



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Code:**

DRI; FF; O

### **Introduction**

This matter was convened to hear the Tenant's application to dispute an additional rent increase; to recover the cost of the filing fee from the Landlords; and for other orders.

The parties gave affirmed evidence at the Hearing.

It was determined that the Tenant served the Landlords with their Notice of Hearing documents by registered mail, sent June 13, 2013. The Tenant provided a copy of the registered mail receipts and tracking numbers in evidence.

I was also determined that the parties served each other with their documentary evidence.

### **Issue(s) to be Decided**

Was the rent increase implemented in September, 2010, a valid rent increase?

### **Background and Evidence**

The Tenant (JM) gave the following testimony:

JM testified that he overpaid rent in the amount of \$65.00 per month for a 33 month period. He stated that he did not discover that he was overcharged until April 28, 2013.

The tenancy started in October, 2004. Rent at the beginning of the tenancy was \$175.00 per month. In 2010, rent was \$195.00. The Tenant does not dispute the rent increase prior to September, 2010.

JM stated that he received a notice from the owner (RH) that the site rent would increase from \$195.00 to \$260.00 per month effective September 1, 2010. JM sold the manufactured home and the tenancy ended on May 31, 2013.

JM testified that on or about May 2, 2013, he received a letter from the Landlord JD that site rent would increase to \$250.00 per month of September 1, 2013. JM was confused because he had been paying \$260.00 per month since September, 2010. JM spoke with neighbours and discovered that some occupants in the manufactured home park were paying \$195.00 a month and others were paying \$260.00 for the same pads and services.

JM provided copies of the notices he received in 2010 and 2013, increasing the monthly site rent. The notices do not comply with Section 35(c) of the Act.

JM seeks to recover the overpayment in the total amount of \$2,145.00 (33 months x \$65.00).

The Landlord (RH) gave the following testimony:

RH made major upgrades to the electrical systems at the manufactured home park at an average cost of \$750.00 per site. He stated that he went to the Residential Tenancy Branch to find out how to do an additional rent increase, but was not told that he had to get written consent of the occupants to increase the rent. RH stated that everyone got the letter and everyone paid the increase until one occupant went to arbitration in February, 2011. The occupant's application to cancel the rent increase was canceled and he paid \$195.00 a month afterwards.

Some other occupants found out, so he had to lower their rent too, but he still had 10 occupants paying the \$260.00. There are 36 sites in the manufactured home park.

RH is in the process of obtaining written consent for the rent increase that was given in May, 2013. He currently has 24 consents.

RH does not dispute that the Tenant overpaid rent for 33 months, as alleged in his Application. He does not dispute the Tenant's application.

**Analysis**

The Landlords are advised to make themselves acquainted with Part 4 of the Act and Part 5 of the regulation with respect to rent increases. Copies are attached to this Decision.

A landlord must not increase rent except in accordance with the legislation. Any attempt to do so is of no force or effect. Section 36(5) of the Act provides that if a

landlord collects a rent increase that does not comply with Part 4 of the Act, the tenant may deduct the increase from rent or otherwise recover the increase.

I find that RH illegally collected \$65.00 a month from the Tenant for a period of 33 months and that the Tenant is entitled to a monetary award in the amount of **\$2,145.00** pursuant to the provisions of Section 36(5) of the Act.

The Tenant has been successful in his claim and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord RH. The Tenant's claim against the Landlord JD is dismissed for insufficient evidence.

### **Conclusion**

The Tenant is hereby provided with a Monetary Order in the amount of **\$2,195.00** for service upon the Landlord RH. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and 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 *Manufactured Home Park Tenancy Act*.

Dated: July 22, 2013

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Residential Tenancy Branch

## **MANUFACTURED HOME PARK TENANCY ACT**

### **[SBC 2002] CHAPTER 77**

## **Part 4 — Rent Increases**

### **Rent increases**

**34** A landlord must not increase rent except in accordance with this Part.

### **Timing and notice of rent increases**

**35** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

#### **Amount of rent increase**

**36** (1) 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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(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.

*Manufactured Home Park Tenancy Act*

**MANUFACTURED HOME PARK TENANCY REGULATION**

**Part 5 — Rent Increases**

**Rent increase**

**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;

**"change in utility fees"** means the utility fees 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 utility fees 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;

**"utility fees"** means the sum of the payments respecting a manufactured home park made by the landlord for the supply of electricity, natural gas, water, telephone services or coaxial cable services provided by the following:

(a) a public utility as defined in section 1 of the *Utilities Commission Act*;

(b) a gas utility as defined in section 1 of the *Gas Utility Act*;

(c) a water utility as defined in section 1 of the *Water Utility Act*;

(d) a corporation licensed by the Canadian Radio-television and Telecommunications Commission for the purposes of that supply.

(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.

### **Additional rent increase**

**33** (1) 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;

(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.

(2) If the landlord applies for an increase under paragraph (1) (b), (c), or (d), the landlord must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage.

(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

(a) the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect;

(b) the rent history for the affected manufactured home site in the 3 years preceding the date of the application;

(c) a change in a service or facility that the landlord has provided for the manufactured home park in which the

site is located in the 12 months preceding the date of the application;

(d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;

(e) the relationship between the change described in paragraph (d) and the rent increase applied for;

(f) a relevant submission from an affected tenant;

(g) a finding by the director that the landlord has contravened section 26 of the Act [*obligation to repair and maintain*];

(h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the manufactured home park results from inadequate repair or maintenance in a previous year;

(i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;

(j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;

(k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has

- (i) submitted false or misleading evidence, or
- (ii) failed to comply with an order of the director for the disclosure of documents.

(4) In considering an application under subsection (1), the director may

(a) grant the application, in full or in part,



- (b) refuse the application,
  - (c) order that the increase granted under subsection (1) be phased in over a period of time, or
  - (d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the manufactured home park.
- (5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).