DECISION

Dispute Codes DRI

Introduction

This hearing dealt with three joined applications for dispute resolution. The tenants applied to dispute an additional rent increase. All parties appeared or were represented during the hearing. The landlord confirmed receipt of hearing documents. The parties were provided the opportunity to be heard, to respond to submissions of the other party and to ask questions.

Issues(s) to be Decided

Has the landlord imposed an disputable rent increase upon the tenants?

Background and Evidence

I heard undisputed testimony as follows. The tenants have been renting sites from the landlord for several years. There is no written tenancy agreement in place with the tenants. The tenants currently pay rent of $380.00 per month and hydro, cable, water and sewer are included in rent. The tenants received a letter from the landlord dated March 31, 2010 requesting the tenants sign the enclosed Manufactured Home Site Tenancy Agreement. The written tenancy agreement provides that effective July 1, 2010 pad rent would decrease to $350.00; however, tenants would be responsible for paying for their own cable and hydro. Power meters have been installed at each site.

The tenants are of the position the landlord is imposing a rent increase since the cost of cable and hydro will exceed the reduction in pad rent offered by the landlord by way of

the written tenancy agreement. One tenant claimed to have paid HST for the month of July 2010.

The landlord testified that the property is zoned for recreational vehicles; however, the landlord rents 42 sites to long term tenants. The landlord submitted that subsequent to a tax audit the landlord is required to remit GST/HST to Canada Revenue Agency (CRA) unless the landlord can provide tenancy agreements to CRA to show the sites are rented under residential tenancy agreements. The landlord denied the tenant paid HST with his July 2010 rent payment.

The landlord explained that she sent the letter and new written tenancy agreements to all tenants in the park and only these three tenants objected to signing the new agreement. The landlord explained the letter and written tenancy agreement was sent for the tenants to consider and claimed they have not been forced to sign it. The landlord also submitted that she has not increased rent in three years.

Provided as evidence for the hearing were copies of the letter written by the landlord on March 31, 2010 and the written tenancy agreements prepared by the landlord March 31, 2010.

Analysis

A “tenancy” means a tenant’s right to possession of a manufactured home site under a tenancy agreement. A “tenancy agreement” is defined as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.

Having heard the tenants that are subject to this dispute have resided in the park for several years and that the landlord ordinarily rents sites to individuals on a long term basis, I am satisfied the property is being operated as a manufactured home park as defined by the Manufactured Home Park Tenancy Act (the Act) and that the tenants subject to this dispute have a residential tenancy by way of an oral tenancy agreement.

As the parties were informed during the hearing, the terms of the oral tenancy agreement remain in effect until such time the terms legally change. The Act provides ways a tenancy agreement may change. Sections 34 through 36 of the Act provide that a landlord may increase rent upon giving a proper Notice of Rent Increase at least three months in advance for an amount that complies with the Act. Under the Act, unless the landlord has the tenant's written consent or authority of a Dispute Resolution Officer, the amount of the rent increase is limited to the amount provided under section 32 of the Manufactured Home Park Regulations (the regulations). Alternatively, the parties may negotiate a new tenancy agreement and the amount of rent may change pursuant to that new agreement.

In this case, the tenants that filed for dispute resolution have not signed the written tenancy agreements prepared by the landlord and the parties have been informed that the tenancy agreements prepared by the landlord are of no effect unless they are signed by the tenants. During the hearing the tenants appeared agreeable to entering into a written tenancy agreement with the landlord but did not agree with the amount of rent sought by the landlord given the termination of hydro and cable. I urged the parties to meet with a view to negotiate an agreement upon receiving this decision. However, until such time a new tenancy agreement is entered into, the current agreement remains in effect.

Upon hearing from the parties, I find the terms of the verbal tenancy agreement require the tenants to pay rent of $380.00 per month and the payment rent includes the hydro, cable, sewer and water. In accordance with the Act, the tenants are obligated to pay rent owed to the landlord pursuant to the tenancy agreement and any other amount payable to the landlord under the Act or regulations. An amount for GST or HST is not an amount payable by the tenants to the landlord under the Act or regulations. If the tenant has paid HST to the landlord for July 2010 the tenant may withhold the HST paid from a subsequent month's rent payable.

As additional information for the parties, the Act also provides that a landlord may restrict or terminate services or facilities unless the service or facility is:

- essential to the tenant's use of the site as a manufactured home, or
- providing the service or facility is a material term of the tenancy agreement.

Residential Tenancy Policy Guideline 22 provides the following example with respect to terminating a service or facility:

> In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

Under section 21(2) of the Act, if a landlord terminates a service or facility that is not essential or a material term the landlord must give the tenant 30 days of written notice of the termination and reduce the rent payable by an amount equivalent to the reduction in value of the tenancy agreement.

Enclosed for the parties reference is a copy of Residential Tenancy Policy Guideline 22: *Termination or Restriction of a Service or Facility* and Residential Tenancy Policy Guideline 37: *Rent Increases*.

Conclusion

I found the landlord requested the tenants enter in a written tenancy agreement. Although the terms of the written tenancy agreement differ from those of the current oral agreement, the tenants are at liberty to accept or reject the terms requested by the landlord. I did not find that the landlord imposed an additional rent increase upon the tenants. I did not find the landlord has given written notice to terminate services or facilities to the tenants. Therefore, I make no Orders to the landlord.

As I heard the landlord is contemplating a rent increase and termination of services or facilities, I have provided the parties with information with respect to the tenancy agreements, rent increases and termination of services or facilities. I encourage the parties to meet and discuss the terms they agree upon with a view to entering into a written tenancy agreement. Until such time a new tenancy agreement is entered into the current verbal tenancy agreement remains in effect, subject to the landlord's right to increase rent in a manner that complies with the Act and regulation and subject to the landlord's right to terminate services in manner that complies with the Act.

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: July 21, 2010.

Dispute Resolution Officer