



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord, a manufactured home park, both attended the conference call hearing, both provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other, and gave affirmed testimony. The parties were also given the opportunity to cross examine each other on the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?
- Is the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement justified?

### Background and Evidence

The parties agree that this month-to-month tenancy began on September 26, 1993 and the tenant still resides in a manufactured home on a pad in the manufactured home park. Rent in the amount of \$275.00 per month was raised to \$315.00 per month effective February 1, 2012.

The landlord's agent testified that the tenant has paid rent in the amount of \$275.00 per month, but has failed to pay the increased amount of rent for the months of February, March or April, 2012. The increase is \$40.00 per month and the tenant is now in arrears the sum of \$120.00. The tenant was served with the Notice of Rent Increase on October 20, 2011, which was posted to the door of the manufactured home on that

date, however only 2 pages of the 7 page form was served. The landlord's agent used the form provided on the Residential Tenancy Branch website which allows a user to fill in certain portions and the automated form updates other fields from the information filled in by the user. There are 43 manufactured homes in the manufactured home park. The landlord's agent testified that the proportional amount of rental increase came out to \$39.56 which would bring the new rental amount of \$326.38 per month.

The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door on March 13, 2012. Copies of two such notices were provided by the tenant for this hearing. One is dated March 12, 2012 and contains an expected date of vacancy of March 23, 2012 and states that the tenant is in arrears of rent the amount of \$80.00 that was due on the 1<sup>st</sup> day of February, 2012. The other appears to be a photocopy of the first, but the amount of arrears states \$80.00 + \$50.00 late fee, and \$130.00 is written in brackets below. That notice is not signed by the landlord's agent, but the first one has been signed. A copy of the tenancy agreement, which is entitled "Rules and Regulations" was provided by the landlord, and that document states that late rent payments are subject to a \$15.00 service charge if the rent is not paid by the 3<sup>rd</sup> day of the month.

The landlord's agent also provided a letter to the tenant dated February 27, 2012 stating that since the tenant did not respond to the rent increase notice effective February 1, 2012, it was assumed that the tenant agreed to the increase. The letter goes on to say that the tenant was in arrears \$80.00 at that time, in addition to a \$25.00 late fee. The letter also states: "The regional district installed water meters this past summer so we are now paying for the amount water that each unit is using per day plus the water used for sewage ie: toilets, dishwashing, showers etc . . as we were not being metered previously the cost of water was minimal." The letter then proposes Option B: "If you are not willing to pay the rent increase as is, we will have no choice but to re-calculate your increase which will be due immediately and to have a separate water meter installed for your unit." There have been no rental increases in the past 5 years or more.

The tenant testified that the increased amount of rent was not paid by the tenant because the tenant attended the Residential Tenancy Branch and received information that if not all pages were received, the Notice of Rent Increase was not valid. Further, 3.4% of an increase is allowed and an additional 1.4% if the landlord serves the tenant with an application for an additional rent increase. The landlord's agent attempted to discuss the issue with the tenant and gave the tenant the February 27, 2012 letter, but the tenant advised the landlord's agent that it was not a legal increase. The landlord's agent kept going on about figures, but the tenant did not know what the landlord's agent

was talking about. The tenant testified that the landlord is entitled to an increase of 3.4% per year but must serve the tenant with the proper form. The 1.4% is an additional rent increase that the landlord must apply for.

### Analysis

The *Manufactured Home Park Tenancy Act* states that a notice of a rent increase must be in the approved form. Further, a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations, or ordered by the director on an application, or agreed to by the tenant in writing, however a tenant may not make an application for dispute resolution to dispute a rent increase if it complies with the *Act*.

The *Act* further states:

**36** (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 information about rent increases for manufactured home parks on the Residential Tenancy Branch website states as follows:

#### **Manufactured Home Park Tenancies:**

- For a manufactured home park tenancy rent increase that takes effect in 2012, the allowable increase is 4.3 per cent plus a proportional amount. For a definition of the proportional amount and for more information please see the [Rent Increase Formula for Manufactured Home Parks fact sheet](#).
- The annual allowable rent increase for manufactured home park tenancies is determined by the formula in the Manufactured Home Park Tenancy Regulation.
- Section 32 of the Manufactured Home Park Tenancy Regulation establishes the annual rent increase formula at inflation plus two per cent plus a proportional amount. The regulation defines the inflation rate as the "12-month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available". The Consumer Price Index is published by Statistics Canada.
- The [Notice of Rent Increase – Manufactured Home Site \(auto-calculating version\) RTB-11A](#) was updated with the 2012 increase on September 1, 2011.

The Rent Increase Formula for Manufactured Home Parks fact sheet states as follows:

### **Proportional amount**

The “proportional amount” is the change in local government levies (taxes) plus the change in utility fees, divided by the number of manufactured home sites in the manufactured home park. This means that each resident (tenant) of the park pays for a part of the year’s increase in taxes and fees.

*Government levies:* Government levies are the things that you find listed on a tax notice, such as school taxes, hospital levies, garbage collection fees, and fees for water services.

*Utility fees:* Utility fees are charges for public utilities such as electricity, natural gas, water, telephone and cable.

The landlord may only pass on the cost of government levies and utility fees that are for the *common* property of the park. The landlord must give the tenant a copy of the most recent tax notice and bills for utility fees with the Notice of Rent Increase – Manufactured Home Site (form #RTB-11). The form includes detailed instructions on what bills can be included and how to fill out the form.

### **Amounts that *cannot* be included**

Expenses that are not local government fees and utility fees cannot be included when calculating a rent increase. If electricity is generated by diesel fuel, for example, a landlord may not include the increased cost of diesel fuel. The fees must be paid to a local government or a regulation utility in order to be included.

The Act states that the rent increase cannot be more than the amount calculated by the formula (inflation rate + 2% + proportional amount). This means that a landlord cannot round up any cents left in calculating the allowable increase. For example, if the base rent is \$800 and the maximum allowable increase is \$36.80, the landlord can issue a Notice of Rent Increase for a new rent of up to \$836.80, but not \$837.

In this case, I find that the landlord used the form-fill document on the Residential Tenancy Branch website, but also rounded up the allowable rent increase from \$39.56 to \$40.00 which is not allowable under the *Act*. I further find that the landlord did not serve the tenant with the approved form, but only part of the approved form. Further, the *Act* and the regulations state that a landlord may increase rent annually by the inflation rate plus 2 percent. This year, the maximum allowable rent increase is 3.4%. If the landlord wishes to increase the rent by a greater amount, the landlord must apply for dispute resolution to obtain an order permitting the landlord to raise the rent by the proportional amount and must also give the tenants a copy of the most recent tax notice and bills for utility fees with the Notice of Rent Increase.

Therefore, I must find that the tenant is not required to pay the rent increase, and I must find that the tenant is not in arrears of rent. The notice to end tenancy must be cancelled.

I also note that the notices to end tenancy issued by the landlord include late fees which are not provided for in the tenancy agreement, or Rules and Regulations. The amount the landlord can claim against a tenant for late payment of rent is \$15.00 per month.

### Conclusion

For the reasons set out above, the notices to end tenancy are hereby cancelled.

I order the landlord to comply with the *Act* by serving the tenant with the proper form in its entirety if another Notice of Rent Increase is issued, and that the landlord only increase the rent in accordance with the *Manufactured Home Park Tenancy Act* and the 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 *Manufactured Home Park Tenancy Act*.

Dated: April 13, 2012.

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Residential Tenancy Branch