

Manufactured Home Park Tenancy Act and Regulation Ambiguities in Compensation for Park Closure Issues

Briefing Paper prepared for Premier John Horgan by Tri-Way Park Residents Association with input from Joyce Klein, former Secretary of AMHOA **May 2019**

Background

In April 2018 Premier Horgan and Government made a sincere attempt to protect Manufactured Home Owners by revising wording in the Manufactured Home Park Tenancy Act (MHPTA) and Manufactured Home Park Tenancy Regulation (MHPTR) sections on Park Closures and Compensation. Whilst greatly appreciated the resulting revised legislative drafting is ambiguous and contains loopholes that could allow an unscrupulous Park Owner from avoiding payment of Compensation..

Premier Horgan's Stated Intention, Nanaimo, April 13, 2018.

<https://globalnews.ca/video/4144129/new-protection-for-b-c-mobile-and-manufactured-home-owners>

Even after the revisions to MHPTA and MHPTR, Home Owners facing Park closure cannot be confident they will receive full assessed value and other compensation. Most Park Home Owners are seniors. The stress of uncertainty about compensation when a Park closes is literally a major health hazard for Home owners.

The ambiguities requiring urgent clarification are set out below:

1) Ambiguities regarding Section 42 of The Manufactured Home Park Tenancy Act

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.**

.....

(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.

- The major concern of Home Owners regarding para 42 (1) is that an unscrupulous Park Owner can simply close a Park, “for business reasons” without “converting”, without changing the use, rather just ceasing a use which does not require any permits. (Court and RTB arbitration cases attached herewith have upheld the right of a business owner to simply close a Park, “for business reasons”).
- For, “business reasons” a Park Owner could serve Home owners the required 12-month notice of Park closure and simply leave the land vacant until the 12 months has elapsed. There has been no “conversion”, no registered change of use, and no permits applied for.
- In such a case home owners have been required to vacate the Park without triggering the requirement for compensation.
- Having got rid of Home owners without paying compensation, a Park owner can then either sell the Park unencumbered or apply for permits to redevelop or, “convert” all or part of the Park to a use other than a Manufactured Home Park.
- In the case of Tri-Way Manufactured Home Park, the January 2019 aggregate BC Assessment value of Tri-Way Park homes is \$6+ million. That is the sum an unscrupulous Park Owner could potentially save by exploiting the, “closure for business”, reasons loophole created by ambiguity in the wording.
- “Good faith”, is a requirement of a Park Owner when closing a Park. For Home Owners to make an appeal proving a Park Owner’s, “bad faith”, is impossible after the 12-month notice period has expired and Home Owners have been evicted.
- To qualify for compensation, under Section 44.1 of the Act it falls to individual Home Owners to file a dispute resolution within 15 days of receiving a Park Closure notice. For many Home Owners the process is overwhelming. Compensation must be automatic and the process for registering simplified for a whole Park not left for each individual Home Owner.
- Even if the conditions for compensation are triggered, payment remains at the discretion of the Director who “*may...*”. This is still ambiguous. Compensation must be unambiguously and immediately payable.

2) Ambiguities regarding Tenant's Compensation: MHPTA Section 42 Notice

44 (3) The *director may excuse the landlord from paying* the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord from accomplishing the stated purpose for ending the tenancy under section 42 *within a reasonable period* after the effective date of the notice.

- The wording above is open to abuse by an unscrupulous Park Owner. A Park Owner could claim he can't find enough workers, there is a shortage of building materials, weather prevented progress and so forth.
- It is not made clear what would constitute a "reasonable period of time", of inability to fulfill the intended purpose for the land once not a manufactured home park.

3) Ambiguities Regarding Section 42 of The Manufactured Home Park Tenancy Act

Additional tenant's compensation: section 42 notice

44.1 (1) *A tenant may make an application for dispute resolution to request an order for compensation in addition to the amount payable under section 44 (1) if*

...

(2)(b) *only in the circumstances prescribed in the regulations, the manufactured home is not capable of being moved before the tenant is required to vacate the manufactured home site at the end of the tenancy, and*

(c) *the most recent assessed value of the manufactured home, as determined under the [Assessment Act](#), is greater than the amount prescribed for the purposes of section 44 (1).*

- Home Owners are required to individually apply for a dispute resolution to request an order for compensation. This is an overwhelming process for many senior Home owners.
- The amended 2018 Act does not specify all the conditions under which a home cannot be moved other than the obtaining of permits to transport a unit by road. Even the transport permitting application process is overwhelming for many senior Home owners. (see the Manufactured Home Act
- In the current case of Tri-Way manufactured Home Park there are literally no spaces available in Langford or anywhere on Vancouver Island.
- What constitutes a, "reasonable distance" requires clarification as this will vary for each Home Owner's circumstances.
- A Home owner may reasonably search for a site to relocate their home within the local community or say up to a 10 km radius but be unable to find an available alternate park. Does this qualify for compensation under the "reasonable distance clause"?
- If a person does not wish to relocate to a Park with a bad reputation or cannot do so for any reason whatsoever, does this qualify for compensation?

- E.g. For those with a medical support network it will be extremely difficult to move any distance away.
- E.g. For those who work this means having to give up a job and particularly for seniors it may be impossible to find another source of income as a move will almost certainly be further out from centre of a town.
- A person may not be able to move because of the costs involved. To move a double wide will cost more than double to move a single wide. The basic \$20,000 blanket compensation currently allowed does not consider distance, single or double wide, legally permitted additions to a home, decks etc. It does not consider the costs of re-installing, hooking up, and repairing and re-instating damage incurred during a move. A double wide will have to have floor and dry wall repairs at minimum. Decks and porches must be re-built in most cases. Storage sheds and units also must be moved and relocated.
- Even a home built recently may have legally permitted alterations that render it structurally impossible to be moved.

Amendments required to clarify Ambiguities in the MHPT Act

- 1) Section 42 (1) of the Act must make clear and unambiguous that any Park Closure **for any reason** whatsoever triggers the Compensation Clauses.
- 2) Home owners should not be required to formulate and plead their cases individually. The process is simply too overwhelming for many who are seniors and have not the background, health, or even cognitive ability to do so. When a Park closes all cases should be dealt with together in a simplified process.
- 3) The appointment of a Home Owner Advocate with in depth experience of manufactured Home Parks, the MHPT Act, the MHPT Regulation and the issues faced by Home Owners is essential.
- 4) The Director should not have discretion to excuse a Park owner from paying compensation under any circumstances once a notice of closure has been issued.
- 5) Moving cost compensation should be based on a scale for single wide or double wide and calibrated for say within 5, 10, 15, 20, 50, and 100+ km. The rates of compensation for moving should be based on the average of 3 credible actual current quotations from several reputable home movers in the province.
- 6) Any redevelopment means huge profits for a developer, huge property tax windfalls for Municipalities, huge capital gains for Park Owners. Full, fair, generous, immediate, and unambiguous compensation is the only fair solution for Homeowners.

- 7) Compensation in full must be paid immediately a notice of park closure is issued. Home Owners must find and pay for temporary accommodation, new homes and so forth. None of this is possible without prompt payment of compensation.
- 8) Every Municipality must be required to withhold redevelopment permits from any Park Owner until a full fair and generous compensation package has been agreed to the satisfaction of the Municipal Council and impacted Home Owners.
- 9) The same loop hole exists at the Municipal level. In the event a Park is closed, Home owners are evicted, and no development permit is applied for within the 12-month notice period, Home owners must be allowed to issue a 5-year lien on the Park property. The lien would be for the value of Home Owners' combined assessed value at time of closure subject to a punitive say 10% annual interest rate payable at such time as application permit for development is received by the Municipality within the 5 years.
- 10) There must be no condition under which a Park Owner is ever excused from paying compensation.

4) Ambiguities Regarding the MHPT Regulation:

Tenant's compensation: notice under section 42 of the Act

Section 5.1

Para 33.1 (1) For the purposes of section 44 (1) of the Act, the amount of compensation payable by a landlord is \$20 000.

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Additional tenant's compensation: manufactured home is not capable of being moved

33.2 For the purposes of section 44.1 (1) (b) of the Act, the following circumstances must be satisfied:

(a) the tenant is not able to

(i) obtain the necessary permits, licences, approvals or certificates required by law to move the manufactured home, or

(ii) move the manufactured home to another manufactured home site within a reasonable distance of the current manufactured home site;

(b) the tenant does not owe any tax in relation to the manufactured home.

- 1) **"Cannot be moved"** - As with the Act, the amended 2018 Regulation does not clearly specify all the conditions under which a home cannot be moved. This point has been covered above.

- 2) **“Reasonable Distance”** - What constitutes a, “reasonable distance” requires clarification as this will vary for each Home Owner’s circumstances. “reasonable Distance” should be clarified and define reasonable distance as within the local community or Municipality.
- 3) Currently there are zero spaces available in any Manufactured Home Park on Vancouver Island according to our research.

Amendments Required to clarify ambiguities in the MHPT Regulation

- 1) “Reasonable Distance” must be clarified to specify that a reasonable distance is limited to within the local community or Municipality.
- 2) “Cannot be moved”, must be clarified to include any reason whatsoever why a unit cannot be moved. Multiple reasons have been listed above in the MHPT Act discussion section.

Ambiguities regarding The City of Langford Manufactured Home Park Redevelopment Policy (and similar Municipal Policies where they apply)

POLICY NO: POL-0070-PLAN, Amendment No. 1, February 2nd, 2015

The Langford City policy is excellent in intent. A similar loophole applies as has been pointed out above related to the Manufactured Home Park Tenancy Act and Regulation.

The Municipal Policy applies to redevelopment only.

A Park Owner could in theory close Park, wait 12 months and then apply for a development permit in order to avoid payment of compensation under the City policy.

In any such case impacted Homeowners should be permitted to file a joint and several claim against the Park property effective for say five years. In the event redevelopment were to take place during that five years homeowners would be eligible for assessed value at the time of notice of Park closure together with a punitive level of interest (say 10%) to the date of application for development by the Park Owner.

Reference Documents Attached

These documents were submitted to, or referenced in discussions with, the Housing Ministry and or RTB by Joyce Klein former Secretary of The Active Manufactured Home Owners Association (AMHOA)

Preamble to Bill M208 - 2010 prepared by AMHOA

Bill M 208 - 2010 Manufactured Home Park Tenancy Amendment Act 2010

Maison Bellendean Park closure “for business reasons”

Pedder bay Park closed “for business reasons”

BC Supreme Court Victoria Howe v. 377001 20080318

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