Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tradewinds Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: RI

Introduction

This hearing concerns the landlord's application for a rent increase above the limit permitted by the Manufactured Home Park Tenancy Regulation (the "Regulation.") Both parties participated and / or were represented in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to a rent increase above the limit permitted by the Regulation.

Background and Evidence

Three previous applications for a rent increase above the limit permitted by the Regulation have been made by the landlord, with related decisions issued by date of July 6, 2009 (file #732029); March 24, 2011 (file #767904); and April 18, 2012 (file # 786656). In response to the current application which was filed in April 2014, a hearing was scheduled for July 15, 2014. In order to permit the further exchange of documentary evidence between the parties, the July hearing was adjourned and rescheduled for September 29, 2014.

The subject manufactured home park (the "park") comprises 53 manufactured home sites (the "sites"), and this particular application concerns only sites #1 and #20. The landlord has filed the application on the following grounds:

> 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 similar to and in the same geographic area, as the rental unit or site.

Subsequent to the time when the landlord's application was filed, rent was increased for the subject units effective October 01, 2014, in the 2.2% amount allowable in 2014. In the result, the additional rent increase currently at issue before me concerns 2015, when the earliest effective date of any rent increase would be October 01, 2015.

The allowable rent increase that takes effect in 2015 is 2.5% plus a "proportional amount." The "proportional amount" is 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 manufactured home park.

The tenant occupancy date for site #1 is sometime prior to 2002, while the tenant occupancy date for site #20 is October 2000. However, the following particulars pertaining to rent are identical for both sites #1 and #20:

Current rent:		**$469.29** (last increased on October 1, 2014)
Allowable increase:	+ $11.73 =	**$481.02** (2.5% in 2015)
Additional increase sought:		**$68.98**
Total monthly rent sought:		**$550.00**

In the original application the landlord does not undertake to draw broad and detailed comparisons with other parks. Rather, the landlord's application is mainly "based on comparable rents paid by other tenants in the same mobile home park." However, in the tenants' submission, miscellaneous comparisons are made with regard to the relationship between rents, services and access in a number of other parks. In turn, the landlord has responded in some detail to those comparisons. There are numerous conflicting views reflected in the respective submissions.

The landlord claims that all 53 sites in the subject park have the same services and access. However, 9 of these 53 sites are located on lakefront, including the 2 sites which are the subject of this application. The landlord notes that the value of lakefront sites is significantly higher than non-lakefront sites.

The landlord also notes that there "are many encroachments and bylaw infractions" in the park. In a sketch plan included in evidence, the landlord draws particular attention to encroachments on the park boundary by certain of the lakefront sites. 5 sites appear variously to be encroaching: #1, #18, #19, #20 and #21, with sites #1 and #20 showing the greatest encroachment. However, the 4 sites #2, #15, #16 and #17 appear to be located entirely within the park boundary.

The landlord seeks a rent increase above the limit permitted by the Regulation for sites #1 and #20 “so we can move our property line and eliminate tenants’ encroachments.” Specifically, the landlord claims to be “working on establishing tenants’ lot lines and plan to use the Land Title Act in the near future for accretion to the high water mark.” The landlord considers that such a boundary change will lead to an increase in both, the size and value of the subject sites. In his application he states, in part:

> We can add tremendous value to the tenants’ lakefront lots through accretion under section 49 of the Land Title Act but without moving the present boundary both units #1 and #20 would be extremely hard to sell to a knowledgeable purchaser and their values would be greatly diminished.

Additionally, the landlord claims, in part:

> Calculations from survey maps and site measurements made us aware that we could not only move the tenants’ lot lines to provide them with a site to satisfy town bylaws but we could gain enough area to satisfy the bylaw green space requirements which would allow us to add 3 more mobile homes to the park.

Further, in part, the landlord states:

> We will proceed with our planned lakefront accretion under section 49 of the Land Title Act. The difference will be without some financial compensation in pad rent from unit #1 and unit #20 we will permanently establish tenants’ lot lines on the current boundaries and keep all the acquired accretion for common area green space to expand the park. The property boundary shown on survey map L18 is the original natural boundary and as noted on L17 we can provide a solution to the encroachments even though we are not legally required to do so. Tenants responsibility is due diligence at time of purchase and paying an appropriate price for the situation.

The tenants argue that the park already has higher site rents when compared to many other parks because the landlord discourages requests for consent to assign a manufactured home site tenancy agreement (RTB - 10), and prefers to increase a new owner’s site rent on the occasion of a sale.

Further, the tenants note that sites #15 and #16 pay identical rent to sites #1 and #20, while no additional rent increase is being sought for them. Additionally, the tenants take the position that the landlord ought first to initiate the process of legal boundary expansion and, if successful, proceed then to apply for an additional rent increase.

The landlord has provided an overview of current rents within the park. He notes that not all rents cited include "cost recovery allowances." In the result, I find that the results reflect reasonable comparative approximations. Sites #1 and #20 are not included in the following overview provided by the landlord:

Average pad rent in 2014 for 51 sites: **$506.49**
Plus 2.5% allowable rent increase in 2015 of $12.66: **$519.15**

Average pad rent in 2014 for 7 lakefront sites: **$576.58**
Plus 2.5% allowable rent increase in 2015 of $14.41: **$590.99**

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

Based on the considerable documentary evidence submitted by the parties, the affirmed testimony given during the hearing, and the relevant statutory provisions and Guidelines, my findings are set out below. These findings neither reference all aspects of the multiple issues raised in the respective submissions, nor all aspects of the multiple issues raised by the parties during the hearing. Nevertheless, all aspects of both were duly considered.

I find that considerable comparative analysis between this park and other parks has already been undertaken in the 3 previous decisions. While these analyses have likely not been exhaustive, I find that they have been comprehensive. In the result, I am not persuaded that any additional comparative analysis that goes beyond the borders of the subject park, would be of any significant value in deciding the current application. In the result, my consideration of the application concerns only the circumstances of this park and rents paid therein.

Section 33 of the Regulation addresses **Additional Rent Increase**, in part:

> 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;

Further, section 33(3) of the Regulation provides, in part, as follows:

> 33(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;

Residential Tenancy Policy Guideline # 37 speaks to “Rent Increases,” and under the heading – **Significantly lower rent**, provides in part:

> The landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.
>
> ---
>
> “Similar units” means rental units of comparable size, age, (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.
>
> The “same geographic area” means the area located within a reasonable kilometre radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject unit, such as proximity to a prominent landscape feature (ie: park, shopping mall, water body) or other representative point within an area.

> Additional rent increases under this section will be granted only in exceptional circumstances. 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 in the residential property at a higher rate.
>
> ---
>
> To determine whether the circumstances are exceptional, the Arbitrator will consider relevant circumstances of the tenancy, including 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 rent or rents was paid.
>
> ---
>
> The amount of a rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessary with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, a dispute resolution officer can approve an additional rent increase that brings the subject unit(s) into that range. For example, an Arbitrator may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

I note the following information included in the "Background and Evidence" section of the decision dated July 06, 2009:

> The Landlords confirmed that they have owned the [park] since August 2002, that they increased all the pad rentals as soon as they took possession of the park and that they have implemented the maximum allowable rent increases every year since.

I find that the most useful comparison for rent paid for lakefront sites #1 and #20, are those paid by other lakefront sites in the same park. As earlier noted, 4 of the 9 lakefront sites pay identical rent (#1, #15, #16, #20), while the remaining 5 sites (#21, #2, #18, #19, #17), pay incrementally higher rent. In his application the landlord identifies the "comparable rent" of $576.58, which is the average he has calculated of rent paid by the 7 lakefront sites in the park in 2014, excluding the 2 subject sites.

The tenants' undisputed claim is that the landlord's usual practise is not to encourage lease transfers, but to increase rent on the occasion of a sale. Related to this matter, on the landlord's "Comparison 1-3 Year Rent History" it is documented as follows:

> As noted by their length of tenure they are not recent purchasers. Recent is defined by Webster's Dictionary as New, Not long before the present.

While there is evidence before me concerning the rent history for sites throughout the park for the 3 year period preceding the application, as to the durations of tenancy I find that the Webster's definition in isolation is not helpfully instructive. In short, I find that occupancy dates bear directly on the weight to be given to the calculation of a "comparable rent," and there is insufficient evidence before me concerning them.

An additional rent increase is not being sought for sites #15 and #16 which currently pay the same rent as sites #1 and #20. The sketch map appears to indicate that sites #15 and #16 do not encroach over the park boundary. I must conclude that the landlord's reason for excluding these sites from the application reflects the view that these sites would not benefit in the same way from a change to the park boundary. That said, the benefits anticipated by the landlord for sites #1 and #20 from a successful application to change the park's boundary have yet to be realized, and have not presently occurred.

I find that the landlord's goal to achieve a change in the legal park boundary in order to "satisfy town bylaws" and to "add 3 more mobile homes to the park," is insufficiently related to the application for an additional rent increase for the 2 subject sites.

Pursuant to all of the above, I find that the landlord has failed to meet the burden of proving there are currently exceptional circumstances, sufficient to support entitlement to a rent increase above the limit permitted by the Regulation. In the result, the application concerning sites #1 and #20 must be dismissed.

Conclusion

The landlord's application is hereby dismissed.

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 23, 2014

Residential Tenancy Branch