



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to dispute a rent increase for the Manufactured Home Site.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form, and Legal Counsel acknowledged receipt of evidence submitted by the Tenants.

Issue(s) to be Decided

1. Has a Notice of Rent Increase been completed and served in accordance with section 36(1)(a) of the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The Tenant affirmed that prior to receiving a Notice of Rent Increase on June 27, 2011; her rent was \$453.50 payable on the first of each month. The Tenant filed her application on September 14, 2011 disputing the rent increase amount as she believes the amounts used in sections D(1) & D(2), for the detailed calculation for the rent increase were incorrect.

The Tenant advised she was informed by the Landlords' accountants that the Notice of Rent Increase covers a two year period as follows:

Year 1 - May 1, 2009 to April 30, 2010

Year 2 - May 1, 2010 to April 30, 2011

The Tenant stated that she is questioning the Notice of Rent Increase amounts based on two areas, the property tax amounts and the amounts used for the water billed by a public utility.

The Tenant advised that the 2011 property tax amount used by the Landlords in this calculation is not the amount paid for 2011 property taxes as supported by her evidence which included a "Property Info Report" she obtained by the municipality. This report indicates the 2011 property taxes were \$34,964.65 and not \$35,825.25 as indicated in the 2011 Property Tax Notice that accompanied the Notice of Rent Increase she received from the Landlord. She confirmed that the Municipality reduced the property taxes after an inspection was conducted on the property to confirm that certain facilities had been removed.

The Tenant confirmed that, based on her calculations, the water utility amounts listed on the Notice of Rent Increase do not total the amounts listed on the utility bills provided by the Landlords. She advised that she organized the copies of the bills provided by the Landlords by how they are invoiced as: Meter 17345, Meter 577, and Unmetered, and input the exact amounts into a spreadsheet which she provided in her evidence. She advised that when she added up these invoices and took the totals from year 1 and year 2 as noted above, she found the difference for water utility from year 1 to year 2 was only \$24.92 and not \$6,664.54 as listed on the Notice of Rent Increase.

During the Tenant's testimony Counsel for the Landlord requested clarification on what the Tenant was seeking with her application. A discussion followed whereby, I paraphrased the information provided by the Tenant. Then the Tenant stated that she did not believe the amounts listed on the Notice of Rent Increase were supported by the utility bills and the actual amount of property tax paid by the Landlords was not used therefore the amount of rent increase was incorrect.

The Landlords' Counsel then requested an adjournment so the Landlord could have an opportunity to provide evidence now that he understood what the Tenant's claim was about. I advised Counsel that I would entertain an adjournment and that I wished to clarify the exact amounts in dispute with the Tenant.

The Tenant began to explain that the amounts on the Notice of Rent Increase, if calculated based on the Year 1 and Year 2 dates noted above were incorrect for the property tax amounts listed on the form. At this time the computer generated message interjected that this hearing was being extended an additional twenty minutes. I explained to the participants that I had another matter to hear and that this hearing would only be extended an additional ten minutes.

I began to provide instructions to the parties on what additional evidence I wanted submitted prior to the reconvened hearing at which time Legal Counsel became argumentative and stated that he had tape recorded this proceeding. I explained to

Legal Counsel that private recordings of this proceeding were not allowed pursuant to the *Residential Tenancy Branch Rules of Procedure # 9.1*, which I read and I instructed Counsel to destroy and/or erase the recording.

Legal Counsel demanded to know which rule of procedure and then demanded to know which statute gave the authority to create the rules of procedure to give me the authority to tell him he could not retain the recording. I informed Counsel that his behaviour was inappropriate and contrary to the rules of procedure and pointed him to the *Residential Tenancy Branch* website for access to the Rules of Procedure. I stated again that I had to attend to another matter and that I would provide further information in my written decision.

Counsel continued his inappropriate behaviour, speaking as I was attempting to provide further instruction, at which point I informed Counsel that I recommend he familiarize himself with the rules of procedure pertaining to appropriate conduct during a dispute resolution hearing. Legal Counsel confirmed he had access to the internet at which point I informed him that he could access the legislation and rules of procedure on the Residential Tenancy Branch website. At this point the Landlords' Counsel stated he was keeping the recording and disconnected from the hearing.

Analysis

As stated during the hearing the parties may access the Act, Regulations, Rules of Procedures and other publications on the *Residential Tenancy Branch* website located at: <http://www.rto.gov.bc.ca>

Division 2, Section 9 of the *Manufactured Home Park Tenancy Act* provides as follows:

- (1) The director is responsible for the administration and management of all matters and persons appointed or retained under this Act.
- (2) Employees may be appointed under the *Public Service Act*, and the director may retain other persons, whom the director considers necessary to exercise the director's powers and perform the director's duties and functions under this Act.
- (3) The director may establish and publish rules of procedure for the conduct of proceedings under Part 6 [*Resolving Disputes*].
- (4) The director may not assign or delegate to the same person both the function of conducting investigations under section 88.1 [*investigations*] into

a matter and the power to impose penalties under section 86.1 *[administrative penalties]* in relation to that matter.

(5) The director may do one or more of the following:

- (a) provide information to landlords and tenants about their rights and obligations under this Act;
- (b) help landlords and tenants resolve any dispute in relation to which an application for dispute resolution has been or may be made;
- (c) publish, or otherwise make available to the public, decisions under Part 6 or summaries of them.

This hearing was conducted under the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1 of the *Manufactured Home Park Tenancy Act*.

Section 67 (1) of the *Manufactured Home Park Tenancy Act* provides that subject to the rules of procedure established under section 9 (3), the director may conduct a hearing under this Division in the manner he or she considers appropriate.

The *Residential Tenancy Branch Rule of Procedure # 9.1* states: *Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted.* Accordingly I hereby Order the Legal Counsel to destroy and or erase all copies of the recording from the December 6, 2011 Dispute Resolution Hearing, pursuant to section 57 (3) of the *Manufactured Home Park Tenancy Act*.

I now wish to draw the Landlords' Counsel's attention to the *Residential Tenancy Branch Rules of Procedure # 8.7* which states as follows:

Disrupting the other party's presentation with questions or comments will not be permitted. The Dispute Resolution Officer may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party.

I caution Legal Counsel that if he displays the same inappropriate behaviour during the reconvened hearing, as he did at the closing of the December 6, 2011 hearing, he will be disconnected from the hearing and it will continue in his absence.

I accept the Tenant's explanation that they filed their application to dispute the amount of rent increase as they are of the opinion that the Landlord's supporting documents do not match their calculation on the Notice of Rent Increase issued August 27, 2011.

The amounts in question are the 2011 property taxes that were paid, as listed on page 2 of the Notice of Rent Increase, under section "D" Detailed Calculation (Column A, B, and C) and on page 3 under Public utility fees and charges for Water billed by a public utility, (Column D, E, and F).

I accept Counsel's argument that the Landlords were unclear of the remedy being sought by the Tenants because of the language used by the Tenants in their application and the volume of evidence provided. Counsel stated that given the Tenant's explanation during the hearing he now understood what the Tenants were seeking and therefore he was requesting an adjournment so he could prepare evidence in response.

After consideration of the aforementioned I approve Counsel's request for an adjournment pursuant to Rule 6.4 of the *Residential Tenancy Branch Rules of Procedure*. Notices of reconvened hearing will be sent to the parties along with copies of this interim decision. The respondents' copy will be sent to the Landlord as requested by their Legal Counsel.

Conclusion

Pursuant to section 57(3) of the *Manufactured Home Park Tenancy Act* I issue the following Orders:

The Tenants are hereby ordered to submit additional evidence to the Landlords and the *Residential Tenancy Branch* no later than December 23, 2011, consisting of:

- a sample Notice of Rent Increase to be completed using the figures the Tenants calculated as the correct amounts that should have been used based on the actual 2011 property taxes paid and the water utility bills; and
- supporting documentation that shows how the amounts used to complete this form were determined or calculated; and
- any other evidence the Tenants intend to rely on.

The Landlords are hereby ordered to submit additional evidence to the Tenants and the *Residential Tenancy Branch* no later than January 13, 2012, consisting of:

- Confirmation of the 12 month period used for year 1 and year 2 calculations; and
- Proof of the actual amount paid to the municipality for the 2011 property taxes; and
- Supporting documentation that clearly shows how the amounts used to complete the Notice of Rent Increase form dated August 27, 2011, for Public utility fees and charges for Water billed by a public utility, (Column D, E, and F), were determined or calculated; and
- any other evidence the Landlords intend to rely on.

NOTE: Loose utility bills alone will not meet the requirement of this order; whereby a clearly documented spreadsheet or document listing each month and each meter indicating how the amounts in question were totalled with supporting utility bills would.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1 of the *Manufactured Home Park Tenancy Act*.

Dated: December 06, 2011.

Residential Tenancy Branch