



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AARI, O

Introduction

This hearing dealt with a landlord's Application for Additional Rent Increase. The landlord submitted that all named tenants were served with the landlord's application and evidence by a process server on April 20 and 21, 2012. Agents for the landlord were present at the hearing and one person appeared on behalf of the tenants. The person appearing indicating she was representing several of the named tenants.

Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I determined that the written submission provided by the tenant's representative had not been served upon the landlord. Accordingly, I did not accept or consider the written submission. Rather, the tenants' representative was provided a full opportunity to make submissions verbally during the hearing and I have considered those submissions.

The landlord initially included site 2 in filing this application; however, the landlord requested this site be excluded as a new tenancy agreement has been entered into since this application was made. I have amended the application accordingly.

Issue(s) to be Decided

Has the landlord shown that after the rent increase permitted by the Regulation has been applied the rent payable for the rental sites is significantly lower than the rent payable for other rental sites similar to and in the same geographic area as the subject rental site?

Background and Evidence

There are 15 sites in the manufactured home park, four of which are vacant. Since the landlord acquired the park in December 2011 some of the tenants have already agreed to a rent increase or have entered into new tenancy agreements with the landlord. The landlord has made this application seeking to increase the rents for the remaining sites to \$286.00 per month. The current rents for the affected sites range from \$185.00 to \$250.00 per month and, if approved, the rent increase would be an increase of 30 – 54.6% respectively. The date of the last rent increase for the affected tenants is 2009 or earlier. The basis for making this application is that:

“after the rent increase permitted by the Regulation, the rent for the rental site is significantly lower than the rent payable for other rental sites similar to and in the same geographic area, as the rental site”.

The landlord submitted that rents in two other parks in the area are \$300.00 per month (herein referred to as “the comparable parks”). The landlord provided copies of three listings for manufactured homes for sale in the comparable parks as evidence. The listings indicate the rent for those sites is \$300.00 per month. The landlord submitted that the subject park is in a more desirable location and setting than the comparable parks and the sites are larger (approximately $\frac{1}{4}$ acre) in the subject park. The landlord also called the managing broker of a local real estate firm as a witness to corroborate the information provided by the landlord.

The tenants’ representative did not dispute that the sites shown in the listings currently rent or will rent for \$300.00 per month; however, the representative made the following submissions:

- The representative toured six parks in the area and is aware of other parks where rent is lower than the rent in the subject park.
- The landlord’s submission that size of sites in the subject park are approximately $\frac{1}{4}$ acre is not possible given there are 15 sites on three acres of land.
- The sites in the subject park are not similar to the other sites in the comparable parks as much of the park and the subject sites are on very steep terrain and/or are heavily treed.
- The subject sites have much less useable space than the sites in the comparable parks where the sites are open and mostly level.
- Parking for some of the subject sites is restricted, as is access to back yards, largely due to the steep terrain and the number of trees on the sites.

The landlord acknowledged that a few sites are on steeper terrain and that the sites have trees that have been permitted to grow very close to some of the manufactured homes. However, the landlord was of the position that other sites in the subject park have large yards and are mostly level. The landlord also submitted that the park has been surveyed and, as a result, the landlord intends to start removing several trees. The landlord has other intentions to improve the park and has begun to do so by tearing down an abandon structure on one of the sites.

The tenants' representative acknowledged that the landlord has torn down an abandoned structure but was of the position the rent increase should not be based on improvements the landlord intends to do in the future.

Finally, the tenants' representative attempted to introduce testimony as to the tenants' ability to pay the rent increase, if approved. As the parties were informed during the hearing, the affordability of the rent increase was not a determining factor in the application before me and I did not permit the tenants' representative to make further submissions in this regard.

Analysis

The amount of a permissible rent increase is provided under section 36 of the Act. It provides that a landlord must not impose a rent increase greater than that:

- (a) calculated in accordance with section 32 of the regulations [*annual rent increase*],
- (b) ordered by the director on an application for an additional rent increase under section 33 of the regulations, or
- (c) agreed to by the tenant in writing.

Section 33 of the regulations provides for limited grounds for making an application for an additional rent increase. The landlord has made this application for additional increase on the ground:

- (a) after the rent increase allowed under section 32 [*annual rent increase*], the rent for the manufactured home site is significantly lower than the rent payable for other manufactured home sites that are similar to, and in the same geographic area as, the manufactured home site;

Residential Tenancy Policy Guideline 37: *Rent Increases* provides information and the policy intent for rent increases under the *Residential Tenancy Act* and *Manufactured*

Home Park Tenancy Act. The policy intent is to allow a landlord to apply for an additional rent increase in extraordinary or exceptional situations, as evidenced by the limited grounds for such an application. The landlord has the burden of proving a basis for a rent increase of an amount that is greater than the increase prescribed by section 32 of the regulations. In considering an application for additional rent increase, I am required to consider several factors, including relevant submissions of affected tenants.

In addition to relevant submissions of the tenants, my decision is based upon:

- the application and supporting material;
- evidence provided that substantiates the necessity for the proposed rent increase; and,
- the landlord's disclosure of additional information relevant to the dispute resolution officer's considerations under the applicable regulation.

In this case, the tenants, through their representative, have submitted that the sites in the comparable parks used by the landlord in support of its application are not similar sites given the steep terrain and heavily treed sites of the subject property. The landlord acknowledged a number of sites are located on steep terrain and are heavily treed. Those reasons may or may not be sufficient to conclude the comparables are not similar as I find it reasonable and consistent with the policy guideline to expect that a "similar site" is one that is of similar: size, terrain, setting, amenities, and sense of community. However, I find the landlord has not provided sufficient evidence for me to determine whether the subject sites are sufficiently similar to the comparable sites provided. Given the nature of the application I find it reasonable to expect the landlord would provide photographic evidence and/or other detailed documentation that would sufficiently describe the subject property and the comparables so that a determination could be made.

Of further consideration is the fact the landlord provided two comparable parks when I heard there are several in the area, including parks where rent is lower than the subject park. As indicated in the policy guideline, the landlord must clearly set out all the sources from which the rent information was gathered and the landlord did not provide specific and detailed information, such as rents for all the similar properties in the immediate geographical area. Therefore, I find three listings for manufactured homes for sale in two other parks to be an insufficient submission to grant the landlord's application.

In light of the above, I deny the landlord's request for an additional rent increase for the subject sites as the landlord has not provided sufficient evidence to conclude the rent

payable, after applying the annual rent increase, is significantly lower than similar sites in the same geographic area.

Conclusion

The landlord's request for an additional rent increase for the sites subject to this application has been denied.

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: June 12, 2012.

Residential Tenancy Branch