

## **DECISION**

Dispute Codes      DRI, FF

### Introduction

This hearing dealt with the tenants' application to dispute a rent increase and recover the filing fee paid for this application. The landlord did not appear at the hearing but provided a written submission. The tenant testified that he personally served an agent for the landlord with notification of this hearing and the tenant confirmed he received the landlord's written submissions. I was satisfied the landlord had been notified of this hearing and I accepted the landlord's written submission in absence of the landlord's attendance. I also heard from the tenant without the landlord present.

### Issues(s) to be Decided

1. Has the landlord served a Notice of Rent Increase that does not comply with the requirements of the Act?

### Background and Evidence

The tenant testified as follows. The tenants are currently paying rent of \$244.00 on the 1<sup>st</sup> day of every month. On March 22, 2010 the tenant received a Notice of Rent Increase (the Notice) from the landlord. The Notice states that the rent will increase to \$255.00 on July 1, 2010. The Notice indicates the rent was last increased June 1, 2007 and that the annual property taxes have increased \$378.41 since last year and that there are 92 sites in the park.

During the hearing, the tenant submitted that the landlord's calculations on the Notice are incorrect and that the incorrect calculation results in a rent increase greater than that permitted under the Act. The tenant verbally requested his rent be reduced to reflect a lack of water supply during 2009. The tenant requested that all of Notices of Rent Increase issued to all tenants in the park be cancelled.

I refused to consider the tenant's request for a rent reduction as that request was not made by way of the Application for Dispute Resolution and the landlord was not duly notified such an issue would be dealt with at this hearing. I also refused to make a finding with respect to any documents served to other tenants in the park as those tenants and documents served upon them were not joined to this application.

In the tenant's application, the tenant described issues related to water supply in 2009, lack of improvements in the manufactured home park and the landlord trying to have the tenants pay in advance for capital improvements.

### Analysis

Section 34 through 36 of the Act provide for the rent increases. Section 36(1) of the Act provides the amount rent may be increased and is limited to: the amount permitted in accordance with the Manufactured Home Park Regulation (the regulations); or as ordered by the Director upon application by the landlord; or as agreed to by the tenant in writing. In this case, the landlord did not apply to the Director for an additional rent increase and I was not provided evidence that tenants consented to an additional rent increase in writing. Therefore, it is before me to determine whether the landlord calculated the rent increase in accordance with the regulations.

Section 32 of the regulations provides for the maximum allowable rent increase. It states:

(2) For the purposes of section 36 (1) (a) of the Act, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

inflation rate + 2 per cent + proportional amount.

Inflation rate is defined in section 32 of the regulations to mean “the 12-month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.” For 2010 the inflation rate is 1.2%.

Proportional amount is defined in section 32 of the regulations to mean “the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park.” I accept that the annual property taxes increased \$378.41 and that taking into account 92 sites, the proportionate amount for the tenant's site is \$4.11 annually. On a monthly basis the proportionate amount is \$0.34.

In calculating the rent increase the landlord calculated that the maximum monthly increase as \$2.93 (inflation) + \$4.88 (2 per cent) + \$4.11 (proportionate amount) for a total maximum monthly increase of \$11.92. By way of the Notice, the landlord is requiring the tenants to pay an increase of \$11.00 starting July 1, 2010.

I find the landlord has miscalculated the proportionate amount and that the proportionate amount is no greater than \$0.34 on a monthly basis. Therefore, the amount of the maximum monthly rent increase is less than \$11.00 and the requirement for the tenants to increase their rent payment \$11.00 per month violates the requirements of the Act.

In light of the above findings, the Notice of Rent Increase issued to the tenants is set aside and cancelled. The rent payable by the tenants remains at \$244.00 per month until such time the rent is legally changed. The landlord is at liberty to issue another Notice of Rent Increase in order to comply with the Act and regulations.

As the tenants were successful in establishing the landlord issued a Notice of Rent Increase that does not comply with the Act, I award the filing fee to the tenants. The tenants are hereby authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the landlord must consider the rent paid in full.

### Conclusion

The Notice of Rent Increase issued March 22, 2010 is invalid and the rent remains at \$244.00 per month. The filing fee has been awarded to the tenants and they are authorized to deduct \$50.00 from a subsequent month's rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 20, 2010.

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Dispute Resolution Officer