



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0955109 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: ARI

Introduction

This hearing dealt with an application by the landlord, pursuant to Section 36 of the *Manufactured Home Park Tenancy Act*, for approval of a rent increase greater than the amount calculated under the regulations. The mobile home park has a total of 33 tenants. The landlord served this notice of hearing on 29 tenants because the other 4 tenants are already paying a higher rent.

The landlord was represented by three individuals. Four tenants attended the hearing and stated that they had had a tenant meeting on November 04, 2015, during which the attending tenants had requested these four tenants to represent all tenants at the hearing, scheduled for this date. The four tenants who attended did not file any documents to confirm that they had the consent of the other tenants, to represent them. After the hearing the tenant faxed to the Residential Tenancy Branch a copy of the signed consent of all tenants, except for five who were unavailable.

Both parties were given full opportunity to present evidence. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Should the landlord be entitled to raise rent in an amount that is greater than what is set out in the *Regulations*? Has the landlord established that current rent is significantly lower than the current rent payable for similar units in the same geographic area?

Background and Evidence

The landlord stated that he had purchased the home park in July 2015 and had started making significant improvements to the park. The tenants agreed that the landlord had made some improvements but added that the improvements consisted of tree trimming and servicing the water shed which were more in keeping with regular maintenance of the park.

On August 05, 2015,- the landlord made an application for an additional rent increase in the amount of 10% with an effective date of January 01, 2016.

The landlord stated that similar rental units in the geographical area, rented for a higher rent and therefore he applied for an additional increase in rent to bring the rent up to an amount that is comparable with the rents in the area. The landlord also stated that as vacancies came up, there were quickly filled at the higher rent. The landlord filed information regarding comparable units of four home parks in the same geographical area. This information consists of the names, addresses, square footage of rental pads, pad rent, services and amenities.

The landlord's evidence indicates that rents for similar units range from \$335 to \$480.00. The average size of the units in the comparable home parks are approximately 3000 square feet and all have water, sewage, snow removal and garbage collection included in the rent. As per the landlord's evidence, all the comparable home parks have no amenities except for one (LMHP) which has a club house. The landlord stated that the units in the dispute home park were the approximately the same size as the comparable units and also had water, sewage, snow removal and garbage collection included in the rent.

The tenant provided information about the same comparable units described in the landlord's evidence. The tenant also provided information on one more home park within a five kilometer radius. The tenant provided detailed information on the same parameters as the landlord and added other relevant information regarding the amenities that were available in the comparable home parks but were not available at the dispute home park. Both parties filed photographs of mobile home parks and pads in the neighbouring areas.

The tenants currently pay \$320.00 in rent per month. The landlord is proposing an additional rent increase of \$10% over the allowed 2.5% for a total of an increase of 12.5% which will take the rent from \$320.00 to \$360.00.

The landlord added that there are four tenants who are already paying the higher rate and that he had no problem finding tenants at the higher rate.

Analysis

The landlord relies on sections 33(1)(a) of the *Manufactured Home Park Tenancy Regulations* in his application for an additional rent increase.

Section 33(1)(a) - Significantly lower rent

Section 33(1)(a) of the *Manufactured Home Park Tenancy Act* states that a landlord may apply under section 36(3) of the *Act* (additional rent increase) if after the rent increase allowed under section 32, 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 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. If a landlord wishes to compare all the units in a home park to rental units in other home parks in the geographic area, he will need to provide evidence not only of rents in the other home parks, 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, construction, interior and exterior ambiance (including view), and sense of community.

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.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include any additional separate charges for services or facilities (e.g. parking, laundry) that are included in the rent of the comparable rental units in other properties. Specific and detailed information, such as rents for all the comparable units in similar properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord.

Based on the information provided by both parties, I find that all the other comparable home parks have visitor parking and RV parking. Two of the five have club houses and one has a meeting place. The dispute rental home park has no visitor parking, no RV parking and no clubhouse or meeting place. In addition the tenant stated that the streets are narrow and in need of repair and improved lighting. There are no turnarounds, no storage areas, no communal areas, no parkland and no secure storage areas that the other home parks have.

In this case when comparing the information provided by both parties, I find that the dispute rental units are located in a park that does not offer all the services and amenities that are offered by the other home parks in the same geographical area. The information provided by the landlord indicates that the rent for comparable units starts at \$335.00. The current rent for the dispute rentals is \$320.00 which will increase to \$328.00 with an increase permitted by legislation. Since the home park does not offer the same services and amenities as the comparable home parks, I find that the current rate of rent is reasonable and not significantly lower when compared to the services and amenities offered by the dispute rental home park.

The landlord argued that he has rented the other four pads at the higher rent. However, it is not sufficient for a landlord to claim a rental unit has a significantly lower rent just because the landlord has been able to rent similar units to new renters at higher rates.

In order to be successful in his claim, the Regulations require the landlord to provide proof that similar units in the same geographic area are paying significantly higher rent. I find that the landlord has failed to meet his burden of proving that similar rental units with similar facilities that the dispute rental home park provides, in the same geographic area attract higher rents.

The landlord has failed to meet his burden of proving that he is entitled to an order permitting an above guideline rent increase and accordingly his application is dismissed.

Conclusion

The landlord's application for an additional rent increase is 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 *Residential Tenancy Act*.

Dated: November 25, 2015

Residential Tenancy Branch

