



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ARI, O

Introduction

This hearing dealt with an application by the landlord, pursuant to Section 34 of the *Manufactured Home Park Tenancy Act*, for approval of a rent increase greater than the amount calculated under the regulations.

The hearing initially convened on June 29, 2011. The landlord and eight of the thirty tenants attended the hearing and were given full opportunity to present evidence and make submissions. The hearing went on for 70 minutes and was adjourned to allow the parties additional time to present testimony.

The adjourned hearing was conducted on August 09, 2011. This hearing was attended by the landlord and by only one tenant. I confirmed that the tenant received the notice of this adjourned hearing from the Residential Tenancy Branch. Both parties were given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the landlord entitled to raise rent in an amount that is greater than what is set out in the Regulations? Has the landlord incurred a financial loss from an extraordinary increase in the operating expenses? Has the landlord applied to increase the rent for all the rental units in the park, by an equal percentage?

Background and Evidence

The Landlord testified that the manufactured home park was built approximately 30 years ago and he purchased the park in 1993. Over the years with the increased use of dish washers, washing machines etc., the volume of water usage by occupants grew to a point at which the gravity fed sewer septic system could no longer cope.

The system partially failed in 2007 and required repair. The landlord hired a contractor and the repair was carried out. However, two years later, in December 2010, the system suffered a complete back up and failure. The landlord had to repair, redesign and change the sewer system which cost him approximately \$160,000. The landlord proposed an additional rent increase to the residents in the amount of \$8.64 per month. Alternatively the landlord also offered the tenants the option of paying \$19.19 per month for 15 years. 20 of the 30 tenants replied in acceptance of the rent increase.

Analysis

Section 35 (1)(b) of the *Manufactured Home Park Tenancy Act* provides that a landlord must not impose a rent increase for at least 12 months after the effective date of the last rent increase made in accordance with this *Act*. The landlord raised the rent in January 2011. Therefore the landlord can impose a rent increase no earlier than January 2012. The rate of the increase must be no greater than the amount calculated as follows: Inflation rate + 2 %. The current maximum allowable increase for 2011 is 2.3 %.

Section 36(1)(b) of the *Manufactured Home Park Tenancy Act* provides that a landlord may impose a rent increase only up to the amount ordered by the director on an application under subsection (3) which provides that 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, by making an application for dispute resolution. In this case, the landlord has applied for a rent increase of \$8.64 over the rent increase permitted by regulation.

The Regulation section 33 (1)(b) states that a landlord may apply under section 36(3) of the *Act* [additional rent increase] if the landlord has completed significant repairs or renovations to the manufactured home park in which the manufactured home site is located that are (i) reasonable and necessary, and (ii) will not recur within a time period that is reasonable for the repair or renovation.

Regulation section 33 (3)(h) provides that the director must consider whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year.

Based on the testimony and evidence filed by the landlord, I find that the landlord has carried out significant repairs to the sewer system and has upgraded the system to accommodate the increased usage of water by the tenants. Based on the landlord's testimony, I find that the repair was reasonable and necessary and will not recur for 15 to 20 years.

In the first hearing, the tenants argued that the need for the extensive repair arose from inadequate repair in 2007. The landlord argued that the system was 30 years old and was ill equipped to take the increased volume of water that the residents used due to the use of dishwashers, washing machines and other equipment that was not widely used 30 years ago. Therefore the first repair in 2007 lasted approximately two years after which the system completely failed. I am satisfied that failure of the system was due to the limited capabilities of the system to deal with the current usage of water and was not a result of inadequate maintenance.

The landlord has filed financial statements to support his testimony and the amount that was spent to repair and upgrade the system to meet the current needs of the residents.

Based on the above, I find that the landlord has met the burden of proof and he is entitled to a rent increase in excess of the amount set by Regulation. The landlord has applied for a fixed amount of \$8.64 to be applied to the amount of rent increase allowed by legislation.

Section 33(2) of the *Manufactured Home Park Tenancy Act* provides that if the landlord applies for an increase under 33(1)(b), the landlord must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage. Therefore, I dismiss the landlord's application to have the excess rent in a fixed amount applied to all residents.

The rents of the 30 residents of the manufactured home park range from \$341.91 to \$388.00. Based on this range and the landlord's request for an added rent increase of \$8.64, I find that the landlord may apply a rent increase of 2.3% in addition to the percentage of the legislated allowable rent increase percentage. The approved additional rent increase will therefore vary for the various rental units.

Since the last rent increase came into effect on January 01, 2011, this approved rent increase will come into effect no earlier than January 01, 2012. The amount of the rent increase will be the allowable rent increase for 2012 plus the approved 2.3%. The landlord must serve on the tenant a notice of rent increase in the prescribed form together with a copy of this decision.

Conclusion

The additional rent increase in the amount of 2.3% is hereby granted. **The landlord may increase the rent by the percentage set by legislation for 2012 plus 2.3%.** This new rent will be effective no earlier than January 01, 2012.

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: August 09, 2011.

Residential Tenancy Branch