

Decision

Dispute Codes: O (Application for Additional Rent Increase)

Introduction

This is the Landlords' application for a rent increase in excess of the amount specified in the Act and associated Regulations.

This Hearing originally convened for one hour, 15 minutes on October 20, 2009, and was reconvened for an addition 30 minutes on December 4, 2009, to permit time to hear all of the evidence.

Section 36(3) of the Act permits a landlord to apply for a rent increase beyond the regulated maximum (currently 3.7% plus a proportional amount) under circumstances specified at Regulation 33. In this instance the landlord's application is based on Regulation 33(1)(a) which provides for such an application where, even after the maximum allowable increase, rents are significantly lower than those of comparable sites in the same geographic area.

I reviewed the evidence provided prior to the Hearings. Both parties gave affirmed testimony and the matter proceeded on its merits.

Issue(s) to be Decided

Has the landlord proven that rents are significantly lower than those of comparable sites in the same geographic area? If so, are the increases sought by the Landlord of an order that would bring rents within a reasonable range of similar sites?

Background and Evidence

Landlord's Testimony and Evidence

The Landlord served the Tenants with the Notice of Hearing documents, as follows:

Site number	Method of service	Date of service
1	Personal service	July 8, 2009
2	Personal service	July 8, 2009
3	Registered mail	Mailed July 9, 2009
5	Personal service	July 8, 2009
6	Personal service	July 8, 2009
7	Personal service	July 8, 2009
8	Registered mail	Mailed July 9, 2009
9	Personal service	July 8, 2009
10	Posted on the tenant's door	July 9, 2009
13	Registered mail	Mailed July 9, 2009
16	Personal service	July 8, 2009
18	Personal service	July 8, 2009
19	Personal service	July 8, 2009
20	Personal service	July 8, 2009
21	Personal service	July 8, 2009
22	Personal service	July 8, 2009
23	Personal service	July 8, 2009
25	Personal service	July 8, 2009
26	Personal service	July 8, 2009
27	Registered mail	Mailed July 9, 2009
29	Personal service	July 8, 2009
31	Personal service	July 8, 2009

With respect to sites 4, 11, 12, 14, 15, 17, 24, 28 and 30, the Landlord testified that those tenants had agreed to pay the additional rent increase.

The present site rental is \$215.69 per month. The Landlord seeks to increase the monthly rent to \$259.45, an increase of \$43.76 per month, or 20.29%.

The last increase in rent was in 2004, and the increase was the maximum allowed for that year. In addition, there was no increase in rent for 2001, 2002 or 2003.

The Landlord has lost money for the last two years, particularly because of an 88% increase in water rates over the past few years, which has been absorbed by the Landlord as utilities are included in the rent. The Landlord has \$1.5 million invested in the park and is concerned that he will have to consider other options for the property if the rent increase is not allowed.

The subject park has paved streets with good sized lots. The Landlord provided a list of nine other manufactured home parks with similar sites in the same geographic area, as follows:

Park	Compared to subject park	Site rent
1	Inferior location, with gravel roads	\$255.13
2	Smaller lots with gravel roads, but preferable location	\$250.00
3	Smaller lots with paved roads	\$263.00
4	Smaller lots with gravel roads	\$244.00
5	Paved roads, being redeveloped all owners pay water in addition to site rent	\$264.00 +\$28.00
6	Small park, paved roads, water rates 1/3 of cost	\$250.00
7	Smaller lots, gravel roads, inferior location	\$235.00
8	Smaller lots, paved roads	\$288.27
9	Smaller lots, paved roads	\$267.15

Tenant's Testimony and Evidence

The Tenant agreed that pad rental was significantly lower than similar sites in the same geographic area.

The Landlord removes snow in the winter, but does not remove ice. The speed bumps in the park are excessively high, which presents a danger to the residents. The septic tanks are not maintained and should be pumped.

The increase requested by the Landlord will put some of the Tenants in a financial bind. The Tenant suggested a gradual increase of 5% over the period of 4 years would be fair.

Analysis

I note on the Landlord's application that he calculated the rent increase to be 19.7%. I calculate the requested increase to be 20.29%. In any event, based on the testimony and evidence provided by both parties, I find that the Landlord has established that the rents are significantly lower than comparable sites in the geographic area, and that an additional rent increase is justified under the circumstances. Having considered the fact that the Landlord could have, but chose not to, give notice of any rent increases for five years, I find it appropriate to phase in the rent increase.

Conclusion

The Landlord must serve the affected Tenants with a copy of this Decision, along with a Notice of Rent Increase in the prescribed form. I order that the rent increase be phased in as follows:

1. The first notice will increase the rent to \$230.45 and will take effect three full months after the notice is served.
2. After the first rent increase has taken effect, the Landlord may serve another notice of rent increase in the prescribed form, which will take effect no earlier than 6 months after the first notice has taken effect, and no earlier than 3 full months after the Landlord serves the notice. The second notice will increase rent to \$244.95 per month.
3. After the second rent increase has taken effect, the Landlord may serve another notice of rent increase in the prescribed form, which will take effect no earlier than 6 months after the second notice has taken effect, and no earlier than 3 full months after the Landlord serves the notice. The third notice will increase rent to \$259.45 per month.

For the sake of clarification, if the first notice is served in December, 2009, the first rent increase will take effect April 1, 2010. If the second notice is served in June, 2010, the second increase will take effect October 1, 2010. If the third notice is served in December, 2010, the third increase will take effect April 1, 2011.

The Landlord may recommence imposing regular rent increases, effective no earlier than one year after the third increase has taken place. For clarity, given the example above, the earliest date the Landlord may give notice for a regular rent increase pursuant to Section 35 of the Act, is December 2011, to take effect April 1, 2012.

December 17, 2009

Date of Decision