



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0806183 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RI

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on September 23, 2014, to obtain an Order for an additional rent increase.

The hearing was conducted via teleconference and was attended by two Agents for the Landlord. The majority of the submissions were made by the Landlord's accountant. Therefore, the Landlord's accountant will be referred to as the Landlord and the on-site manager will be referred to as the Agent, for the remainder of this decision.

Each Tenant was represented by an agent as recorded on the first page of this Decision. B.S. attended the hearing and gave affirmed testimony that he was representing J.D. as her agent, as she was unable to attend because she was at work. M.M.G. spoke briefly and confirmed that she wanted her agent, M.B. to speak on her behalf.

Each party gave affirmed testimony and confirmed receipt of evidence served by each other. Upon review of the documentary evidence I noted that no evidence had been received on the Residential Tenancy Branch (RTB) file from M.M.G. M.B. testified that M.M.G.'s evidence consisted of his comments written on copies of the Landlord's evidence and were mailed to the RTB, via regular mail, sometime around December 22, 2014.

Considering evidence that has not been received by the *Residential Tenancy Branch* or the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore, as M.M.G.'s written evidence was not received on the RTB file prior to the hearing, I declined to consider them if received after the hearing. I did however consider the oral submissions made by M.B., M.M.G.'s agent.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Has the Landlord met the high standard of proof to be granted an Order for an additional rent increase?

### Background and Evidence

The Landlord filed an application for an additional rent increase pursuant to section 36 (3) of the Act [*additional rent increase*] which provides that an application made be made if 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.

The Landlord submitted documentary evidence in support of their application which consisted of, among other things, copies of: a two page written statement dated October 7, 2014; a spreadsheet summarizing the average rents for five manufactured home parks (MHPs) used as comparable parks; copies of the February 3, 2014 letter issued to each Tenant asking for the Tenants' acceptance of the proposed rent increase; copies of documents where the other six tenants' signed accepting the proposed rent increase; the July 23, 2014 Decision granting the Landlord leave to reapply for an additional rent increase; and packages of documents outlining the details of each of the comparable parks as well as the details of the Landlord's park.

Each package for the comparable parks and the Landlord's park included the following documents:

- A cover sheet assigning a number to each example as Comparable #1, Comparable # 2 etc., the name and address of the park and the number of "Trailer Pads", which the Landlord clarified was manufactured home park (MHP) sites;
- A map which outlined the location of each park and named or identified by a symbol, any amenities in the area such as the hospital, cemetery, school, park, and transit;
- A property report which included a picture, legal description, and zoning information provided by the municipality;
- A topographic survey map of each park; and
- 3 to 5 photographs of each park taken of the general area and signs.

The Landlord testified that the owner purchased this park in 2007 with the original intent of developing the property. The owner has since decided not to develop the property and to keep operating it as the manufactured home park (MHP). The Landlord submitted that when the owner purchased the MHP all of the tenants had been long term tenants and he did not begin to implement annual rent increases until 2010. The previous owner had managed the property like a small "ma and pa" operation and there were no written tenancy agreements or park rules.

The property is a large private lot with 8 MHP sites. Each site is approximately 20' x 40' in size and there is one house that is a rental property on the property. There is only one street to drive into the park. There are no hotels or motels and there are no recreation vehicle (RV) sites which the Landlord argued makes their MHP a quieter location than other parks, as there is no short term or transient tenants coming and going.

The Landlord stated that this application pertains to only two MHP sites as the tenants from the other six sites all signed agreeing to the phased in rent increase. The Landlord is seeking to increase the rent from \$314.04 to \$468.92. The rent of \$314.04 was established by the annual rent increase in either April or May 2013. She noted that the rent would only increase by \$7.85 up to \$321.89, with the annual allowable legislated increase of 2.5%, which she argued was below market value rent. The Landlord clarified that the additional rent increase, if approved, would be phased in over several months. They are proposing increment amounts of \$38.72, once approved in subsequent six month intervals, so they do not cause their tenants any hardship.

The Landlord provided testimony about their written submissions and the five comparable MHPs and stated that all five parks were within the same geographic area and had access to all the same amenities such as the shopping, parks, and transit, as noted on the maps provided in each comparable package. She then pointed to each package and provided the following summaries:

Comparable # 1 charges rents from \$465.00 to \$541.00 per month with an average sized MHP site of 20' x 40'. This MHP has a motel and temporary RV sites which she argued creates more noise and less security due to more frequent or transient occupants. She argued that having more frequent occupants may also increase theft and reduces the ability for the MHP residents to know all of their neighbours. She noted that the pictures support that this MHP looks more run down as it displays car tires piled up on the property and a sign in need of repair.

Comparable # 2 charges rents from \$446. – 549.00 per month and had the average MHP site of 20' x 40'. There are 26 long term MHP sites, a motel, temporary RV sites, and a laundry facility for the transient occupants. She noted that the motel in the MHP offers cheap rooms and the property is open to the highway which creates less security and or safety.

Comparable # 3 charges \$412.00 per month rent that was recently increased from \$344.00 per month. This property has a motel, which brings in transient occupants, and borders a wall directly adjacent to their MHP. This comparable is a much larger property with many sites and has about 20 MHP sites that closely resemble the size of the sites in their park.

Comparable # 4 charges \$523.31 per month rent and has 36 MHP sites. This property is similar in character to their MHP and even has a house on the property. There are no motels or RV sites.

Comparable # 5 has various MHP sites ranging from 25' x 50' to 80' to 40' in size. They charge \$493.00 per month rent for the 25' x 50' sites that are similar to their MHP sites in size. They have drop in RV sites, which brings in the transient and seasonal occupants and they offer storage space for residents' RV's.

In summary the Landlord submitted that the other sites with Motels and RV sites are busier in the summer months as they bring in the more transient or casual or vacation type occupants. This type of MHP tends to be noisier than their MHP as they only have long term tenants and no RV's or motel occupants.

The Agent testified that because their MHP is small and private it adds to the privacy and safety of each of their tenants. He agreed that while their MHP may be very old it is quiet and nice looking. He noted that the two Tenants who were subject to this application purchased existing manufactured homes located in their MHP. Those purchases were completed in the last five or six years and the new Tenants were assigned the same rents that were being paid by the previous long term occupants. The Agent argued that the new Tenants were paying rental amounts that were below market value as the rent amount had been established by the previous owner.

The Agent stated that there had been a previous hearing that had been scheduled back in 2012 regarding an eviction notice that had been served upon the occupant at M.M.G's MHP site. He was not sure if that issue was relevant to these matters but wanted it noted that they were able to resolve the issues prior to the hearing and that they withdrew their application.

M.B. testified in response to the Landlord's application and clarified that the Tenant purchased this manufactured home on June 19, 2009. She has had a rent increase every year since 2010. He argued that the manager recently cut down large trees and replaced them with smaller shrubs which increased the noise level in the park. He noted that the MHP is located on a highway and since the large trees were cut the traffic noise level from the highway has increased.

M.B. submitted that he used to reside in the MHP which was used as comparable # 3 by the Landlord. He resided in comparable #3 from June 2009 to May 2011 and that he has knowledge that that MHP had more than 20 MHP sites. He argued that comparable # 3 has up to 63 sites, and was safer because it had a block watch program, signs that

stated no trespassing and keep out, and 12 video security cameras. Comparable # 3 also has a dog park, free RV parking for its residents, onsite managers, a grounds keeper, and a play area for children.

M.B. argued that the other MHPs used as the Landlord's comparables are visually different with RV sites and motels so they are comparing "apples to oranges". M.B. stated that he checked with the municipality and was informed that the Landlord's MHP was registered as a "cellphone park" and that they paid fewer fees. M.B. could not provide an explanation of what a "cellphone park" was and could not provide details about the fees, such as how often the fee was required to be paid or what it was for.

B.S. testified that the tenant purchased her MHP site on November 27, 2008 and has had an annual rent increase since 2010. He argued that the Tenant should have been informed of the Landlord's intent to raise the rent at the time she purchased the manufactured home back in 2008. He pointed to pictures provided in the Tenant's evidence which displayed water pooling in the Tenant's back yard. He argued that they should not have to have a rent increase when they have water that accumulates in the yard every time it rains. B.S. confirmed that the Tenant has never requested the Landlord attend to the water issue and has had no discussions with the owner about this issue.

In closing, the Landlord reiterated that the rents have been kept low by the previous owner and the current owner would like to bring the rents up to market value over the next 20 months. She noted that the Landlord would not impose the annual rent increase during the phasing in of the additional rent increase as it is not the owner's intent to cause his tenants any hardship.

### Analysis

The Landlord's application was submitted pursuant to section 33(1)(a) of the Manufactured Home Park Regulations (hereinafter referred to as the Regulations) provides that a landlord may apply under section 36 (3) of the Act [*additional rent increase*] 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.

Section 33(3) of the Regulations stipulates that 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.

It should be noted that section 33(1) of the Regulations provides five different reasons to make an application for an additional rent increase and the requirements set out in section 33(3) of the Regulations, as listed above, may not all apply to each of those reasons.

After carefully considering the aforementioned and the documentary evidence submitted, I make the following findings based on a balance of probabilities:

The six other sites in the manufactured home park have agreed in writing, to the owner's proposal of a rent increase. Therefore, the other six tenants' rent immediately before this proposed increase is intended to come into effect, is the same as this application for a proposed increase which is a phased- in increase as of May 1, 2016 will be a total rent payable of \$474.60 per month.

The two Tenants' who are subject of this application have a projected rent, after the allowable rent increase in 2015 at 2.5%, of \$322.25.

Every MHP site tenant were issued the legislated annual increase for each of the 3 years preceding this application (2011, 2012, 2013) bringing the rent to \$314.04 per month for each MHP site as of April or May 2013.

The Tenants' relevant submissions are noted below in my analysis of the Landlord's comparable units.

No evidence was required to be submitted relating to sections 33(3)(c)(d)(e)(g)(h)(i)(j)(k) of the Regulations as that information is not relevant this application which was submitted due to rent being 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.

The burden of proof of market value rent lies with the Landlord who has to meet the high statutory requirement of proving that rent being charged for similar units, in the same geographic area are significantly higher than the Tenants' rent. The *Residential Tenancy Policy Guideline # 37* stipulates that:

- An application must be based on the **projected rent** after the allowable rent increase is added; and
- Additional rent increases under this section will be granted only in **exceptional circumstances**; and
- **"Similar units"** means rental site of comparable size, ambiance (including view), and sense of community; and
- The **"same geographic area"** means the area located within a reasonable kilometer 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 (e.g., park, shopping mall, water body) or other representative point within an area.

**Projected rent** - In this case the current monthly rent for each MHP site is \$314.04 and after applying the 2015 rent increase of 2.5% allowed under the Regulation the Tenants' monthly rent will be **\$321.89**.

**Exceptional circumstances** - To determine the exceptional circumstances I must consider the relevant circumstances of the tenancy, the duration of the tenancy, and the frequency and amount of rent increases given during the tenancy.

Upon review of the evidence I find it supports that in this case rent was kept low due to the occupation of the previous long term tenants and the previous owner running the park casually, as a "ma and pa" park. There was no evidence before me to prove or deny that regular rent increases were imposed by the previous owner; however, there was evidence that no rent increases were implement for 2007, 2008 or 2009. Furthermore, when these two Tenants purchased their manufactured homes they were

already placed on the existing MHP sites and the new Tenants were assigned the rents that had been in place with the previous long term tenants.

After consideration of the aforementioned, I find there are exceptional circumstances in these cases which have kept the Tenants' rents below market value.

**Similar units** – In determining market value rent I must consider if the Tenant's projected 2015 rent is significantly lower than the rent payable for other MHP sites that are **similar** to the Tenants' site [emphasis added].

In response to M.B.'s submission that the Landlord is comparing "apples to oranges", I note that case law has established that when determining market value rent the arbitrator must first determine if there are similar MHP sites that can be fairly and reasonably compared to the subject sites in terms of their physical attributes and other attributes arising from the neighbourhood or their location. The arbitrator must also consider any differences and how those differences might affect the rental amount being paid (*Berezowski V. British Columbia (Residential Tenancy Branch) 2014 BCSC 363*, Vancouver Registry, March 5, 2014).

When determining market value rent in cases where the MHP sites are similar in some respects and not others, consideration will be given based on the following reasonable person test and balance of probabilities: (a) if two MHP sites were similar in all areas except for size, it would be reasonable to conclude that on a balance of probabilities the larger MHP site would command a higher market rent than the smaller MHP site; and (b) similarly, if manufactured home park had a less desirable feature, such as transient or seasonal occupants that changed frequently, it would demand a lower market value rent than another park that did not have seasonal occupants and had only long term tenants.

In determining the market value rent of the MHP sites in this application I have summarized the evidence below:

Description *	LL's MHP	Comp. # 1	Comp. #2	Comp. #3	Comp. #4	. #5
Current Rents	2 x \$314.04 6 agreed to increase	\$465 to \$541	\$446 to \$549	\$412.00	\$523.31	12 similar size = 25 x 50 \$493. Comp 00
Same Geographical Location	Yes	Yes	Yes	Yes	Not close to HWY	Not close to HWY
Size of average Sites	20' x 40'	20' x 40'	20' x 40'	20' x 40'	Unknown	Various 12 @ 25 x 50



Size of Park / # of sites	8	14	26	More than 20	36	+ 64
Trees	Yes	Yes	Yes	Yes	Yes	Yes
Motel & RV Sites	No	Yes	Yes	Yes	No	Yes
Photos show Clean, well maintained	Yes	Not as good	Yes	Yes	Yes	Yes
Security Cameras	No	Unknown	Unknown	Yes	Unknown	Unknown
Park located on Highway	Yes	Yes	Yes	Yes	No	No

\*LL's MHP = Landlord's manufactured home park sites

\*Comp. = comparable manufactured home park sites

The Residential Tenancy Branch Policy Guideline # 37 provides that evidence regarding lack of repair or maintenance will be considered only where it is shown to be relevant to whether an expenditure was the result of previous inadequate repair or maintenance. A tenant's claim about what a landlord has not done to repair and maintain the residential property may be addressed in an application for dispute resolution about repair and maintenance.

When considering B.S.'s submissions regarding water pooling in the Tenant's back yard, I note that the Tenant has made no effort to inform the Landlord of this issue, has not requested that the Landlord attend to this issue, and as such she has made no effort to seek resolution for this issue. Therefore, I find the water pooling issue not to be relevant to the matters before me, pursuant to Policy Guideline # 37. If the Tenant wishes to have this issue resolved she should inform her Landlord in writing and follow up with the normal course of action for requested repairs.

Notwithstanding M.B.'s argument that comparable park # 3 is safer because it has signage and video cameras, I accept the Landlord's submission that their MHP would be quieter and may have better security benefits than the comparable parks because their MHP is smaller and they do not have a motel or RV sites; therefore, they do not have frequent or transient type occupants which would make their MHP more desirable and should command a higher rent. Therefore, it is reasonable to conclude that the comparable MHPs # 1, 2, 3, and 5, which all have a motel and RV sites, would be less desirable and would have a lower market value rent; when in fact they currently have a higher rent.

I accept M.B.'s submission that the larger parks tend to have resident managers and possibly regular maintenance staff; however, there were no arguments how the presence of onsite managers or maintenance staff would relate to rent. Rather, their presence was simply stated as being a fact. I also accept that the larger parks may have dog parks, play areas or club houses; however, such amenities would be used by all occupants, including the seasonal or more transient type occupants. That being said I would accept that occupants would pay a marginally higher rent to maintain such facilities and therefore would consider that the rent in comparable # 3 should be reduced by \$25.00 when using it as a comparable to the Landlord's MHP.

Although there were some benefits noted with #3 being a larger park with more amenities, there were also some negative attributes, such as the motel and RV sites creating more transient occupants with less security which would offset the reduction in rent of \$25.00 allowed above, for comparable # 3.

When considering all the comparable MHP sites and all of the positive and negative attributes, to determine similar MHP sites, I accept the Landlord's submission that they provided comparable rent amounts for sites that were of similar size, with somewhat similar landscaping, with negative attributes that off-set the positive attributes.

With respect to geographic location, I note that comparable # 4 and #5 were not located on or beside the same highway where the Landlord's MHP park and comparables # 1, 2, 3 were located. Based on the maps submitted in the Landlord's evidence, comparable parks # 4 and # 5 are located further away from the highway and therefore cannot be considered to be in the same geographic area. Accordingly, I did not consider comparable parks # 4 and # 5 when determining the market value rent of the subject MHP sites.

Before I calculated the overall market value rent I determined the median rate of rent for comparable # 1 and #2, because a range of from low to high rents had been submitted. A median rate is the middle value in a sample sorted into ascending order.

The median rate of the rent ranges provided for comparable # 1 (\$465 - \$541) and # 2 (\$446 - \$549) which resulted in a median rate of #1 = \$503.00 and # 2 - \$497.50.

To determine the comparable market value rent of the Tenants' MHP sites I used the mean rate which is an average calculated by using the grand total divided by the number of data points. In this case the data points were comparable rents.

Using the above mentioned median rent amounts, I determined the mean market value rent amount of the 3 comparables: # 3 (\$412.00), #2 (\$497.50) and #1 (\$503.00), which was **\$470.83**, which I find to be the relevant market value rent of MHP sites in the same geographic area and of similar size and attributes to the Tenants' sites.

Based on the above, I accept the Landlord's submission that the Tenants' rent of \$321.89, which includes the proposed 2015 legislative rent increase, is significantly lower than the rent payable for other MHP sites that are similar to, and in the same geographic area as the Tenant's MHP sites, and which have the market value rent of \$470.83.

The Landlord has made application for a total increase amount of \$154.88 which would bring the Tenants' rent to \$468.92 which is an amount lower than my calculated market value rent of \$470.83. Accordingly, I find the Landlord has met the high statutory requirement of proof for an additional rent increase.

Section 33(4) of the Regulations provides that 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.

Based on the foregoing, I hereby grant the Landlord's application and Order that the increase be phased in over four, six month intervals, in increments of \$38.72 starting May 1, 2015, with the last increment to be effective on November 1, 2016.

I further order that in accordance with the Landlord's evidence, the Landlord will not impose the annual legislated rental increase during the calendar years of 2015 or 2016.

### Conclusion

I HEREBY grant the Landlord's application for an additional rent increase and Order that it be phased in between May 1, 2015 and November 1, 2016 as listed below.

For clarity, the Tenants are HEREBY Ordered to pay the approved rent increase in phased-in increments as follows:

<u>Effective Date</u>	<u>Rent Amount Payable</u>
Current rent	\$314.04
May 1, 2015	\$352.76
November 1, 2015	\$391.48
May 1, 2016	\$430.20
November 1, 2016	\$468.92

No annual legislated rent increases are to be implemented during the calendar years of 2015 or 2016. For clarity, after the commencement of the phased in rental increase approved here, the earliest that an annual rent increase could become effective would be November 1, 2017, pursuant to section 35(1) of the Act.

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 20, 2015

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Residential Tenancy Branch

