



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crest Group Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's Application for Additional Rent Increase seeking an increase in rent for specific sites.

The hearing was conducted via teleconference and was attended by the landlord's agents; legal counsel; and witness and two tenants who have consent to represent 21 of the 26 named respondents (consents on file). The remaining 5 tenants were not represented at the hearing.

The landlord submits all the tenants were served with the notice of hearing documents and this Application for Additional Rent Increase, pursuant to Section 52(3) of the *Manufactured Home Park Tenancy Act (Act)* by placing the documents in each of the site mailboxes for the tenants on September 28, 2013.

The landlord submits that all tenancies restrict tenants from having renters and as such the homes must be occupied by the tenants. The landlord submits that they have no reason to believe that the 5 tenants who did not attend or send representation to the hearing would not have been residing in their respective sites at the time of service.

Section 82 of the *Act* stipulates an Application for Dispute Resolution (or Additional Rent Increase), when required to be given to a tenant by a landlord must be given in one of the following ways:

- a) By leaving a copy with the person;
- b) By sending a copy by registered mail to the address at which the person resides;
- c) By sending a copy by registered mail to a forwarding address provided by the tenant; or
- d) As ordered by the director.

Based on the testimony and submissions of the landlord, I am satisfied, on the balance of probabilities that all tenants have been sufficiently served with the documents pursuant Section 64 to the *Act*.

Prior to the hearing the landlord's legal counsel submitted a request seeking the following:

- An order to allow the landlord to "re-file with the Residential Tenancy Branch an Application for Additional Rent Increase form that complies with the Act and its Regulation forthwith upon receipt of the Director's order; and
- An order allowing the landlord to serve the tenants a copy of the landlord's Application and hearing documents by registered mail to the manufactured home site address that each tenant rents from the landlord.

At the outset of the hearing the landlord's legal counsel withdrew his request for the order to re-file the Application and as noted above I am satisfied each tenant was sufficiently served for the purposes of this hearing.

Two days prior to the hearing the landlord submitted into evidence a binder with several hundred pages of submission; evidence; and the landlord's "Book of Authorities." Legal counsel confirmed that this binder was served only on the lead tenant.

Initially I had ordered that I would not consider the written submission but that the landlord's legal counsel could speak to all material in the binder. However, in the interest of time and the tenants' inability to attend a reconvened hearing within a reasonable time I allowed the landlord's written submissions and provided the tenants with an opportunity to review the material and landlord's testimony; obtain input from the tenants they represented and provide their own written submission no later than December 5, 2013.

The tenants provided their written response and closing remarks on December 2, 2013 and I have considered it in its entirety.

While both parties provided a substantial amount of documentary submissions, I have only considered and recorded in this decision testimony and evidence that is relevant to adjudication of the landlord's Application.

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled an additional rent increase for the subject sites, pursuant to Sections 35 and 36 of the *Act*.

Background and Evidence

The landlord's submission describes the property as a 71 site manufactured home park built in stages between 1958 and 1978. The development includes an owner's single family residence and in-ground pool. The park includes asphalt paved roads with a combination of asphalt and cement paved curbing. There yard lighting and utility services underground. Full municipal and natural gas utilities are connected to each

pad site. Individual sites include a mixture of gravel, asphalt and concrete driveways. Landscaping of lawn, shrubs, and trees is described as ranging from modest to good quality. No information was provided from the landlord in regard to site sizes.

Improvements include a concrete block electrical/laundry building, and a concrete block office/recreational lounge/shop building. The recreational lounge on the ground floor contains a kitchen facility and fireplace. The parties agree the pool and laundry are no longer services provided to the tenants and that use of the recreational lounge is not exclusively for the use of tenants but is available to the general public.

The landlord seeks an additional rent increase that is greater than the annual allowable rent increase because the rent for the sites identified is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic area. The landlord has had a Market Rent Appraisal (Appraisal) completed by a qualified real estate appraiser who also attended the hearing and provided testimony regarding the Appraisal. The landlord relies primarily on the findings of this report to support their Application.

From the Appraisal the recommended rent for new tenancies in the subject property should be \$440.00; the landlord seeks a rent increase to raise all of the subject tenancies to \$400.00. This breaks down to a range of rent increases from \$102.69 to \$173.017 per month. The landlord submits the annual allowable rent increases would range from \$8.62 to \$11.30 per month.

The Appraisal used a direct comparison method to provide the above noted estimate. This method, as described in the Appraisal, attempts to compare similar properties that have recently sold in and around the local community, on which offers have been made, or are currently offered for sale to establish a value of the subject property.

The Appraisal further states that properties selected for comparison should be as similar as possible to the subject property and require little in the way of adjustment. However this is not always possible and most appraisals comparables are adjusted for dissimilar characteristics. Adjustments allow for many factors such as location, time of sale, terms of sale, building age, lot size, condition and quality.

The Appraisal analyzed 8 “comparable and others” to estimate a probable rentable value for the subject property. All parks have age restrictions with most being 55+ and only one park restricted to 45+. I have reproduced the relevant findings in the following tables. For the purposes of identifying the comparable park I have used the same number system in the Appraisal.

Park 1 (108 sites)	(owned by same landlord as subject property)
Geographic location	Same general area as subject property.
Infrastructure	Asphalt paved interior roads; concrete curbs; and street lights; underground utilities.

Sites	Mixture of asphalt and concrete paved driveways; Nicely landscaped.
Site size	4,500 to 5,000 square feet mainly accommodating double wide homes.
Amenities	Small secured RV parking for residents; water and garbage collection included in rent; municipal sewer billed directly to tenant.
Developed	1990's
Rents	Range - \$343.00 to \$406.00 – New tenancies start at \$406.00. Currently 51 sites at \$343.00 and 40 sites at \$388.00.

Park 2 (147 sites)	
Geographic location	Same general area – adjacent to subject property.
Infrastructure	Asphalt paved interior roads; and street lights; full municipal and private utilities services.
Sites	Mixture of asphalt and concrete paved driveways; Park landscaping is of average quality.
Site size	Approximately 2/3 of the pads accommodate double wide homes.
Amenities	Small RV parking area. Water and garbage collection included in rent; municipal sewer billed directly to tenant.
Developed	1970's
Rents	Range - \$366.00 to \$440.00 – New tenancies start at \$440.00. Currently 2 sites at \$366.00 and 10 sites at \$440.00. Average rent is approximately \$400.00.

Park 3 (116 sites)	
Geographic location	Same general area as subject property.
Infrastructure	Asphalt paved interior roads; part concrete curbing and street lights; full municipal and private utilities services; utility services underground.
Sites	Asphalt paved driveways; generally nicely landscaped.
Site size	Approximately 3,750 square feet.
Amenities	RV parking area for approximately 11 RV's and a modest clubhouse. Water and garbage collection included in rent; municipal sewer billed directly to tenant.
Developed	1973 to 1982
Rents	Range - \$420.00 to \$447.00 – New tenancies start at \$447.00. Currently 63 sites at \$420.00 and 14 sites at \$447.00. Average rent is approximately \$428.00.

Park 4 (287 sites)	
Geographic location	Across the main highway and approximately 3 kilometres

	away from subject property and 4 kilometres from shopping mall.
Infrastructure	Asphalt paved interior roads; concrete curbing and street lights similar to modern residential subdivisions; full municipal and private utilities services; utility services underground.
Sites	Concrete foundations with the majority of sites having a garage.
Site size	Not provided.
Amenities	Secured RV parking area for approximately 38 RV's and a clubhouse with landscaped grounds, decorative patios and walks, putting green and a horse shoe pit. Water, garbage collection, and sewer billed from municipality; service provider or landlord.
Developed	4 phases beginning in the 1990's.
Rents	Range - \$400.00 to \$475.00 – New tenancies start at \$475.00. Average range is between \$440.00 and \$450.00.

Park 5 (45 sites)	
Geographic location	Several kilometres away from subject property and no indication of proximity to shopping malls.
Infrastructure	Asphalt paved interior roads; concrete curbing and street lights; full municipal and private utilities services; utility services underground.
Sites	Mix of asphalt and concrete paved driveways.
Site size	2,500 to 4,000 square feet.
Amenities	RV parking area for approximately 7 RV's. Water and garbage collection included in rent; municipal sewer billed directly to tenant.
Developed	3 phases beginning in the 1980's.
Rents	Set to escalate to \$388.00.

Park 6 (104 sites)	
Geographic location	Several kilometres away from subject property and 2 kilometres from downtown shopping core.
Infrastructure	Asphalt paved interior roads; concrete curbing and street lights; full municipal and private utilities services; utility services underground.
Sites	Mix of asphalt and concrete paved driveways. Nicely landscaped.
Site size	Average size approximately 3,500 square feet. 50/50 split between single and double wide sites.
Amenities	RV parking area for approximately 13 RV's available for rent at \$35.00 per month. Water and garbage collection included

	in rent; municipal sewer billed directly to tenant.
Developed	4 phases beginning in the 1990's.
Rents	Range - \$400.00 to \$475.00 – New tenancies start at \$475.00. Average range is between \$440.00 and \$450.00.

Park 7 (69 sites)	
Geographic location	Several kilometres away from subject property and 5 kilometres from downtown shopping core.
Infrastructure	Asphalt paved interior roads; concrete curbing and street lights; full municipal and private utilities services; utility services underground.
Sites	Mix of gravel, asphalt and concrete paved driveways. Average landscaping.
Site size	Approximately 4,160 square feet.
Amenities	None. Water and garbage collection included in rent; municipal sewer billed directly to tenant.
Developed	Phases beginning in 1979 and completed in 1993.
Rents	Range - \$300.00 to \$325.00 – New tenancies start at \$400.00. Currently 5 or 6 at \$400.00.

Park 8 (112 sites)	
Geographic location	Furthest location from subject property and 4 kilometres from downtown shopping core.
Infrastructure	Asphalt paved interior roads and curbing and street lights; full municipal and private utilities services; utility services underground.
Sites	Concrete paved driveways. Good quality landscaping.
Site size	Approximately 5,650 square feet.
Amenities	RV parking and storage. Water and garbage collection included in rent; municipal sewer billed directly to tenant.
Developed	1991 – 1995.
Rents	\$425.00.

The tenants submit, in response to the Appraisal, that there are a number of issues related to the methodology and data.

Overall the tenants submit that the landlord has failed to provide sufficient evidence to allow for a site by site comparison and is relying on a site by park comparison to attempt to establish the comparable rents.

The tenants submit that the Appraisal is focused on “market rentable values” and established only the highest current rent that can be charged to new or potential tenants. The tenants submit that there is insufficient rental information regarding current occupied rentals. The tenants submit that the adjustment process used in the

Appraisal actually creates an indirect relative comparison and not a direct comparison at all.

The tenants accept that the characteristics of the manufactured home park are important factors to compare; however they submit that these are not the only factors that must be considered. The tenants submit that the following factors are of equal importance in establishing a comparison: site size, site location within the park, site ambience, noise, terrain, views, and age of park and tenancy.

The landlord has provided no evidence regarding site sizes in the subject property. The tenants submit that of the sites the landlord is seeking the additional rent increase on the sizes range between 1,780 to 3,450 square feet. The landlord did not dispute the size range.

The tenants propose that rent averages from park to park should not be used but that rents for specific sites found to be approximately comparable should be used as a baseline on a site per site basis.

The tenants question some of the assumptions in the Appraisal, as follows:

- Assumption – “the rent represents the normal consideration for the property in its highest and best use, unaffected by special or creative rent incentives.” The tenants submit this assumption requires an open rental market is not consistent with the allowable assignment of current tenancies to new tenants.
- Assumption – “the prospective tenant is not then in occupation of or has no obligation in respect of the building (MHP pad).” The tenants note that the sites the landlord is seeking to increase rates on in this Application are all fully occupied.
- Assumption – “rent is determined on the assumption that there are no restrictions as to the type of tenant eligible to rent the MH pad and irrespective of the form of ownership or restrictions on the development.” The tenants submit the subject property restricts tenants to 55 years or older; no subletting, and no pets.
- Assumption – “we prepared this appraisal for use only by [landlord] for determination of market rentable value purposes”. The tenants state the report makes no mention of rent comparison for existing occupied sites and appears to be focused on new tenancies.

The Appraisal states: “The mandate for this appraisal did not require a report prepared specifically for in-depth cross-examination with a court or arbitration hearing, so we did not include full documentation, confirmation and/or include the reference material to primary sources for all information reported herein.” The tenants submit that as a result the original data cannot be examined or clarified.

The landlord's witness confirmed that had the document been prepared for the purposes of arbitration it would have been different in that it would have included original data and sources.

The tenants submit that because of the distances between the subject park and comparable parks 4 to 8 and the differences in proximity to services such as the highway and shopping malls they should not be considered as being in the same geographic area.

The tenants submit it is unclear why the landlord did not include a particular park that is 1 kilometre from the subject property despite the landlord referencing that park in a letter to tenants dated August 6, 2013. In that letter the landlord indicates rent sought in that park is lower than that sought by the landlord in this Application.

The landlord submits that all 53 tenancies paying under \$300.00 per month were offered a voluntary rent increase of \$100.00. The landlord submits that 27 tenants had agreed to this rent increase prior to this hearing. The landlord provided no evidence or testimony as to why they determined \$100.00 as the amount they would propose to tenants if they would agree to the increase.

The landlord also noted that they had agreed with those 27 tenants who accepted the rent increase that should they be approved for a lower rent increase, the landlord would reduce the voluntary agreements by an equivalent amount and refund the difference already paid.

The landlord has provided no specific information on the actual current rent payable for the sites in the subject property that are not a party to this Application.

The landlord submits that rent increases of the last three years were made in accordance with the allowable amounts each year and that no proportional amounts were added, as follows:

- December 1, 2012 – 4.3%
- December 1, 2011 – 2.3%
- November 1, 2010 – 3.2%.

The landlord submits that despite the consistent rent increases, over the past three years the rents in the subject park are still significantly below that of similar manufactured home parks. The landlord testified she could not recall any rent increases imposed prior to the three years identified above.

The tenants submit that there was at least one other rent increase in 2009 for at least two of the sites. The landlord did not dispute these statements in the hearing. The tenants submit that this increase was \$8.00.

The landlord submits that any changes in services or facilities are a “neutral” factor they do indicate the landlord has made a social club available for the tenants. The tenants submit that as a result of closing the swimming pool in 2008 and the closure of the laundry facilities they have been faced with “hidden rent increases” when the landlord failed to reduce rent for the closures of these services/facilities. The tenants also submit that the increase in RV storage fees from \$5.00 to \$25.00 in 2013 amounted to another hidden rent increase.

In regard to any changes in operating expenses and capital expenditures in the 3 years preceding the date of the Application the landlord submits that this is a “neutral” factor of little relevance when seeking a rent increase based on the rent being lower than similar manufactured home sites in the same geographic area. The landlord has provided no evidence regarding any increases or decreases in operating expenses or capital expenditures.

The landlord also submits that the relationship between the change in operating expenses and capital expenditures and the rent increase sought is also a “neutral” factor of little relevance in this particular case.

Neither party provided any evidence that:

- The landlord has breached any obligations under Section 26 of the *Act* (duty to maintain and repair);
- The landlord has incurred 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;
- 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;
- The director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
- 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.

Analysis

Section 36 of the *Act* states a landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations; ordered by the director on an application under subsection; or agreed to by the tenant in writing. 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 by making an application for dispute resolution.

Section 33(1) of the Manufactured Home Park Tenancy Regulation states a landlord may apply under section 36 of the *Act* if after the rent increase allowed under section 32 of the Regulation, 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.

Section 33(3) of the Regulation stipulates that in deciding to approve an application for a rent increase under subsection (1) I must consider:

- (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.

Prior to considering the 11 key points under Section 33(3) of the Regulation I must determine whether or not the landlord has provided sufficient evidence to establish that after the application of an allowable rent increase, rent for the sites in the subject property are significantly lower than the rent payable for other manufactured home sites that are similar to and in the same geographic area as the subject park.

Residential Tenancy Policy Guideline 37 states that additional rent increases under the section of "Significantly lower rent" will be granted only in **exceptional circumstances**

and that it is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar units at a higher rate [emphasis added].

To determine the exceptional circumstances the Policy Guideline states I must consider the relevant circumstances of the tenancies; the duration of the tenancy; the frequency and amount of rent increases given during the tenancy; and the length of time over which the significantly lower rents were paid. Accordingly I have considered the following evidence:

- The landlord has not provided the start dates or duration of any of these tenancies;
- The landlord confirms 3 rent increases in the past the three years (as noted above). The landlord also confirms that these rent increases were for the allowable percentage and did not include any proportional amounts. The proportional amount is defined as 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 park ;
- The reduction in services and facilities over recent years as identified and confirmed by both parties such as the closure of the pool and laundry facilities without any subsequent rent reductions; and
- The landlord has provided no evidence in regard to the length of time over which the significantly lower rents were paid.

In addition, the Policy Guideline sets out that the landlord must provide specific and detailed information, such as rents for all the comparable units in the residential property or similar residential properties in the immediate geographical area with similar amenities.

While the Guideline requires very specific information and data to be provided to determine whether or not the comparison parks have a significantly higher rate I am not persuaded by the tenants' submission that the comparison must be made on a site by site basis.

Rather I find that if there is sufficient evidence to establish that parks and their sites are relatively similar and the rents in the subject park are significantly lower than the comparables, then the landlord has met the burden of establishing they have met the criteria set out in Section 33(1) of the Regulation.

However, in the case before me, I find the data and information provided by the landlord is deficient in two areas vital to the determination of comparable parks and sites. First, I find that to determine whether the subject park and sites are similar to the comparables an important factor to be considered is the general size of the subject sites and their capacity to hold either a single or a double wide home.

As the landlord has failed to provide any information on the subject park site sizes, including whether or not there are any sites in the subject park suitable for double wide homes and based on the tenants' undisputed submission I find that the sites in the subject park, in general, are substantially smaller than the majority of the comparables submitted by the landlord.

Secondly, as the primary focus of the Appraisal was to determine market rent for *new* tenancies I find the Appraisal focused very heavily on the rates in the identified comparable parks for new tenancies. While there is some information regarding current tenancies, such as the number of tenants paying the lowest rent in the park; the highest rent in the park; and the average rent in the park there is very little and in some cases no information regarding all of the current rates in the park.

As such, I find the landlord has failed to provide sufficient detail regarding the current rents being paid in the identified comparable parks to determine if the current rents in the identified comparable parks are significantly higher than current rents being paid for the subject park sites.

Based on the aforementioned I find there to be insufficient evidence to prove exceptional circumstances have lead to rents for the subject sites to be significantly lower than the rent payable for other similar sites. In addition, I find the landlord has failed to provide sufficient evidence of significantly higher rents at comparable park sites.

As I have found the landlord has failed to meet the criteria for Section 33(1) I have not considered any of the landlord's evidence in relation to the requirements set out in Section 33(3).

Conclusion

Based on the above, I dismiss the landlord's Application for an additional rent increase.

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: January 10, 2014

Residential Tenancy Branch

