



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atid Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RI

Introduction

This was a hearing with respect to the landlord's application for an additional rent increase. The hearing was conducted by conference call. The landlord has served the affected tenants with copies of the application, the Notice of Hearing and copies of its documentary evidence. The landlord's representative and the two named tenants called in and participated in the hearing.

Issue(s) to be Decided

Should additional rent increases be granted to the landlord and if so, in what amounts and upon what terms?

Background and Evidence

The rental property is a manufactured home park on Vancouver Island. The landlord's representative testified that there are eight manufactured home pads in the park. The landlord purchased the property in 2014 and took possession and assumed the role of landlord in January of this year. On May 21, 2015 the landlord applied for an additional rent increase for four of the pads in the park. The application was made pursuant to section 33 (1) (a) of the Manufactured Home Park Tenancy Regulation. The Regulation provides that: a landlord may apply for a rent increase that exceeds the amount permitted by section 32 of the Manufactured Home Park Tenancy Act if, after taking into account the annual allowable rent increase permitted by the Act, 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's representative testified that he has applied for an increase for only four of the eight pads because he has negotiated increases with the occupants of the other

sites and they have each signed agreements with the landlord consenting to a rent increase.

The landlord's representative testified that the sites for which the landlord applied for a rent increase are; Site No. 2, occupied by S.M and R M which has a current monthly pad rent of \$315.00; Site no. 3, occupied by the respondents, G.M. and K. M. which has a monthly pad rent of \$320.00; Site no, 6, the largest site with a built storage area, occupied by the respondent W.H. has a monthly pad rent of \$355.00 and Site 5, occupied by M.F. which has a monthly pad rent of \$320.00.

The landlord's representative testified that the home sites in the rental property were made to accommodate single wide trailers and were approximately 4,000 square feet. The property is connected to city water and sewer services, not to a septic system and the pad rent includes water, sewer and garbage services.

The landlord submitted evidence consisting of real estate listing agreements for manufactured homes in locations in the surrounding area of the rental property. The landlord's representative submitted that rent for comparable properties was \$460.00 per month. He said in the application that he was seeking rent increase of \$95.00 per month for unit 6, \$110.00 per month for unit 2 and \$105.00 per month for units 3 and 5.

The landlord's representative referred to real estate listings for several manufactured homes offered for sale in areas surrounding the rental property. He referred to the pad rental fees stated in the advertisements (noted in the real estate sales listings under the heading "strata fee". The fees charged for the properties claimed by the landlord as comparables varied from \$348.00 per month to a high of \$465.00 per month. The landlord reviewed the location and amenities of the locations he relied upon and he referred to the opinion of his realtor, who stated his opinion as to market rent for the rental property. The realtor expressed his opinion that the sites at the rental property were superior to most of the comparables, he suggested that the appropriate market rent would be from \$420 to \$435 per month.

The tenants, R.M. and S.M. did not attend the hearing, but they submitted a letter in opposition to the landlord's application. The tenants complained that the landlord has attempted to bully and harass them into agreeing to a rent increase and he has intimidated other occupants into agreeing to amend their agreements to provide for an increase to raise the monthly rent to \$380.00. They submitted that the landlord has not looked after the park adequately since he took over as landlord. They submitted that several of the comparables referred to by the landlord in his materials were superior to the rental property. The respondent objected to the landlord's tactics that she

described as intimidation in order to secure the agreement of tenants to a rent increase. She said that since the landlord took over the property, he has done less than what the former landlord provided in exchange for the rent and she described the proposed increase as a “cash grab”.

The tenant, W.H. testified that he moved to the rental property in 2006. He does not agree with the landlord’s request for a rent increase. He said the increase is contrary to the Act and Regulation because it exceeds the allowable amount. He noted that the rent was increased in November, 2014. Mr. H. testified that the park lacks amenities; it does not have paved driveways or roads, lighting, or any form of security. The property is not properly drained and the tenants have had to install their own fencing. The tenant also testified that he has had to pay for his own garbage collection; he received an invoice dated July 6, 2015 in the amount of \$135.00 from the municipality for curbside collection. The tenant submitted that the landlord should not have purchased the property if he was not satisfied with the amount of revenue that it generated.

The landlord testified at the hearing that the landlord has paid municipal invoices for garbage collection for each of the home sites in the park. He said these charges are included in the pad rent paid by each tenant and if any tenant has paid the charge directly to the municipality, he or she should request to be reimbursed because the landlord has paid the charges for each tenant.

The tenant, M.F. attended the hearing and provided a written submission opposing the application for a rent increase. The tenant said that the landlord came to her trailer on April 24, 2015 and introduced himself as her landlord. She said that he told her he wanted to increase her rent to \$380.00 or to \$425.00 if he had to go to an arbitration hearing. The tenant testified at the hearing that she cannot afford to pay an increased rent. She said that she has lived in her trailer at the rental property for 8 years. She has health problems and subsists on a disability pension. She described her problems with her serious illness and disability and provided evidence that due to her very limited fixed income she cannot afford even a modest rent increase, much less the \$105.00 per month increase sought by the landlord.

Analysis

The *Manufactured Home Park Tenancy Act* and Regulation limits the amount by which pad rent may be increased to an annual increase limited to an amount calculated in accordance with the Regulation. The current percentage increase allowed annually is 2.9%, plus a proportional amount of certain levies or utility charges.

The Act permits a landlord to apply for an additional rent increase that exceeds the annual percentage increase in specific circumstances as set out in section 33 of the Regulation. The landlord has made this application pursuant to section 33 (1) (a) which provides that a landlord may apply for an additional rent increase if:

(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 Regulation also sets out a list of factors that must be considered in deciding whether to approve an application for a rent increase. These factors include matters such as the rent payable for similar sites in the park immediately before the proposed increase is intended to come into effect and the rent history for the affected sites in preceding years. The regulation requires that consideration be given to relevant submissions from affected tenants and other factors, such as the landlord's fulfilment of his obligations to repair and maintain and any history of past applications by the landlord for additional rent increases.

The Policy Guideline with respect to rent increases contains provision intended to provide guidance with respect to increases sought under both the *Residential Tenancy Act* and under the *Manufactured Home Park Tenancy Act*. The following passages are excerpted from the guideline:

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.

The rent for the rental unit may be considered "significantly lower" when (i) the rent for the rental unit is considerably below the current rent payable for similar units in the same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit. In the former, \$50 may not be considered a significantly lower rent for a unit renting at \$600 and a comparative unit renting at \$650. In the latter, \$50 may be considered a

significantly lower rent for a unit renting at \$200 and a comparative unit renting at \$250.

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.

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. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. 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 necessarily with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, an arbitrator 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.

The landlord has relied on listing agreement for some 15 properties in the surrounding communities to establish that after the annual allowable increase for the home sites that are the subject of this application, the rent is significantly lower than the rent for other similar sites in the same geographical area.

I find that the landlord has established that, after taking into account the allowable 2.9% increase, the rents for the home sites in question are significantly lower than the rents for similar sites in the same geographical area. The policy guideline provisions quoted

above state that the rent increase that may be requested is one that will bring the sites into line with comparable sites, not necessarily with the highest rents, but rather into the same range of rents. The landlord has requested increases that will raise existing rents by more than \$100.00 or approximately one third more each month. The landlord acknowledged at the hearing that he has agreed to rent increases raising the monthly rent to \$380.00 for four of the eight sites in the park. He has requested permission to raise the rents for the remaining four units by a further \$45.00 to \$70.00 per month, based on his contention that he is entitled to the additional amounts because he has had to go to the trouble and expense of bringing this proceeding and therefore should be entitled to collect a higher rent from the tenants who have withheld their consent. This is not a tenable position; the landlord has applied for an extraordinary remedy and the application for an additional rent increase is not a proceeding that is intended to be used as a tactic to compel tenants to agree to a proposed rent increase exceeding the amount allowed under the Act out of fear that a worse outcome will ensue if they do not agree.

The tenant M.F. in particular has objected the proposed rent increase on the principal ground that her financial circumstances are so dire that she cannot afford a rent increase in any amount. I acknowledge the tenant's concerns and I agree that they are legitimate, but the financial circumstances of the tenants is not one of the factors that I am permitted to take into account in determining whether to approve an additional rent increase, or in fixing the amount of the proposed increase.

One of the factors that I am obliged to consider in determining whether to approve a rent increase, and in what amount is set out at section 33 (3) (a) of the Regulation, namely: "the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect". This means that I must also consider the recently agreed upon rent increases for the units not included in this application as a relevant factor in determining the amount of rent increases for the remaining units, if granted.

The comparables provided by the landlord included sites with monthly pad rents of \$348.00, \$355.00, \$375.00, \$378.00, \$386.00, \$395.00 and as well, a number with monthly rents exceeding \$400.00 per month, up to a maximum of \$475.00.

Site 2, in the park occupied by S.M and R.M, has a current monthly rent of \$315.00. After the 2.9% allowable rent increase, the monthly rent will be \$324.14. This is still \$25.00 per month lower than the least expensive of the comparables provided by the landlord. Bearing in mind that I may consider granting an increase that will bring the rent into the range of comparable units, but not necessarily equal to the highest rents

charged and bearing in mind that the recent rents increased by consent at this manufactured home site are also a relevant factor, I find that The landlord should be granted an additional rent increase, of \$55.00, inclusive of the allowable 2.9% increase; this will raise the monthly rent to \$370.00 per month, which I find brings it into the range of the comparables before me. I accept the evidence of the tenant W.H. that there are amenities lacking in this manufactured home park that would preclude it from being regarded as comparable to the parks in the higher range of comparables presented by the landlord; these include unpaved roads, the absence of park lighting and the absence of security.

Sites 3, occupied by the tenants G.M and K.M and site 5 occupied by M.F. have a current monthly rent of \$320.00. In his application for an additional rent the landlord sought a lesser increase so as to bring these sites and the previously discussed site 5 to the same monthly rent. Based on the landlord's position taken in his application and the rent increases that he has negotiated, I find that the landlord should be granted an additional rent increase, of \$50.00, inclusive of the allowable 2.9% increase; this will raise the monthly rent for these two units to \$370.00 per month.

Site no, 6, occupied by the tenant W.H. was described as a larger site; it has a monthly pad rent of \$355.00. In his application the landlord proposed a slightly lower additional rent increase for this site, \$10.00 less than that sought for sites 3 and 5, so as to raise the rent for this site to an amount \$25.00 per month greater than that for the other sites. The landlord distinguished this site from the other sites in the park, based on the size of the lot, but also because of the presence of additional outbuildings and a garage built by the tenant. I do not find that these latter factors are relevant to the claim for an additional rent increase; they may affect the value of the mobile home and improvements upon a sale by the mobile home owner, but aside from the lot size, these should not be applied as a basis for an additional rent increase greater than that of the other units in the park. Bearing in mind the additional lot size for Site 6, I find that the landlord should be granted an additional rent increase, of \$25.00, inclusive of the allowable 2.9% increase; this will raise the monthly rent for this unit to \$380.00 per month.

As confirmed by the landlord at this hearing, the rents include the municipal charges for garbage collection and the charges shall continue to be paid by the landlord.

Conclusion

To summarize I have granted rent increases for the sites that are the subject of this application as follows:

- Site 2: From the current monthly rent of \$315.00 to a monthly rent of \$370.00
- Sites 3 and 5: From the current monthly rent of \$320.00 to a monthly rent of \$370.00
- Site 6: From the current monthly rent of \$355.00 to a monthly rent of \$380.00

I direct that the rent increases shall take effect 3 full months after the landlord has served each of the tenants with a Notice of Rent Increase together with a copy of this decision. Any further rent increases cannot take effect until one full year after these increases have been implemented.

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: September 14, 2015

Residential Tenancy Branch

