



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B & D STINN ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction

This matter dealt with an application by the Tenant for other considerations and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 31, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. What other consideration is the Tenant applying for?

Background and Evidence

This tenancy started on November 18, 2003 as a fixed term tenancy until the year of 2040. The tenancy agreement is reviewed yearly. Rent is \$348.60 and a notice of rent increase to \$358.72 has been issued for February 1, 2014. The date on the Notice of Rent Increase is October 25, 2013.

The Tenant said he has applied not to dispute the Landlord’s ability to issue a Notice of Rent Increase or the method of calculation on the Notice of Rent Increase, but the Tenant said he is disputing the information that the Landlord used in calculating the rent increase. The Tenant continued to say this dispute has arisen because of a dispute about the land taxes that the Landlord and tenants are paying at the Manufactured Home Park. The Tenant continued to say that the Landlord had a reduction in land taxes in 2011 due to a reallocation of land within the park from the Landlord’s share to the tenants’ share. The Tenant said the Landlord had applied for this reduction and this caused an increase to the land taxes to the tenants of the park. Subsequently the Tenant disputed the land tax change and the Tax Authority reversed and revised their decision in 2013. The new decision from the Tax Authority increased the amount of land in the Manufactured Home Park that the Landlord is responsible for and decreased the land the tenants are responsible for. This decision resulted in the Landlord’s land

taxes increasing from \$6,885.72 in 2012 to \$10,828.86 in 2013. As a result the Landlord has calculated a rent increase based on the increase of the taxes of \$3,943.14 distributed over 134 sites in the park. The Landlord used the proper rent increase form to calculate the monthly rent increase for the Tenant, which was calculated at \$10.12 per month.

The Tenant said the previous year (2012) land tax amount the Landlord used for the calculation (\$6,885.72) was artificially low because of the Landlord's land tax reduction application. The Tenant continued to say that because this amount is artificially low; then the rent increase the Landlord has now issued is artificially high, because the rent increase is calculated on the amount of increase from one tax year to the next. The Tenant said he disagrees with the Landlord using the 2012 tax amount of \$6,885.72 as the base for calculating the tax portion of the rent increase. The Tenant said it is not fair that the tenants are paying an artificially high amount for the Landlord's share of the land taxes.

The Landlord Counsel said the Landlord has complied with the Residential Tenancy Branch, guidelines and method of calculating a Notice of Rent Increase. As well the Landlord had no control of the amount of land taxes the Tax Authority has assessed to the Landlord and to the tenants in the Park. The Landlord's Counsel said the Landlord calculated the rent increase with the numbers and amounts that the Landlord paid. The Landlord's Counsel continued to say the Landlord has complied with the Act and has made the rent increase calculation as stated in the Regulations.

Further the Landlord's Counsel said the amount of land taxes increased for the Landlord as a result of more land in the park being designated as common area or as the responsibility of the Landlord and this has also resulted in the tenants land taxes decreasing as less land is the tax responsibility of the tenants.

The Tenant agreed that his land taxes went down for 2013.

The Tenant said in closing that this is a unique situation and fairness to the tenants of the park should be considered as he believes the Landlord has increased the rent more than it should be, because of the dispute with land taxes.

The Landlord's Counsel said in closing that the Landlord has complied with the Act and the Notice of Rent Increase has been calculated in compliance with the Regulations.

Analysis

The Act says:

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.

Further Regulation 32 of the Manufactured Home Park Act says:

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

There was considerable amount of testimony about the tax dispute and the share of taxes that the Landlord and the Tenant (tenants in the park) should be responsible for. This is a dispute for the Tax Authority and is beyond the jurisdiction of the Residential Tenancy Act.

The matter of the Notice of Rent Increase is a well defined process and there is a set method of calculating a rent increase. The Act says in section 36 (2) that a tenant cannot dispute a notice of rent increase that has complied with the Act and the

Regulations. In this situation I find the Landlord has complied with the Act and has made the calculations for the rent increase in accordance with the Regulations. As well I find the Tenant has not established grounds to prove the Landlord used incorrect land tax amounts or that the Landlord used an artificially low land tax amounts. Both sides agreed the land tax amounts are the amounts that the Tax Authority assessed to the Landlord and the Tenant. Consequently these are the only land tax amounts the Landlord could use for the Notice of Rent Increase. The Tenant has not provided evidence that the Tax Authority has reassessed the 2011 or 2012 land tax amounts to the Landlord. As a result the Landlord's land tax amounts are the amounts the Landlord used in the calculation of the Notice of Rent Increase. I find the Landlord has calculated the Notice of Rent Increase in compliance with the Act and Regulations.

Consequently I dismiss the Tenant's application without leave to reapply.

As the Tenant has been unsuccessful in this matter I order the Tenant to bear the cost of the filing fee of \$50.00 that the Tenant has already paid.

Conclusion

The Tenant's application is dismissed 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 *Manufactured Home Park Tenancy Act*.

Dated: February 24, 2014

Residential Tenancy Branch

