



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, ARI

Introduction

This conference call hearing was convened in response to the landlord's application for an additional pad rental increase at pursuant to Section 36(3) of the *Manufactured Home Park Tenancy Act*.

The hearing was originally scheduled to be heard on May 22, 2012, but was adjourned to be heard on July 19, 2012 to allow more time for the proceedings.

The landlord is applying for an additional rent increase above that permitted by the Regulation. The basis for this request according to the Application is that, after the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites in the same geographic area.

The parties confirmed that all of the evidence submitted by the landlord and the tenants was received by the other party.

Issue(s) to be Decided

Is the rent significantly lower than other similar units, and is the landlord entitled to an additional rent increase?

Background and Evidence

The park is a 30 unit manufactured home park , including 8 park-owned homes and is approximately 30 years old.

Evidence submitted by the landlord included the application form dated April 6, 2012. The landlord had completed sections, (or boxes) "A", "B", "D", and "K" and later submitted an attachment to section "K", which was the 3-year history of rent increases for each pad site.

According to the data provided in box "K" on the application form, the current rental rates for the pads varies from \$296.67 to \$365.00 and the landlord is seeking to increase the rent for all of the units to a pad rate of \$400.00 per month. "Box K" on the application form, shows that the monthly increases vary from the lowest at \$35.00 per month to the highest at \$103.33 per month. The form also indicates that most of the

units were given rent increases for each of the past 3 years with the 2011 increase being given in December 2011 for the majority of the residents. However, the document confirmed that several were increased earlier, in May, June, August or September 2011 and one of the pad rents was recently established in April 2012.

Box "E" on the Application for Additional Rent Increase on page 2 of the form contained a grid for data under the headings:

- "Rent Before Increase",
- "# of Units/Sites"
- "Rent Increase Permitted"
- "Comparable Rent"
- "Additional Increase Requested"
- "% Increase Requested"

Box "E" was not completed, but there was a notation written beside the title, "*Please see details attached*". There was a document attached marked, "E" however, this document was a 23-page report titled, "*Economic Rental Report...*" prepared by an appraiser. The report did not contain all of the required information as set out on the form in box "E".

The landlord submitted this comprehensive report prepared by an accredited appraiser that compared the subject property to 7 other sites in a geographic area spanning from 31.5 miles away to one that was 1.59 miles away from the subject property. The pad rent in these parks varied from \$353.00 to \$425.00 per month. A detailed analysis of each comparable was included. According to the appraiser, the two most similar parks had pad rental rates of \$395.00 to \$425.00 and \$375.00 to \$385.00 respectively. The appraiser based his analysis on various factors that included age, amenities, lots sizes, location, proximity to services, roadways, parking and rental rates. The conclusion reached by the appraiser was that \$400.00 would be a justifiable rate for the park to become more equivalent to others in the same geographic area. Additional communications from the appraiser clarified data further.

During the proceedings, the landlord and appraiser gave detailed testimony about the comparables and called a witness familiar with the sale of manufactured homes and the parks put forth as comparables, to support the conclusions reached in the report.

The tenants were permitted to cross examine the landlord, appraiser and witness. The tenants challenged the data provided by these individuals and submitted a substantial amount of evidence refuting portions of the appraisal report. The tenants testified that

some of the comparables were not within a reasonable geographic area to their park and disputed the claims of similarity with respect to various factors, such as convenience, road, parking, lot sizes, upkeep and amenities. The tenants alleged that the data and photos in the report were misleading, and submitted photos and data of their own that they felt contradicted the report.

The tenants objected that a nearby manufactured home park with lower pad rents had been excluded from the list of comparables by the landlord's appraiser. A witness called by the tenants also testified that the rental rate range stated for the park she lived in was not accurate, as some residents paid less than the minimum stated in the report.

A tenant testified that they felt as if they are being bullied ever since the park was purchased about 3 years ago. The tenants stated that there were maintenance issues in the park, but acknowledged that a few had been addressed by the landlord. However, they still felt that this did not elevate the value of their tenancies in any respect and would not place their park in a more desirable category that would justify any additional increase in the rent. Some tenants challenged the statement that the pads in the subject park were all approximately equal in size.

The tenants provided evidence and testimony about relative tax assessments. The landlord disputed the relevance of this data. The tenants also described the demographic profile of occupants now residing in the park.

Analysis

The landlord bears the burden to prove that the additional rent increase is justified.

Section 36 (1) states that a landlord may impose a rent increase only up to the amount, (a) calculated in accordance with the regulations; (b) ordered by the director on an application under subsection (3); or (c) agreed to by the tenant in writing. Section 36 (3) permits a landlord to 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) , in the specific circumstances prescribed in section 33 of the Manufactured Home Park Tenancy Regulations, by making an application for dispute resolution.

Section 33(1) of the Regulation sets out the various circumstances that may be proven by the landlord to justify an additional rent increase, and states that a landlord may apply under section 36 (3) of the Act *[additional rent increase]* if one or more of the following apply:

(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; (my emphasis)

(b) the landlord has completed significant repairs or renovations to the manufactured home park in which the manufactured home site is located that

(i) are reasonable and necessary, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the manufactured home park;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the manufactured home park, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same manufactured home site.

The landlord's application was made under 33(a) of the above Regulation which requires that the landlord prove that their circumstances met the criteria under this section to justify the additional rent increase.

Section 62 of the Manufactured Home Park Tenancy Act states that if the dispute resolution officer is satisfied that circumstances prescribed for the purposes of section 36 (3) [*amount of rent increase*] apply, the officer may order that a landlord is permitted to increase rent by an amount that is:

(a) greater than the amount calculated under the regulations for the purpose of section 36 (1) (a), and

(b) not greater than the maximum rent increase authorized by the regulations prescribed for the purpose of this section.

This landlord submitted an "Application for Additional Rent Increase" and requested a hearing pursuant to section 36(3) of the Act. In doing so, the landlord was required to complete the applicable sections of the application form that are specifically relevant to the particular reason upon which their request is based, and to provide sufficient evidence to support the increase being sought under that category.

I find that the landlord failed to complete the Application for Additional Rent Increase form properly in that the required data for box "E" was not provided on the form, nor was

it submitted in an “attached” document, despite the notation by the landlord written beside the heading of Box “E”.

Section 52 (2) of the Act states that an application for dispute resolution must (a) be in the applicable approved form and , (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceeding. (my emphasis)

I find that the landlord submitted a substantial amount of documentary evidence along with detailed testimony to support the application. Although the landlord also included a document marked, “E”, this document consisted of a report about the park and the comparable parks and pad rentals, but did not contain the specific data required to complete the chart featured in box “E” on the application.

I find that the landlord’s failure to provide the requested data in the required format as directed on the *Application for Additional Rent Increase* form, has impeded this application. As a Dispute Resolution Officer, I am bound by administrative fairness and therefore I am not at liberty to fill in missing data requested on the application form, nor complete calculations on an applicant’s behalf.

I find that, based on the incomplete application and missing data, this application is not sufficiently supported and I must refuse to grant the landlord’s request for an additional rent increase. Accordingly, the application must be dismissed.

Conclusion

I hereby dismiss this application without leave to reapply.

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: August 15, 2012.

Residential Tenancy Branch