Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sunview Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an order permitting a rent increase that is in excess of the allowable rent increases under the *Manufactured Home Park Tenancy Act.*

Both named landlords attended the hearing and also represented the landlord company. Some of the named tenants attended the hearing and 4 gave affirmed testimony. An observer also attended who did not testify or take part in the proceedings.

The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. One of the landlords advised that 25 of the 36 tenants (which includes 2 units belonging to the park) agreed to the rental increase in writing commencing September 1, 2013. This hearing is with respect to the remaining 11 tenants who have not agreed in writing.

Issue(s) to be Decided

Have the landlords established that rent should be increased in an amount that is in excess of the allowable rent increases under the *Manufactured Home Park Tenancy Act?*

Background and Evidence

The first landlord (RH) testified that current rent for each of the 11 sites is $195.00 per month, and the allowable increase under the *Act* is $4.87. Comparable rent of other parks in the geographical area is $250.00 per month. The landlords seek an additional increase of 25.5%, or $50.13 per month to bring the rents to the comparable amount of $250.00 per month. The landlords contacted other parks in the area and have provided a document from 4 other parks setting out the monthly rents, amenities included and

addresses. The comparables were obtained in September, 2013 and are only the older parks that are similar to this park. They show as follows:

1. $50 to $400 per month; amenities: water, sewer, garbage collection, snow removal;
2. $286 to $325 per month; amenities: water, sewer, garbage collection, snow removal, parking;
3. $280 per month; amenities: water, sewer, garbage collection, snow removal, parking;
4. $300 per month; amenities: water, sewer, garbage collection, snow removal, storage facilities.

The landlord testified that #1 is 1.5 km away from downtown Safeway, which is the centre of town; #2 is 2 km away, #3 is 2.5 km and #4 is 4.7 km away. This park is 1 km away from the City limit and 4.5 km from Safeway. The landlord attended each park; the owners filled in the forms and signed them. The sites in this park include water, sewer, garbage collection, snow removal, parking, recreation facilities and storage facilities for recreational vehicles. A map of the area has also been provided.

The landlords made an application for an additional rent increase in February, 2011 but were not prepared and not successful. The landlords have not increased the rent since. The landlords do not reside in the community and their daughter now manages the park.

With respect to services, upgrades and maintenance, the landlord testified that they run a well and submit 2 water samples per month to the health authority who tests it and the landlords get the results. Boil water advisories have been issued, but never in 32 years was a mandatory water advisory or shut-down issued. If unacceptable amounts of bacteria are detected, the well gets shocked and is acceptable again. The landlords put in 1 gallon of household bleach in the well for the use of 36 homes which dissipates quite fast. Tenants are notified of the shock and it's up to them to boil water before drinking, however, sometimes it's an emergency and too hard to get in touch with everyone before hand.

The landlords put in $250,000.00 worth of underground hydro in the park in 2009.

The landlords have a snow plow and plowing is done as quickly as they can. No one has been stuck and there have been no issues with business vehicles getting in or out of the park. The landlords spread sand and gravel on the ice as required, or when the landlords deem it necessary so people don't get stuck, and there have been no accidents or complaints. The landlords are in the process of buying a new sander for

more efficiency and a sand box is available for tenants to use. There are 3 or 4 roads in the park and last year the landlord only sanded a portion of the roads, not near the cul-de-sac, and there were no calls and no problems.

The second landlord (SH) testified that the Decision of the director in 2011 shows that the landlords did not at that time fall within the *Act,* and were denied the application. However, the last page of that Decision states that rent remains the same until legally changed. Things came up in life and the landlords wanted to ensure that the application this time was done properly.

Although the landlords do not reside near the manufactured home park, tenants know how to get ahold of them if there are any problems with managers, and no one has called.

The first tenant (CA) testified that she has lived there for almost 30 years, and her mother also lived in the park. The water is unreliable and the landlords haven't told the tenants when it's bad. The tenant has had to buy water for over 20 years.

Emergency vehicles cannot turn around in the cul-de-sac due to lack of snow removal and sanding. The park is out of City limits, not within walking distance, and neither Handi-dart nor taxis will go there. The tenant has helped drivers who can't get out by placing mats under tires due to icy conditions and the lack of road maintenance in the park.

The tenant was told that the rent increase request is for the power upgrade, and some rents are $265.00. The comparables provided by the landlords are not comparable considering sewer issues, constant water line breaks, low water pressure, no shopping available, and size of the lots. Tenants aren't being told when the landlords are going to shock the water system. There are no lights in the park and bears and cougars have been sighted.

The tenant disputes the increase and testified that she was told that if she didn't sign agreeing to the increase, the rent would raise by an extreme amount.

The tenant also provided evidentiary material including a letter wherein the tenant explains for the purposes of this hearing that when emergency vehicles attended her site, the fire engine had a difficult time getting in and out due to no gravel on the road and 2 firemen had to assist the tenant to the ambulance as they were also slipping and sliding on the ice in front of the tenant's site.

The tenant has also provided a list entitled: Things that (the) Trailer Park doesn't have that the other parks do, which includes the following:

1. Proper and healthy water;
2. Distance to City limits with no community bus or Handi-dart;
3. Limited fire protection and no fire hydrants, resulting in higher insurance costs;
4. No City sewer;
5. Different lot sizes;
6. No proper lighting in the vicinity of the tenant's site;
7. Improper road maintenance and yard maintenance.

Photographs have also been provided.

The second tenant (WS) testified that the landlords only plow so far, no further, and that's where tenants have to push people out of the ditch. The tenant had difficulty a few days ago, due to improper sanding.

The tenant also testified that there was a bear at his gate last year.

The landlord claims that the noise issue is solved, but it is still a problem. The tenant called the landlord about it and the manager, but obviously the landlords aren't' being notified of complaints.

The third tenant (LL) testified that he and his wife were told by the landlord that if they didn't sign the document agreeing to the rent increase, the landlords would apply for much more. The tenant told the landlord the increase wasn't legal and they were not agreeing.

The fourth tenant (AS) testified that she has resided in the park for 25 years and buys her drinking water.

Maintenance and repairs are not completed by the landlords in a timely manner. If the landlords want more money, the tenant has expectations of what's to be done in return. The tenant's lot has a retaining wall which the landlords said was the tenant's problem, but the whole park has them, and now all of them are falling over. Tenants have received inconsistent stories about tree removal, problems with water and water pressure. The tenants don't pay as much as other parks, but the park is not on City water and sites do not have consistent pressure.

The tenant also provided a letter in evidence material requesting that the rent increase be limited to the allowable rate of 2.5% setting out issues of lack of maintenance and repair. Also attached to that evidence is a copy of a Decision of the director dated February 01, 2011. The Decision shows that the hearing resulted from an application by 2 tenants disputing a notice of rent increase given by the landlords in early June, 2010. The notice was in the form of a letter from the landlords "indicating the rent would

be increased to $260.00 effective September 1, 2010 due to costs associated to an electrical installation project." The tenants' application was allowed and rent was ordered to remain at $195.00 per month, "…until the rent is increased in accordance with the Act and regulations. The landlord remains at liberty to issue a Notice of Rent Increase to the tenants in order to increase the rent by the amount permitted by the regulations or the amount agreed to by the tenants in writing. Alternatively, the landlord is at liberty to seek authority from the Director for an additional rent increase."

The tenant's evidentiary letter also states that the landlords upgraded the electrical system at the requirement of the BC Safety Authority due to a fire on a hydro pole behind the tenant's unit in October, 2008. It took 2 years to complete the work. Further, Residential Tenancy Branch Policy Guideline 40 - Useful Life of Building Elements sets the upgrading of power lines at 25 years.

Analysis

The regulations to the *Manufactured Home Park Tenancy Act* state as follows, 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;

(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.

In this case, the landlords apply under Section 33 (1) (a).

The considerations I am required to make are also set out in the regulations:

(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.

In this case, there have been no changes to services or facilities within the last 12 months or a change in operating expenditures. There has been no finding by the director that the landlords have failed to maintain the property, and I find that paragraphs (i) through (k) do not apply to this application. However, I must consider relevant submissions made by affected tenants.

I refer to Residential Tenancy Branch Policy Guideline 37 – Rent Increases, which specifies as follows:

> 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.
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> 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 dependant 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.
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> An arbitrator's examination and assessment of an AARI will be based significantly on the arbitrator's reasonable interpretation of:
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> - the application and supporting material;
> - evidence provided that substantiates the necessity for the proposed rent increase;
> - the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation; and
> - the tenant's relevant submission.
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> 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.

Therefore, the tenants' testimony with respect to noise complaints and maintenance is not entirely relevant with respect to the application before me. However, where it relates to services or facilities, a comparable must include those services and facilities.

The landlords have not applied for an additional rent increase due to costs associated with upgrading the park, and the landlords have not increased the rent for at least 5 years when doing so would have been as simple as to serve a form on the tenants for each of those years. I also note that the comparables were obtained by the landlord 2

years prior to this application, which I find is outdated. The landlords now apply to recoup the loss that I find is based on the landlords' failure to mitigate.

The landlords' comparables do not contain any information about water pressure or quality, or access to public transportation such as Handi-dart or taxi. The comparables do not provide any information about fire protection and insurance costs due to fire hydrants in the area or whether or not the comparables are on City water or sewer. In the circumstances, I find that the landlords have failed to establish that the rent is significantly lower than other rent for similar sites within the same geographical area considering significantly important services.

The landlords' application for an additional rent increase is hereby dismissed. The landlords are at liberty to raise rent in accordance with the *Manufactured Home Park Tenancy Act.*

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed. The landlords are at liberty to serve notices to increase rent in accordance with the *Manufactured Home Park Tenancy 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: December 29, 2015

Residential Tenancy Branch