Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: DRI FF

Introduction:
Both parties attended the hearing and the landlord confirmed the tenant served them personally with the Application for Dispute Resolution hearing package. This hearing dealt with an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* (the Act) to dispute rent increases from 2014 to 2015 which were not made in accordance with sections 34, 35 and 36 of the Act; and to recover the filing fee for this Application.

Issues to be Decided:
Has the tenant proved on the balance of probabilities that the rent increases of the landlord were not in conformance with the Act? If so, what should be the present rent? Is she entitled to recover the filing fee for this application?

Background and Evidence:
Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The tenancy commenced on June 1, 2014, rent for the home site was $425. The landlord's witness gave sworn testimony that they served the tenant a Notice of Rent Increase on December 10, 2014 to be effective May 1, 2015, increasing the rent to $435 monthly. They again served a Notice of Rent Increase on February 23, 2016 to be effective June 1, 2016 increasing the rent to $447 a month.

The tenant said he was never served the first Notice of Rent Increase but it may have been taped to his fence and blown away. The landlord and the witness said that all the Notices of Rent Increase were served on December 10, 2014 and were posted to the doors unless there was a large dog and the person serving the notices was uncomfortable and she would then paste them to the fence or gate of the unit. The tenant said most of the notices he gets are put on his fence and his dog is not large.

The landlord said that the increases are put into the system with their individual effective dates and somehow there was a glitch in the system and the tenant's increase was not

noted properly (and there was another tenant's increase missed as well). He continued paying his old rent and the error in the system was not noticed until March 2016 after the current Notice of Rent Increase was served on February 23, 2016. They said that he admitted to other personnel of the landlord that he got the Notice of Rent Increase in December 2014. The tenant denied he told the other management person that he got the Notice.

Analysis:

I find the allowable increases in rent for manufactured park home sites were as follows:

Maximum Allowable Rent Increase

2015 2.5%

2016 2.9%

I find the landlord did not exceed the allowable increases in 2015 and 2016. However the onus is on the landlord to prove on a balance of probabilities that the Notice of Rent Increase was served in accordance with section 81 of the Act. I find that sending it by mail, putting it in a mail box or mail slot or "attaching a copy to the door or other conspicuous place at the address at which the person resides" are all legal means of service according to section 81. I find attaching it to the tenant's door, fence or gate is a conspicuous place and would be a legal means of service.

The tenant contends he never got it and it might have blown away. The landlord's witness said she served 190 homes in the park that day and she put it on this tenant's door or fence. The evidence in this case is contradictory, and the issue is credibility. A useful guide in that regard, and one of the most frequently used in cases such as this is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.) as follows at pages 357-358:

> "The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions..."

I find the landlord's evidence more credible. Their evidence was clear and consistent and they were serving 190 homes that day. They provided copies of their correspondence in evidence. Also in support, there is in evidence a copy of the Notice

of Rent Increase which they said was delivered on December 10, 2014 containing the tenant's name and address. I find it improbable that management missed delivering it to the tenant. I find it unlikely that only his Notice would blow away and would not come to his attention as all his neighbours were served Notices of Rent Increases that day. It also had his name and address on it so I find it improbable that a neighbour in this community would not either have given it to him or returned it to management of the park. Based on the weight of the evidence, I find he received the Notice of Rent Increase on December 10, 2014 and based on the most recent notice, the tenant's rent is $447 as of May 1, 2016. I find he owes the amount of the unpaid rent increase for 2015.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply. I find the tenant's rent commencing May 1, 2016 is $447. I find the tenant not entitled to recover his filing fee due to his lack of success.

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: April 27, 2016

Residential Tenancy Branch