DECISION

Dispute Codes DRI, MNDC, OLC

Introduction

This hearing dealt with 10 joined Applications for Dispute Resolution disputing several rent increases and seeking an order to have the landlord comply with the *Manufactured Home Park Tenancy Act (Act)*, regulation or tenancy agreement and a monetary order.

The hearing was conducted via teleconference and was attended by the lead tenant and the majority of the tenants; the landlords and their agent.

At the original hearing on May 28, 2012 I ordered the lead applicant to ensure I had copies of all tenancy agreements and at the outset of the hearing of June 19, 2012 the applicants confirmed that I had all copies of all agreements that they had copies of, specifically applicants XXXXXX and XXXXXX and in the case of XXXXXX a copy of a Manufactured Home Site Lease document required by a bank.

Additionally, I had asked the lead applicant to re-format the information and evidence provided into a specific format to re-serve the landlord with the re-formatted documents and to provide them to the Residential Tenancy Branch no later June 1, 2012. The lead applicant complied and provided all requested documentation.

Both parties identified at the start of the 2nd hearing that applicant XXXXXX had withdrawn from the joint application. The landlord provided, at my request, a copy of a handwritten note from these applicants confirming their withdrawal. I amend the Application to no longer include these applicants and note that they remain at liberty to file a separate Application for Dispute Resolution if they so choose.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel several rent increases; to a monetary order for monies owed resulting from non-compliant rent increases; for an order to have the landlord to comply with the *Act,* regulation or tenancy agreement, pursuant to Sections 34, 35, 36, 60, and 65 of the *Act.*

Background and Evidence

There are two main components to this Application:

Water – the tenants submit that when two of the applicants first signed their tenancy agreements (2002 and 2004) they were not charged fees for water utilities and that it was not until 2006 that tenants started receiving Regional District bills for water usage.

The applicants who signed their agreements in 2002 and 2004 both provided copies of their agreements and while different in format neither tenancy agreement indicates that water is included in the rent paid.

From the applicants in attendance at the hearing some understood that they would have to pay water from the beginning of their tenancy; some indicated there was no discussion about water at all when agreeing to their tenancy; one other applicant remembered not paying water for the first year; and one could not remember either way.

The landlord submitted that for those tenants who had not had to pay anything at the start of the tenancy it was due to an error of the Regional District and conversion to a new system. The landlord testified all tenants were made aware that water was not included in the rent amount and specifically when parties purchased their manufactured homes from the landlord the disclosure statements clearly outlined that purchasers would be responsible for water usage.

Rent Increases – as each individual applicant has distinct information relevant to their claim each of their circumstances was presented separately by the lead applicant and the subject applicant provided testimony (if they chose to) and the landlords and their agent were provided an opportunity to respond.

Details of the first occurrence where the tenants submit there was an invalid rent increase were presented and appear in this table:

File #	Notice Format**	Notice Date	Effective Date	% Increase	Allowable % Increase	Total Claimed
XXXXXX*	2005	April 27, 2008	Sept 1, 2008	4.27%	3.7%	$202.92
XXXXXX	Typed	April 6, 2006	May 1, 2006	12.5%	4%	$1,608.36
XXXXXX	Typed	March 1, 2007	June 1, 2007	3.8%	4%	$155.20
XXXXXX	2005	April 16, 2011	June 1, 2011	7.4%	2.3%	$45.48
XXXXXX	2005	April 16, 2011	June 1, 2011	3.7%	2.3%	$45.48
XXXXXX	Unknown	Unknown	Dec 1, 2009	8.5%	3.7%	$510.84
XXXXXX	2005	Sept 2010	Nov 1, 2010	3.8%	3.2%	$86.28
XXXXXX	Unknown	Unknown	June 1, 2008	8.5%	3.7%	$252.72
XXXXXX	Unknown	April 2007	June 1, 2007	3.8%	4%	$140.16

*see Analysis below.
** 2005 – means the form available from Residential Tenancy Branch between November 2005 and June 2006; Typed – means typed in a note from the landlord; Unknown – means either not provided in evidence or unsure how the notice was provided.

The landlord did not dispute any of the data presented but did testify that on the occasions that the rent increases were typewritten it was because they had run out of the forms and that they would issue the rent increase notices at the same time every year after they would return from being away in April each year.

Analysis

In relation to the tenant's claim for reimbursement of water charges throughout the tenancy the tenants must provide sufficient evidence to establish that water was included as a service or facility provided under the tenancy agreement. From the two tenancy agreements submitted it is clear that water was not included as part of those tenancies.

From the testimony of all the applicants there seems to be some confusion on the part of some tenants as to whether or not it is included. In making a claim for compensation the burden is on the tenants (applicants) to provide sufficient evidence that water was included as a provided service in their rent.

Based on the testimony of the applicants and the landlord I find the tenants have failed to establish that water was an included provision under their tenancy agreements and I dismiss this portion of their Application.

Section 35 of the *Act* requires a landlord who wishes to increase pad rentals to issue a notice of a rent increase at least three months before the effective date of the increase and in the approved form. Section 36 stipulates the amount of rent increase a landlord may impose as calculated in accordance with the regulation; as ordered by the director; or agreed by the tenant.

If a wrong effective date is stipulated the increase is not invalidated but, as long as the increase complies with the other requirements of Sections 35 and 36, will take effect on the earliest date that allows compliance with the three month notification requirement.

In the case of XXXXXX the applicants' rent did increase in 2007, however, the tenant identified that when the tenancy began on September 1, 2004 that ended on August 31, 2007, as such, a new tenancy agreement was required and I find the new amount of rent effective September 2007 to be in relation to a new tenancy and not a rent increase.

I find that in all of the cases from the table above, with the exception of XXXXXX, the amount of the imposed rent increases exceeds the allowable rental increases for the years noted. There is no evidence before me that the landlord had included in any of the notices issued since July 2007 include the allowable proportional amount relating to increased property taxes or utilities.

In regard to the file XXXXXX, as the landlord's notice of the rent increase was in the form of a typewritten note to the tenants, I find the landlord failed to use the approved form as is required under Section 35.

While an exception may be considered if a previously approved form had been used no such exception can be made in this case, because the format of the typewritten note did not provide any information to the tenants as the recourse they may have taken to dispute the increase.

If a landlord imposes a rent increase that is non-compliant with the requirements under the *Act* and all subsequent rent increases are based on the amount of rent determined, in part, by that original non-compliant rent increase are invalid, rendering the amount of rent to be the amount paid prior to the 1st non-compliant rent increase.

I find the tenants have provided sufficient evidence to substantiate the value of their individual claims for compensation for the non-compliant rent increases and grant the amount claimed on each file as noted in the table above. In addition and based on my findings and the undisputed rental data provided by the tenants I find the amount of rent, effective from the date of this decision, for each of the applicants to be:

- XXXXXX: $234.00 XXXXXX: $200.00 XXXXXX: $235.00
- XXXXXX: $270.00 XXXXXX: $270.00 XXXXXX: $235.00
- XXXXXX: $260.00 XXXXXX: $235.00 XXXXXX: $235.00

Conclusion

For the reasons noted above, I find individual tenants are entitled to monetary compensation pursuant to Section 67 for the loss of quiet enjoyment. The total amount is comprised of the amount claimed by each tenant for rent only. I grant monetary orders in the following amounts:

Applicant	Amount	Applicant	Amount	Applicant	Amount
XXXXXX	$202.00	XXXXXX	$1,608.36	XXXXXX	$155.20
XXXXXX	$45.48	XXXXXX	$45.48	XXXXXX	$510.84
XXXXXX	$86.28	XXXXXX	$252.72	XXXXXX	$140.16

These orders must be served on the landlord by each tenant. If the landlord fails to comply with any order the subject tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: June 25, 2012.

Residential Tenancy Branch