy has a predetermined expiry date, on that date.
>
> (2) Where the approval of a municipality, regional district or the Minister of Municipal Affairs is required before doing one of the things referred to in subsection (1), the approval must be obtained before a notice may be given under subsection (1) unless the rentalsman, before or after the notice is given, and on conditions he considers appropriate, orders otherwise.

[25] The petitioners submit that the word "permit" was not included in the earlier legislation and that the legislation contemplated only a possibility of municipal approval. They say that the language of the ***MHPTA*** is different in that the word "permit" is now specifically included, and therefore, there is a requirement for building permits and all other permits that are required. They argue that the Arbitrator erred in law when she did not require 3770010 to have a building permit for its stated intended use of the property, *i.e.* building a residence, prior to serving the Notices.

In her decision, Madam Justice Gerow considered the decision in *Gould* and found the only requirements to build a single-family dwelling were that the owner obtain a building permit, meet the requirements in the building permit for provision of water and sewer and that the dwelling meets the appropriate setbacks. Madam Justice Gerow specifically stated there was no requirement for a change of zoning to change the use of or convert the property to a residential use other than a manufactured home park. At paragraphs 31 through 35, Madam Justice Gerow stated:

[31] The petitioners submit that ***North Shore Motels (1977) Ltd. v. Gould*** is distinguishable because the earlier legislation only used the word "approval" and that the inclusion of the word "permit" in s. 42(1) of the ***MHTPA*** means that 3770010 must also obtain a building permit prior to issuing the Notices.

[32] I am not persuaded that the narrow reading urged by the petitioners is appropriate. For example, the petitioners argue that 3770010 did not comply with the requirement to obtain permits to move the homes under the ***Manufactured Home Act*** prior to serving the Notices under s. 42(1) of the ***MHPTA***. However, under s. 15 of the ***Manufactured Home Act***, it is the owner of the manufactured home who is to apply for the permit and the landlord is only entitled to obtain the transportation permit in the event that the home is under an order of possession or the landlord is exercising a right respecting disposal of abandoned personal property. Pursuant to s. 17(1) of the ***Manufactured Home Act***, a transport permit expires 30 days after it is issued. That cannot be the type of permit referred to in s. 42(1) of the ***MHPTA*** as under s. 42(2) the notice to end tenancy is not effective earlier than 12 months after the date the notice is received, or if the

tenancy agreement is fixed term, no earlier than the date specified as the end of the tenancy.

[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.

[34] In this case, the Arbitrator was satisfied that there were no further permits or approvals required in order for the property to be converted to a residential use other than a manufactured home park.

[35] The role of the Court is limited in this case and is to determine whether the Decision was unreasonable. In the Decision, the reasons for the Arbitrator's findings are set out in an intelligible fashion. For the reasons set out above, it is my view that the Decision falls within the range of outcomes which are defensible on the facts and the law. Accordingly, I cannot say the Decision should be set aside on the basis that it is unreasonable.

The Howe decision supports the Landlord's position that, as the Park was already zoned for residential use other than as a manufactured home park, it does not require any additional permits or approvals to convert the Park to the use contemplated by its redevelopment plan.

(iii) Metro Vancouver (Regional District) v. Belcarra South Preservation Society, 2021 BCCA 121, 2021 Carswell BC 836, 331 A.C.W.S. ("*Belcarra")*

In Belcarra, the BC Court of Appeal considered the conversion of lands located within Belcarra Regional Park from a "restricted access residential use" to a "non-residential public use". The Landlord, Metro Vancouver Regional District, served Two Month Notices to End Tenancy on the tenants under section 49(6)(f) of the *Residential Tenancy Act* ("*RTA").* Section 49(6) of the *RTA states:*

> 49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
>
> (a) demolish the rental unit;
>
> (b)[Repealed 2021-1-13.]

(c) convert the residential property to strata lots under the *Strata Property Act*;
(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
(f) convert the rental unit to a non-residential use.

The tenants made applications for dispute resolution with the Residential Tenancy Branch to seek an orders cancelling the Two Month Notices. The Landlord's position was it had all necessary permits and approvals and intended in good faith to convert the rental units ("Cabins") to a non-residential use because it did not require rezoning of the property for the proposed use as non-residential public use.

At the hearing before an arbitrator of the RTB, evidence was given on behalf of the Landlord that, in order to convert the property to a non-residential public use, the respondent only need to remove signage prohibiting public access, lock the Cabins from entry and establish perimeter fencing around the Cabins to prevent access to their interiors. Testimony was also given that no approvals or permits were required to change the use of the property on which the Cabins were located, within the two municipal jurisdictions in which the cabins were located, to a non-residential public use.

After taking the testimony and submissions of the parties at the hearing, the Arbitrator concluded in his decision that the respondent had not complied with section 49 of the *RTA*. He cancelled the notice to end tenancy and ordered that the tenancy continue until ended in accordance with the *RTA*. The Landlord sought a judicial review before the BC Supreme Court. The chambers judge who heard the judicial review found the decision of the arbitrator was patently unreasonable. The Tenants, who are referred to as the "appellants" in the BC Court of Appeal decision, appealed the decision of the chambers judge.

The Honourable Mr. Justice Voith, speaking on behalf of the Court of Appeal, stated at paragraphs 62 through 78:

[62] The chambers judge, in turn, said:

> [63] The arbitrator's conclusion that MVRD had not complied with s. 49(6) because heritage alteration permits may be required for the future use of Cabins 2-7 is similarly flawed. In *Howe v. 3770010 Canada Inc.*, 2008 BCSC 330 the court confirmed that when a change of use is established as a basis to terminate a tenancy, only permits and approvals associated with the change in use are required. The condition does not apply to permits which may be required incidental to changes to the structures following a change in use. The court in *Howe* refers to the decision of McLachlin L.J.S.C., as she then was, in *North Shore Motels (1977) Ltd. v. Gould*, [1981] B.C.J. No. 1044 (S.C.), aff'd [1982] B.C.J. No. 112 (C.A.), where in considering the similar section in the *RTA* at that time, she concluded that the tribunal had erred in treating the section "as though it referred to physical changes involving new construction rather than changes in use."

[64] The Society presented me with a number of decisions where the court found that permits required for constructions or alteration of rental units had to be in place before a Notice to End Tenancy could be issued. However, these cases, including *Allman v. Amacon Property Management Services Inc.*, 2007 BCCA 141, *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, and *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165, are cases where the landlord relied on subsections of s. 49(6) other than (f). In the case before me, MVRD relies on s. 49(6)(f), the change in use provision, and in such cases the only relevant permits and approvals are those required to allow for the change in use.

[63] I agree with each aspect of the chambers judge's conclusions. Both *Howe v. 3770010 Canada Inc.*, 2008 BCSC 330, and *North Shore Motels (1977) Ltd. v. Gould*, 10 A.C.W.S. (2d) 230 (B.C.S.C.), aff'd 14 A.C.W.S. (2d) 119 (C.A.), had been brought to the attention of the Arbitrator. Both address similar circumstances under similarly worded legislative provisions.

[64] In *Howe*, the tenants, who owned homes in a manufactured home park, were served with notices under s. 42(1) of the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77. That section provides:

> 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 residential use other than a manufactured home park.

[65] The arbitrator in *Howe* had accepted the landlord's position that the landlord intended to close the park in order to build a single-family residence on the property. The judge in *Howe* addressed the arbitrator's conclusions:

> [8] In the Decision, the Arbitrator stated the following:
>
> All the 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.

[66] The judge in *Howe*, in upholding the decision of the arbitrator, concluded:

> [33] Section 42(1) of the [*Manufactured Home Park Tenancy Act*] 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.

[67] In *North Shore Motels,* the appellant owned property, a part of which was occupied by a motel and a part of which was a manufactured home park. The respondents were tenants of the park. The entire property was zoned for tourism or commercial use. The landlord decided to make extensive additions to the motel and served notices of termination on the tenants of the park. The tenants filed notices of dispute and the matter was heard before the Rentalsman under the previous *Residential Tenancy Act*, R.S.B.C. 1979, c. 365. The Rentalsman found that the landlord *bona fide* intended to convert the residential premises in the park into something other than residential premises. He concluded, however, that the termination notices were invalid because the landlord had failed to obtain the prior "approval of a municipality" under s. 17(2) of the then *Act*. In the Rentalsman's view, the word "approval" required some form of positive indication from the municipality that the proposed premises could be constructed.

[68] Madam Justice McLachlin, as she then was, said:

> 6 The termination notices were served under Section 17(1)(e) of the Act:
>
> "17(1) Notwithstanding Section 15, where a landlord bona fide intends to occupy or use residential premises for the purpose of...
>
> (e) converting it into something other than residential premises occupied under a tenancy agreement;

> the landlord shall give not less than 119 days notice of termination of the existing tenancy agreement, to be effective as specified in section 15, or, where the tenancy has a predetermined expiry date, on that date."
>
> …
>
> 10 The narrow issue … thus becomes: what municipal approval, if any, is required before converting the residential premises here in question into something other than a tenancy agreement?
>
> 11 It is important to note that the approval in question is not approval of a construction project, but rather approval required for conversion from residential premises to other premises, in this case tourist-commercial premises. Alteration of existing premises is not inevitably associated with a change from residential to non-residential use. Consider the example of what are often referred to as apartment hotels. Such buildings are often constructed with a view to operation as residential premises for a time, after which they will be used as tourist-commercial premises, without further alterations. Similarly, while it would be unlikely, it might be entirely possible for the Landlord in the case at bar to operate tourist facilities out of mobile homes on its property without ever obtaining municipal consent to new construction. These examples illustrate that conversion of residential premises to other premises - the conversion contemplated by Section 17(1)(e) - does not necessarily entail alteration of the physical premises. While new construction often takes place in such circumstances, it is incidental to the change of use to which Section 17(1)(e) refers. It follows that "approval["] in Section 17(2) as applied to Section 17(1)(e) should not be read as referring to physical changes or new construction, but rather the change in use, such as zoning changes. Since the land is presently zoned for commercial/tourist use, no further approval is required. The Rentalsman, by requiring that "the municipality through the building inspector must give some form of positive indication that the Landlord may construct the motel extension" erred in law by treating Section 17(1)(e) as though it referred to physical changes involving new construction rather than changes in use.

[69] In this case, the appellant argues, and I accept to a degree, that though *Howe* and *North Shore Motels* reflect one interpretation of the provisions being considered, this does not mean that other possible interpretations of similar provisions would be patently unreasonable. Furthermore, I am mindful that the principles governing the appropriate standards of review and deference for different administrative decision makers have developed significantly since *North Shore Motels* was decided.

[70] That said, I am unaware of, and the appellant did not advance, any decision of the RTB that supports the Arbitrator's interpretation of s. 49(6)(f). Furthermore, it was necessary for the Arbitrator to focus on the actual language of s. 49(6)(f) in determining what the respondent was required to do before issuing the notice to end tenancy. In *Aarti,* as I have said, this Court confirmed that "an RTB decision is patently unreasonable if it does not address the criteria established in the *RTA* when determining whether a landlord may evict a tenant".

[71] The word “use” is capable of different meanings in different contexts. Here, s. 49(6)(f) requires that the landlord have “all the necessary permits and approvals required by law … [to] convert the rental unit to a non-residential use.” Though the Decision never expressly refers to s. 49(6)(f), it is clear that this was the specific provision the Arbitrator addressed.

[72] The evidence before the Arbitrator was again quite clear. The respondent had resolved, in good faith, to convert the Premises under the Lease, including the cabins, to a “non-residential public use.” Representatives from the Village of Belcarra, where Cabin 1 is located, and the City of Port Moody, where Cabins 2–7 are located, testified before the Arbitrator that no permits or approvals of any kind were required in order to immediately convert the Premises, including the cabins, to a non-residential public use.

[73] In relation to Cabins 2–7, the Arbitrator concluded, and the appellant argues, that if the landlord knows the specific non-residential purpose for which the rental unit will be used in the future, they must have all the required permits in hand to achieve that non-residential use before issuing a notice to end tenancy. The appellant says that the Decision gives effect to this principle.

[74] This argument conflates the requirements that may be necessary under different subparagraphs of s. 49(6), such as the need for the landlord to obtain all necessary permits and approvals to, for example, renovate or repair the rental unit in a manner that requires the rental unit to be vacant (s. 49(6)(b)). The specific subparagraph at issue before the Arbitrator was s. 49(6)(f). Some overlap can be expected between the permits and approvals that may be necessary for a landlord to do any of the different things contemplated in s. 49(6). However, the Arbitrator did not, at any point in the Decision, address the differences or the interrelationship between the “necessary permits and approvals” that may be required under the different subparagraphs of s. 49(6). This is what the chambers judge addressed at para. 64 of her reasons, quoted above. The appellant relied, before the chambers judge, on authorities decided under different subparagraphs of s. 49(6), as though there were no differences in these subparagraphs.

[75] In my view the chambers judge was correct when she said:

> [58] …Therefore, while the specific public use for each building was not determined at the time the Notice was given, any use to which the buildings could be put could only be a public use.
>
> …
>
> [65] By focussing incorrectly on the future uses and plans for the cabins, the arbitrator made a finding which is not supported on the evidence, namely that all necessary permits and approvals required by law had not been obtained by the MVRD. There was no evidence before the arbitrator which could support a finding that either municipality required any permits or approvals to convert the Property to

> a non-residential public use. As such, the arbitrator's conclusion in this respect is patently unreasonable.
>
> [76] Considering the issue from a practical standpoint further contextualizes why the Arbitrator's conclusion does not comport with the legislative direction in s. 49(6)(f) or the evidence before the Arbitrator. To return to the analogy that is raised by the respondent, s. 49(6)(f) would pertain to a landlord who sought to convert a residential building with multiple "rental units" to a commercial space. In order to comply with s. 49(6)(f), that landlord would have to establish that it intended to effect this conversion in good faith and that it had in place whatever zoning, licensing, or other approvals were necessary to convert the building to commercial space for commercial purposes. The landlord would not, however, be required to establish that it had in place those further specific permits or approvals that might be required in order to convert each former "rental unit" to, for example, an office, or a restaurant, or a wine store, or a fitness centre.
>
> [77] In light of the uncontroverted evidence of the respondent and the relevant municipalities that no permits or approvals were required to convert the Premises, including the cabins, to a non-residential use, there was no evidentiary basis on which to conclude that the respondent had not met this requirement of s. 49(6)(f).
>
> [78] Accordingly I am of the view that the Decision, as it related to Cabins 2–7, was also patently unreasonable.
>
> [79] I would dismiss the appeal and confirm the chambers judge's order setting aside the Arbitrator's Decision and remitting the matter to the RTB for reconsideration.

I find the decisions in *Gould*, *Howe* and *Belcarra* support the proposition that, before serving a tenant with a 12 Month Notice to End Tenant under section 42(1) of the Act, it must be demonstrated, on a balance of probabilities, that:

1. the landlord intends in good faith to convert a manufactured home park to another use other than as a mobile home park;
2. provided the landlord has obtained all of the necessary *zoning* permits or the property is already zoned to allow for conversion of 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, it is not necessary for the landlord to have local government building permits or archeological, environmental or other permits that may eventually be required to complete the conversion proposed by the landlord; and

3. where a manufactured home park is already zoned to allow for the conversion of the property to a use other than as a manufactured home park, the landlord provides evidence that the existing local government zoning allows the conversion of the park to the residential or non-residential use proposed by the landlord.

The Tenants argued that it would not be necessary for their mobile homes to be moved from the Park if a smaller grid size to perform the archeological survey. On the other hand, the Landlord's consultant has recommended 10 metre by 10 metre grid size to perform the survey. As I have found above, it was not a prerequisite for the Landlord to have completed the survey required by the archeological permit. Accordingly, the grid size recommended by the Landlord's consultant is irrelevant to my consideration of whether the Landlord complied with the requirements of section 42(1) of the Act before serving the Tenants with the 12 Month Notices.

B. Did the Landlord *intend in good faith* to convert the Park to another use other than a manufactured home park?

Residential Tenancy Policy Guideline 2B ("PG 2B") provides guidance on, among other things, the "good faith" requirement in sections 49.2 of the *Residential Tenancy Act* and section 42(1) of the Act. Under the heading "Good Faith", PG 2B states:

> In *Gichuru v. Palmar Properties Ltd*., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165. Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section32(1) of the RTA).

> In some circumstances where a landlord is seeking to change the use of a rental property, a goal of avoiding new and significant costs will not result in a finding of bad faith: *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371.
>
> If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.
>
> If evidence shows the landlord has ended tenancies in the past for renovations or repairs without carrying out renovations or repairs that required vacancy, this may demonstrate the landlord is not acting in good faith in a present case.

AB provided a copy of a letter dated November 23, 2021 from the BC Ministry of Forests, Lands, Natural Resource Operations and Rural Development confirming that the Permit has been issued to allow for a survey under HCA together with a copy of the Permit. AB provided a copy of a letter from the Landlord's Consultant that that states the mobiles located in the Park will required removal in order to complete the archeological survey. AB provided a copy of a Memorandum of Understanding between the Landlord and the local First Nations respecting the archeological survey to be conducted on the Park pursuant to the HCA. AB entered into evidence a copy of a letter dated September 2, 2021 to the municipality that accompanied the multi-family dwelling project for the Park that has been submitted for review.

RF stated it was the position of the Tenants that the Landlord was required to obtain a building permit from the City before it served the 12 Month Notices on the Tenants. RF stated that it could take several years before the Landlord obtained municipal permits for the redevelopment project and complete the archeological survey. RF stated that there is sensitive animal habitat near the Park, including eagle nesting grounds within five metres of the Park. RF stated the Park, located on the former site of a gas station, will require decontamination. RF stated the archeological survey recommended by the Consultant states the survey will use a 5 metre by 5 metre grid. RF stated that the archeological study being conducted on an adjacent property is using a 2 metre by 3 metre grid. RF stated that, if the archeological study of the Park was done using a 2 metre by 3 metre grid, it would be unnecessary to remove the manufactured homes from the Park to perform the study.

RF stated that a study on another nearby property found that property cannot be developed at all due to the environmental sensitivity of the area. RF stated there is a good chance the Landlord will not be able to redevelop the Park due to it's environmental sensitivity. RF argue that the Tenants would be unnecessarily evicted if it turns out that the Landlord is unable to obtain a building permit or was otherwise prohibited from developing the Park due to environmental issues. RF stated it was the position of the Tenants that the Landlord is using a loophole to move forward with its own agenda.

RF stated the Landlord has not negotiated with the Tenants in good faith and, as a result, it has not complied with the requirements of section 42(10. RF stated it was the position of the Tenants that the 12 Month Notices should be cancelled.

BS testified the Landlord has taken numerous steps in order to move forward with the conversion of the Park. BS stated the Landlord has spent, as of the date of this hearing, almost $300,000 in connection with the conversion and redevelopment of the Park, including surveys, geotechnical and archeological reports, architectural designs and legal expenses. BS stated the Landlord has also incurred approximately $300,000 to put contracts in place in connection with the termination of the tenancies with other tenants of the Park. As further proof that the Landlord intends in good faith to convert the Park to residential use other than as a manufactured home park, AB provided a copy of the a Restoration Plan. Based on the above, I find that the Landlord has demonstrated an honest intention with no dishonest motive for ending the tenancy.

Although the Tenants have submitted that the Landlord has not negotiated with them in good faith regarding compensation, it is not a precondition that the Landlord has successfully negotiated compensation with the Tenants under section 44 of the Act in order for the Landlord to demonstrate that it intends in good faith to convert the Park to a non-residential use or a residential use other than a manufactured home park at the time the 12 Month Notices were served on the Tenants.

Furthermore, as noted above, whether the Landlord will be able to obtain all archeological, environment and building permits required to complete the redevelopment is not a relevant consideration under section 42(1) of the Act. All that is needed for the Landlord to demonstrate that the property on which the Park is located does not need to be rezoned in order to convert the Park to a residential use other than as a manufactured home park.

Based on the foregoing, I find the Landlord intended in good faith, and continues in good faith, to convert the Park into a residential use other than a manufactured home park under section 42(1) of the Act.

C. Is the Landlord converting *all or a significant part of the Park* to another use?

AB stated the Landlord is converting to build a six-story 80-unit residential apartment building. The Tenants did not dispute the Landlord's intention to convert all of the Park. As such, I find the Landlord has satisfied it evidentiary burden to show that it intends to convert all of the Park to a residential use other than as a manufactured home park.

In summary, I find the Landlord has demonstrated, on a balance of probabilities, that prior to serving the 12 Month Notices on the Tenants:

1. the Landlord did not require any zoning permits or approvals as the property was already zoned to allow for the conversion of the mobile home park to the use proposed by the Landlord;
2. the Landlord has provided adequate evidence to verify the Park was zoned to allow for the conversion of the Park to a residential use other than as a manufactured home park;
3. the Landlord intended, and continues to intend, in good faith to convert all of the Park to residential use other than a manufactured home park; and
4. the conversion involves all or a significant part of the Park to a residential use other than a manufactured home park.

As such, I find that Landlord has demonstrated that it had cause to end the five tenancies pursuant to the 12 Month Notices. Based on the foregoing, the Applications are dismissed without leave to reapply.

Subsection 48(1) of the Act states:

> **48**(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if
>
> (a) the landlord's notice to end tenancy complies with section 45 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the 12 Month Notices, and find that they all meet the form and content requirements set out at section 45 of the Act.

Accordingly, pursuant to section 48(1), I grant the Landlord Orders of Possession for each of the five home sites occupied by the Tenants to take effect at 1:00 pm on the effective date of the 12 Month Notices, being February 1, 2023, after the Landlord serves this decision and attached orders on the Tenants.

As the Applications have been dismissed, I find the Tenants are not entitled to recover the filing fee of their Applications.

Conclusion

I grant the Landlord Orders of Possession for each of the five home sites occupied by the Tenants effective at 1:00 pm on February 1, 2023, after the Landlord serves this decision and attached Orders on the Tenants.

Should any Tenant fail to comply with the Order respecting his or her home site, the Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 15, 2022

Residential Tenancy Branch