

## **DECISION**

### **Dispute Codes**

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### **Introduction**

This hearing was convened in response to an application by the tenant under the *Manufactured Home Park Tenancy Act* (the Act) disputing an additional rent increase with an effective date of January 01, 2011.

Both parties attended the conference call hearing. The landlord determined not to fully participate in this hearing - appearing only momentarily at the outset to confirm receipt of a submission. The hearing proceeded without the attendance of the landlord. The tenant was given opportunity to be heard, to present evidence and to make submissions.

### **Preliminary matter**

The landlord's submission outlined the landlord's position that I do not have jurisdiction to hear or determine this matter as the tenancy is purportedly wholly situated on Indian lands and the tenancy site is owned and operated by members of the associated Indian Band. The landlord stated they had not sent their submission (letter) to the tenant and the tenant stated they were not aware of a jurisdiction issue. The landlord's letter cites specific precedents, which the landlord claims support their position with respect to the jurisdictional limits of the Act. As well, the landlord cited *Residential Tenancy Policy Guideline #27 – Jurisdiction*, in support of the landlord's position vis-a-vis jurisdiction. In the landlord's brief appearance they stated they expected my reliance on their information to guide my decision.

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

Does the *Manufactured Home Park Tenancy Act*, and therefore the Director, have jurisdiction over this tenancy?

Is the landlord's Notice of Rent Increase valid?

### **Background and Evidence**

The subject residential property is a mobile home pad situated on the landlord's property. It is undisputed that the parties entered into a tenancy agreement which respects the rental of a manufactured home pad site, and that pad rent includes

parking, and services of water, sewer, garbage collection, and road maintenance. The current rent payable by the tenant for the home site pad is \$435 per month.

On September 21, 2011 the tenant received a document from the landlord notifying the tenant of a rent increase effective January 01, 2012. The one page document intends that the tenant's pad rent would be increasing 14% - from \$435 to \$495. The notice of rent increase was not on the approved form for its purpose. The tenant disputes the rent increase based on the form and the amount of increase in the rent. In the absence of the landlord's full participation, it is none the less clear the landlord's submission disputes my capacity to decide the tenant's application.

The tenant provided the landlord's Notice of Rent Increase letter addressed to the tenant. The landlord did not provide the legal precedents cited by them.

### **Analysis**

On preponderance of the parties' evidence and the submissions made, I have reached a decision. In the absence of the landlord, and any supporting argument or additional submissions respecting their position, I have reviewed Residential Tenancy Policy Guideline 27 (RTPG 27) respecting Constitutional Jurisdiction for this matter. It must be noted that RTPG 27 confirms that provincial legislation cannot affect the, "use and occupation" of Indian Lands, as the authority over which affects the "use and occupation" falls to the federal government under the Constitution Act.

I find that the parties entered into a residential tenancy agreement establishing the use and occupation of the home site. The tenant is required to pay the monthly rent payable for the home site, and the landlord is required to provide the home site and services to which they agreed.

I find that the *Manufactured Home Park Tenancy Act* governs this tenancy agreement - in so far as the Act does not affect the "use and occupation" of the home site. I find that the provisions of the Act governing increases of rent do not affect the parties' interests, or use and occupation, of the home site. The parties may differ over the rent payable but the rent payable does not shift or affect the interests of the parties established by their tenancy agreement. As a result, I find the provisions of the Act respecting rent increases apply to this tenancy and that I have jurisdiction to determine this matter in dispute by the tenant.

I find that the landlord was required to provide the tenant with an approved Notice of Rent Increase for a valid increase in rent as prescribed by the Act and corresponding Regulations. It must be noted that for a manufactured home park tenancy rent increase that takes effect in 2012 (as intended by the landlord), the allowable increase is 4.3% plus a proportional amount. The annual allowable rent increase for manufactured home park tenancies is determined by the formula in the Manufactured Home Park Tenancy Regulation.

I find the landlord's letter purporting to a notice of rent Increase is not valid to affect a legal increase of rent. **I Order** the landlord's intended notice of rent increase **is of no effect**. The tenant's application is allowed with the effect the tenant is not required to pay the intended increase in their rent on January 01, 2012.

The landlord is at liberty to give the tenant a *valid* legal Notice of Rent Increase in accordance with the Act and Regulations *via the approved form*.

### **Conclusion**

**I Order** the landlord's intended Notice of Rent Increase is effectively **cancelled**. The tenant is not required to pay the landlord's intended increase in rent.

The landlord is at liberty to give the tenant a valid legal Notice of Rent Increase in accordance with the Act and Regulations.

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 22, 2011

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Residential Tenancy Branch