



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes** MNDC, OLC, FF, O

### **Introduction**

This hearing was convened by way of conference call to deal with joint applications filed by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Two agents attended for the landlord company, and three of the tenants appeared to testify and appear as agents for the remaining tenants.

All parties gave affirmed testimony, provided evidence in advance of the hearing, and were given the opportunity to cross examine each other on their evidence. All information and testimony has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

The tenants testified that towards the end of April, 2008 they were given a notice from the owner of the manufactured home park dated March 31, 2008 stating that rent would

be increased from \$275.00 per month per unit to \$360.00 per month per unit, with a \$20.00 discount each month if the rent was paid on or before the 1<sup>st</sup> of each month. The notice is signed by the owners and has a place for the tenants to sign acceptance of the letter. The notice also contains monthly pad rent for other manufactured home parks in the area, and asks for parity with the other parks. Further, attached to the notice, is a further note from the landlords to the tenants stating that the pad increase would not go into effect until September 1, 2008.

One of the tenants testified that her signature on the notice has been forged; that it is not her signature at all. Another tenant testified that he signed the notice under duress; the landlord that served the notice stated that if the tenant didn't sign the notice, the landlord would go after \$367.00 per month instead of \$360.00 with a \$20.00 discount. He further stated that he has resided in the park since 2004 and was afraid of getting evicted. He could not afford the increase to \$360.00 or \$340.00, and certainly couldn't afford \$367.00 per month.

Another tenant testified that he got the notice around the end of April, 2008. The landlord told him that he'd "make my life a living hell if I didn't sign it." He also testified that the landlord said he would kick the tenant out of the park and take his trailer.

The tenants started to pay the rent increase on September 1, 2008.

The landlords testified that the notice was issued by a partner, who is now deceased. The park was owned by the deceased and another person, and is now operated by the two landlords who attended the hearing. They further testified that he was a kind man who assisted people in the park when they needed assistance, and he would never have threatened tenants.

The landlords further provided evidence that a notice had been placed in the local newspaper stating that all persons having claims against the deceased landlord must file with the executor by January 4, 2010, failing which the executor will distribute the estate. The tenants filed their applications for dispute resolution in July, 2010.

The landlords further testified that one of the tenants in this dispute owned a manufactured home and his father also owned one in the park. The tenant's father has also passed away, and the tenant has rented out his father's unit. They also testified that the tenant has rental arrears outstanding and is always late paying rent.

### **Analysis**

I have no application before me by the landlords with respect to rent owing by one of the tenants in this dispute.

I have compared the signatures of the tenant's notice who testified that the signature has been forged to the document containing her signature that was submitted as evidence in advance of the hearing. I find that the two signatures differ, and I accept the testimony of the tenant that the notice does not contain her signature.

The *Manufactured Home Park Tenancy Act* states as follows:

**34** A landlord must not increase rent except in accordance with this Part.

**35** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

**36** (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,

- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) in the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) (Repealed 2006-35-11.)

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Sections 34 and 35 set out what the landlord must do and must not do with respect to rent increases: must not increase rent except in accordance with these sections of the *Act*, must not impose a rent increase for at least 12 months, must give the tenant at least 3 months notice, and the notice must be in the approved form. Section 36 provides that the landlord may increase up to an amount ordered by the director or agreed to by the tenant in writing, but does not provide for use of a notice that is not in the approved form. The *Act* is explicit on what must happen, and where the landlord may have discretion, and I find that the landlord did not comply with what must happen – that the tenants be given notice in the approved form.

I also accept the evidence of the tenants that they feared repercussions from the landlord if they failed to sign the form created by the landlord, in that the evidence is consistent. Tenants felt threatened that the landlord would make their lives miserable, or evict them, or increase the rent even more. Whether or not the landlord would have carried out the threats described by the tenants or not is really not at issue in this case. The fact is clear that the landlord breached the *Act* by giving notice in a form not approved by the legislation.

**Conclusion**

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of \$1,820.00 each. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenants are also entitled to recovery of the filing fee, and I order that the tenants in units #1, #9 and #35 shall be permitted to deduct \$25.00 each from the next month's pad rent payable.

I further order that the landlord comply with the *Act*, and as such I declare that the pad rent payable is \$275.00 per month for each unit.

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: December 20, 2010.

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Dispute Resolution Officer