



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ARI

Introduction

The landlord, the operator of a manufactured home park, applies for an additional rent increase under Part 4 of the *Manufactured Home Park Tenancy Act* (the “Act”) on the basis that the rents are lower than comparable sites and that there have been significant repairs or renovations to the park.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that an additional rent increase is warranted under the terms imposed by the *Act*?

Background and Evidence

The manufactured home park (“the park”) is a twenty site park located about twenty nine kilometers outside a small city in south central BC. As I understand it, the park was created in the 1970s to house miners and workers at a mine nearby. The park has a twenty two site twin located about eighty kilometers away, on the other side of the mine.

The landlord’s representative Ms. C.L. proved that the five affected tenants who did not attend the hearing had all been duly served by registered mail with the application and notice of hearing.

The sites in this park are about 4500 square feet. Rent includes water but not power. The roads in the park are gravel. It is not landscaped. It has no sign at the road. There are no lights. The park overlooks a stream.

Ms. C.L. provided evidence of the rents in four other parks. The monthly rents were \$526.00, \$338.00, \$360.00 to \$415.00 and \$389.00.

She testified that the last rent increase in the park was in 2007. The landlord has not taken advantage of the annual rent increases permitted under the *Act* because he finds the paperwork daunting.

There do not appear to be written tenancy agreements with any of the tenants in the park.

She notes that a tenant in the park, Mr. J.P. has developed another site in the park and rented it out for \$250.00.

Regarding expenses, Ms. C.L. shows that the landlord spent \$44,502.85 in 2008 to renovate the power lines in the park. Apparently a power pole was noted to be at an angle and as a result the lines were re-run underground. It is not apparent whether the underground wiring was a legal requirement or whether it was the landlord's choice.

She says that sometime in 2011 a truck ran over and crushed a septic pipe. As a result, between then and 2014, the landlord spent \$5153.39 to repair the septic system generally, including a new tank.

The landlord's materials referred to a third major expense; a pump house repair, but Ms. C.L. decided not to rely on that expense to support the landlord's claim for a rent increase.

In response, the tenant Ms. T.S. testified that the comparables submitted by the landlord were not really comparable because they were much nicer parks, close to or in the nearby small city. He says that this park's twin is very similar. It charges pad rents of \$210.00 and has lighting and garbage pickup, which the park in question does not.

He notes that the electrical work the landlord claims was done before he or Mr. L.B. or Mr. T. LaB. moved in.

He says the septic damage wasn't caused by a truck but was because the pipe was not placed deep enough in the ground.

He notes that one of the landlord's bills seems to suggest that a plumber was paid at the rate of \$150.00 per hour, which he considers to be very excessive.

Mr. L.B. says that the tenants in the park do all the caretaking; that the on site manager does nothing. He disputes the comparability of the parks referred to by the landlord as they are right in town while he has to drive 20 to 30 minutes to get "anywhere."

In response, Ms. C.L. notes that the sites in this park are very large when compared to other parks. She notes that the twin park is even further from town than this one and that most of the sites in that park are empty.

Analysis

The *Act* permits a landlord to raise rent, but only in accordance with the *Act* and regulations. Part 5 of the *Act* states:

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.

In addition to an “additional rent increase” the landlord has requested that I grant him the rent increase he is authorized to impose once every twelve months, in the amount prescribed by regulation and which a tenant cannot dispute. I have reviewed the *Act* and determine that the annual authorized increase must be imposed in accordance with Part 4, above. My power under the law is to consider whether any additional rent increase is justified, over and above that permitted by Part 4.

It follows that in order for the landlord to impose the annual rent increase, he must issue to tenants the three month Notice referred to in s.35, above. Rent increases to become effective in 2016 are permitted to be up to 2.9% plus the proportional amount. In this park, that would mean a rent increase of about \$5.80 a month for each tenant currently paying \$200.00 per month rent.

In regard to the request for an additional rent increase, the Manufactured Home Park Tenancy Regulation (“the Regulation”) sets out in significant detail the bases for an additional rent increase and that consideration is to be given to particular aspects. I set out the requirements here:

Part 5 — Rent Increases

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).

Ground 1: Rent Significantly Lower Than Comparable Sites

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;

The sites presented by the landlord as comparable manufactured home sites are not reasonable comparable with the sites in this park. Primarily, they are much closer to an active urban center and so are significantly more amenable. They are in urban parks. This park is a rural park. Unlike the sites in question here, they appear to be in landscaped, modern parks.

The Residential Tenancy Policy Guideline 37 “Rent Increases” states:

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.

Thus the fact that Mr. J.P. has sublet a site in the park at a rent of \$250.00 is not particularly useful to the question of whether the law permits an additional rent increase across the park.

I decline to award an additional rent increase on this ground.

Ground 2: Significant Repairs or Renovations

33 (1) A landlord may apply under section 36 (3) of the Act *[additional rent increase]* if one or more of the following apply:

(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;

There was some indication from one of the tenants that the power pole, ostensibly the cause for the electrical renovations, was still standing. This might have been a suggestion that the electrical work was not necessary. However that point was not pursued by the tenants. In all the circumstances I find that the electrical work conducted by the landlord in 2007 was reasonable and was necessary. I doubt he would have suffered the considerable expense had it been otherwise. As well, I am satisfied that the repairs or renovations will not recur within a reasonable time.

The attending tenants make the point that the repairs predated their tenancies. It seems to me that the more important fact is that they are receiving the benefit of the new electrical system and will do so as long as they are tenants.

I am satisfied from the landlord's materials that the cost of the electrical work was \$44,502.00. According to Residential Tenancy Guideline 40, "Useful Life of Building Elements," the useful life of power lines and rewiring is 25 years. To recover the total cost over the useful life of the new lines would require the landlord to receive \$1780.00 a year. That is \$89.00 a year from each of the twenty sites in the park. The fact that the park might not be full with tenants is not a reason to charge the present tenants a greater share. On a monthly basis this would mean a rent increase of \$7.42.

I consider an additional rent increase of \$7.42 per month for each of the eight respondent tenants to be a justifiable rent increase according to the law.

I am also satisfied that the septic work done between 2011 and 2014 was reasonable and necessary and that it will not reoccur within a reasonable time.

In accordance with Guideline 40, the useful life of a septic system is also 25 years. I have reviewed the landlord's evidence and I adjudge the cost of the work to have been \$5153.00. Based on the equation used for the electrical work, this expense justifies a rent increase of \$0.86 per month.

During the hearing there was an intimation from Ms. C.L. that the landlord was paying 3% on financing for improvements he had made. She did not provide any further detail or directly suggest that it was a ground for an additional rent increase. I note that under s.33(1)(d) of the Regulation an additional rent increase may be justified where "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."

I find that the landlord's financing costs are not relevant to the question of an additional rent increase as they do not relate to the financing costs "of purchasing the manufactured home park."

I have considered the relevant provisions of s.33(3) of the Regulation in reaching this decision.

Conclusion

The landlord is entitled to charge an additional rent increase on each of the eight respondent tenants in the amount of \$8.28 per month. I direct that the increase is to take effect as of October 1, 2015. I direct that the landlord serve each of the eight respondent tenants with a copy of this decision no later than September 15, 2015, by a method set out in s.81 (a), (c), (d), (e), (f) or (g) of the *Act*, which provides:

How to give or serve documents generally

81 All documents, other than those referred to in section 82 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

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: August 30, 2015

Residential Tenancy Branch

