



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes RI, O

Introduction

This hearing dealt with an application by the landlord for a rent increase above the limit set by the Manufactured Home Park Tenancy Regulation. Both parties were represented in the hearing and had opportunity to be heard.

Issue to be Decided

After a rent increase permitted by the Regulation, is the rent for these manufactured home sites significantly lower than rent payable for other sites similar to and in the same geographic area as the sites?

Background and Evidence

The landlord seeks to raise the rents of the subject sites in order to achieve a relatively level rate among all the sites located at the subject property. The subject sites are occupied primarily by tenants who have lived in the park since its inception. The landlord compared the subject sites to 7 other sites in the park which are comparatively new tenancies. The rent payable for these 7 sites ranges from \$271.82 - \$277.00 per month. There was no dispute that the sites to which the landlord compared the subject sites are comparable. None of the subject sites had received a rent increase in 2007. In 2008 all but sites 7, 9, 15 and 18 received a rent increase and in 2009 all the sites received a rent increase. In 2009 the landlord obtained an order permitting him to increase the rent for sites 2 and 11 above what was permissible under the Regulation.

The following table shows the rent currently payable, the permitted increase and the proposed additional increase.

Site	Current rent	Permitted Increase 3.2%	Rent after permitted increase	Additional increase	Total rent
2	\$244.76	\$7.83	\$252.59	\$19.23	\$271.82
7	\$260.24	\$8.33	\$268.57	\$ 3.25	\$271.82
8	\$244.76	\$7.83	\$252.59	\$19.23	\$271.82
9	\$258.09	\$8.26	\$266.35	\$ 5.47	\$271.82
10	\$244.76	\$7.83	\$252.59	\$19.23	\$271.82
11	\$244.76	\$7.83	\$252.59	\$19.23	\$271.82
14	\$251.63	\$8.05	\$259.68	\$12.14	\$271.82
15	\$257.78	\$8.25	\$266.03	\$ 5.79	\$271.82
18	\$258.09	\$8.26	\$266.35	\$ 5.47	\$271.82
19	\$244.76	\$7.83	\$252.59	\$19.23	\$271.82
20	\$244.76	\$7.83	\$252.59	\$19.23	\$271.82

The landlord seeks to raise the rent of the subject sites to the same level as the lowest rent paid at the comparable sites.

The tenants argued that the rents after the permitted increase are not significantly lower than the rent of the lowest priced comparable, which is \$271.82. Sites 2, 8, 10, 11, 19 and 20 will pay the lowest amount of rent after the permitted increase and their rent is just 7.1% lower than the proposed rate after an additional rent increase. The tenants further argued that the Residential Tenancy Branch Policy Guidelines (the “Guidelines”) required the landlord to prove that exceptional circumstances existed in order to succeed in his claim and that in this case, the circumstances cannot be characterized as exceptional. The tenants took issue with the landlord raising rent for the purpose of what they characterized as “ease of bookkeeping.”

The tenants referenced a judicial review of an unreported Residential Tenancy Branch decision. The tenants did not provide copies of this decision to the Branch or to the landlord.

Analysis

Section 33(1) of the Regulations provide as follows.

33 (1) A landlord may apply under section 36 (3) of the Act [*additional rent increase*] if one or more of the following apply:

(a) after the rent increase allowed under section 32 [*annual rent increase*], the rent for the manufactured home site is significantly lower than the rent payable for other manufactured home sites that are similar to, and in the same geographic area as, the manufactured home site;

The landlord bears the burden of proving that the rent for the rental units is significantly lower than other comparable rental units. In this case, after the permitted increase is applied, the lowest of the rents payable for the subject sites is 7.1% below the rent of the comparable sites. Rents for the other subject sites are roughly 1.2%, 2%, 2.1% and 4.5% lower than that of the comparable sites. I am unable to find that an increase even as high as 7.1% is significant. The Guidelines use a 25% increase as an example of a significant increase and I find that an increase which is less than 1/3 of the example used in the Guidelines cannot be characterized as significant. I accept that the rent of the subject sites is lower than the rent payable for comparable sites, but I am unable to find that it is *significantly* lower.

Although section 33(3) sets out factors which must be considered when determining whether to approve an application for a rent increase under this section, I find it unnecessary to engage in a detailed discussion of these factors as the landlord has failed to pass the threshold over which he must cross in order to determine that an increase may be warranted. Further, none of the considerations listed under section 33(3) would operate to save the landlord's application.

Conclusion

I find that the landlord has failed to prove that after imposing a rent increase in the amount permitted under the Regulation the rent payable for the subject sites are significantly lower than the rent payable for comparable sites. Accordingly I dismiss the landlord's claim.

Dated: July 23, 2010

Dispute Resolution Officer