



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** O – Timing of Rent Increase

### **Introduction**

This application was brought by the landlord on April 1, 2011 seeking a definitive ruling on the allowable effective date of a rent increase on the subject tenancy.

Despite having been served with the Notice of Hearing sent by registered mail on April 1, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing which proceeded in their absence.

### **Issues to be Decided**

This application requires a decision on whether, for the purpose of initiating rent increases, is the anniversary date of the tenancy based on the new rental agreement or on the anniversary date of the unit's previous owners as would be the case with an assignment of lease?

### **Background and Evidence**

This manufactured home park tenancy began in December 1, 2009 with monthly rent of \$354.

The park manager questions whether the park's standard annual increase date of May 1<sup>st</sup> or the anniversary date set by the new rental agreement prevails.

Given that the park entered into a new rental agreement with the tenants, the rental agreement sets the beginning of the tenancy and supersedes the park's policy and practices.

Therefore, the park manager stated that he erred in creating a new rental agreement with the tenants rather than the customary “Assignment of Lease” which he said is normally provided to him by the realtors processing the sale.

Consequently, he stated that the park owners are losing six months of a rent increase to which he believes they are legally entitled.

## **Analysis**

Part 4 of the Manufactured Home Park Tenancy Act provides that:

### **Rent increases**

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

### **Timing and notice of rent increases**

**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.

## **Amount of rent increase**

**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.

The effect of section 35(1)(a) on the subject tenancy is that the landlord could have implemented a rent increase to take effect no sooner than December 1, 2010 provided notice of that increase had been served and received by the tenants no later than August 31, 2010.

Please note that, as noted at section 35(4), if the landlord had issued a Notice of Rent Increase for May 1, 2010, that notice would have been effective on December 1, 2010.

If that was not the case, and If the landlord wished to implement a rent increase to take effect May 1, 2011, then Notice would have to have been given no later than January 31, 2011 and would be limited to the 2.3 percent set by *Regulation*, referenced in section 36(1)(a) of the *Act*.

## **Conclusion**

As the landlord and tenants created a new rental agreement which came into effect on December 1, 2009, that agreement supersedes the landlord's previous practice of implementing the increases on May 1<sup>st</sup>.

If, for administrative purposes the landlord prefers all increases to take effect on May 1<sup>st</sup>, the landlord could have delayed implementation to that date, but could not implement it in advance of the 12 month period set by section 35 of the *Act*.

The landlord was not “legally entitled” to the six months of increase from May 1 to December 1, 2010 as questioned by the park manager.

April 28, 2011