



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a determination regarding her dispute of what she maintained was an additional rent increase by the landlord pursuant to section 36; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that the tenant handed her a copy of the tenant's dispute resolution hearing package on September 27, 2012. I am satisfied that the tenant served this hearing package and that the parties exchanged written evidence with one another in accordance with the *Act*.

Issues(s) to be Decided

Should an order be issued to the landlord to reduce the amount of the landlord's March 20, 2012 rent increase that took effect on July 1, 2012? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

This periodic tenancy for a manufactured home park pad rental commenced on September 1, 2008. On March 20, 2012, the landlord sent the tenant a notice of rent increase in which the landlord revised the monthly pad rental from \$355.00 to \$374.00, an increase of \$19.00, effective on July 1, 2012.

Much of the tenant's application for a reduction in the amount of the landlord's rent increase relied on her claim that the landlord had been incorrect in apportioning the \$1,058.65 in increased property taxes to 22 lots in this manufactured home park. The tenant claimed that an additional 17 lots which have never been developed by the landlord should also have been included in these calculations. Alternatively, the tenant maintained that the landlord's lot is larger than those of the tenants and that the landlord maintains and uses a section of the undeveloped land as her own. She also raised

concerns about the property assessment values assigned to the undeveloped land in this manufactured home park and took issue with the landlord's failure to appeal the assessment of this land.

Analysis

Section 36(1)(a) of the Act establishes the process whereby a landlord may impose a rent increase up to the amount calculated in accordance with the regulations. Section 32(1) of the *Manufactured Home Park Tenancy Regulation* reads in part as follows:

32 (1) *In this section:*

"change in local government levies" means the local government levies for the 12-month period ending at the end of the month before the month in which notice under section 35 (2) of the Act was given less the local government levies for the previous 12-month period;..

"inflation rate" means 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 for the calendar year for which a rent increase takes effect;

"local government levies" means the sum of the payments respecting a manufactured home park made by the landlord for

(a) property value taxes, and

(b) municipal fees under section 194 of the Community Charter;

"proportional amount" means the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park;...

(2) *For the purposes of section 36 (1) (a) of the Act, a landlord may impose a rent increase that is no greater than the amount calculated as follows:*

inflation rate + 2 per cent + proportional amount.

The tenant's application questions the extent to which the increase in property taxes for this manufactured home park should be apportioned to her rental unit.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Although the tenant also referred to past rental increases for her pad rental and those of others in this manufactured home park, she paid the rent for previous rent increases without applying for dispute resolution. In accordance with the legal principle of *laches*, the tenant's payment of rent for those years limits my consideration of her application to the most recent rent increase sought by the landlord.

As was noted earlier, the tenant asserted that the landlord had done little to contest the assessed value, particularly of the undeveloped land in this park, because these costs were being borne by each of the 22 units in the manufactured home park equally. At the hearing, I noted that the *Act* does not enable me to make determinations regarding the assessment values placed on land. If the tenant believes that the assessment value is too high or too low on portions of this property that is an issue she will need to address through the property assessment process, an area that extends beyond my jurisdiction.

The total amount of the landlord's increased property tax bill of \$1,058.65 was not at issue. Turning to the primary issue in dispute, I note that the landlord's Notice of Rent Increase apportioned \$48.12 to each of the 22 lots in the manufactured home park ($\$1,058.65/22 = \48.12). This led to a monthly rent increase of \$4.01 to the occupants of each of the 22 lots in this park as a result of the increase in the landlord's property taxes over the previous year.

Section 1 of the *Act* defines a manufactured home site as "a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home." The landlord testified that the 22 lots cited in the landlord's application are the only fully serviced lots in this manufactured home park and the only ones that have been available for rental. Although water and sewer mains were installed when the park was first constructed, hydro, cable and telephone services have not been installed over the remainder of the 17 lots identified on the original site plan. Based on my interpretation of the definition of a manufactured home site as set out in section 1 of the *Act*, I find that the undeveloped lots and land are not manufactured home sites as defined under the *Act*. I find that the tenant has not demonstrated that the landlord has incorrectly calculated the number of lots in the park as 22 units. I also dismiss the tenant's assertion that minimal differences in the sizing

and shape of some of the lots, particularly that occupied by the owner, should result in a change to the proportion of the property tax increase that the tenant should bear.

Under the circumstances, the tenant bears responsibility for her own filing fee. I note that this \$50.00 filing fee was more than double the total annual relief that the tenant was seeking through a recalculation of the landlord's application to recover the property tax increase for the past year.

In reaching my decision, I have also taken into account the legal principle of *de minimis non curat lex*, a principle that establishes that the law will not concern itself with matters of trivial value. I find that the tenant's application if successful would have resulted in a monthly rent reduction of between \$0.17 and \$2.26. Given the minimal amounts of rent increase attributable to the tenant's dispute over the calculation of the number of units in the additional rent increase applied by the landlord, I find that it is appropriate in these circumstances to rely on the *minimis* principle in dismissing the tenant's application for dispute resolution. In coming to this additional determination, I observe that the amount of monthly rent reduction that would result from a finding in the tenant's favour would, for the most part, be so minimal that this application should be dismissed.

Conclusion

I dismiss the tenant's application without leave to reapply and make no order with respect to the tenant's filing fee.

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: October 31, 2012

Residential Tenancy Branch