



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

REVIEW HEARING DECISION

Dispute Codes ARI

This matter was previously before me on three separate dates. On May 18, 2016 the hearing completed and a decision was issued on May 19, 2016 in favour of the landlord. The decision granted the landlords request for an additional rent increase above the regulations. The tenants were not present on May 18, 2016. The tenants filed an application for Review Consideration on the basis that they were not informed of the date and did not have an opportunity to attend. The review was granted based on an administrative error that occurred at the Branch whereby the respondents were not notified. The original decision is suspended pending the matter being reconvened before me.

The matter was rescheduled before me and the matter reconvened and completed in the time allotted. Three of the tenants participated in the hearing today along with three of the landlords' agents. All parties gave affirmed evidence. As the landlord had presented and completed their submissions and presentation of evidence on May 18, 2016; the tenants were given full opportunity to respond, make submissions and arguments and to present the evidence that they had submitted in accordance with the Rules of Procedure and the service provisions of the Act.

Issue(s) to be Decided

Should the original decision be confirmed or set aside?

Background and Evidence

For continuity, reference, and ease of read and for absolute clarity, I have attached and italicized the decision I issued on May 19, 2016 to help differentiate the dates and to assist when reading the decision.

May 19, 2016 Decision reads as follows:

Introduction

This hearing dealt with the landlord's application for an additional rent increase over and above the amount provided for in the Manufactured Home Park Tenancy Regulation. This is the third date to which this matter has been heard. The matter was also heard on January 12, 2016 and March 8, 2016. Today's hearing date was scheduled for three hours for the sole purpose to allow the tenants to make oral submissions and argument in regards to the landlords' application. None of the tenants' chose to participate in today's hearing to make submissions or argument. All parties were notified of today's

hearing from the Branch, the hearing went ahead and completed on that basis. The landlords' agents gave affirmed testimony.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

The landlords agent advised that the owner of the home in site #7 has sold the home and that the landlord is no longer pursuing a rent increase as part of this hearing, accordingly, I dismiss the application in regards to site #7.

Issue to be Decided

- *Whether the landlord is entitled to a rent increase beyond the amount permitted by the legislation?*

Background and Evidence

The landlords' agent gave the following testimony. The agent stated that the landlord is seeking a rent increase above the regulations as the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic area, as the rental unit or site. The rental property is a manufactured home park in Nanaimo. The landlords' agent stated that there are 71 sites in the park and that the owner purchased the property in March 2015. The agent stated that. The landlord made an application for an additional rent increase on September 30, 2015 pursuant to Section 36(3) of the Manufactured Home Park Tenancy Act and Section 33 of the Manufactured Home Park Tenancy Regulations.

The agent stated that 17 of the tenancies in the park were determined to be at market levels and needn't be increased. The agent stated that of the remaining 54 tenancies, 45 of those tenants have signed a voluntary rent increase for the amounts detailed below and to be phased in over a three year period. The agent stated that the landlord was very cognizant of the financial impact it may have on tenants and felt it would be "more fair" to have the increase implemented in three equal increases over three years.

The agent stated that they have determined that the "goal rents" for the subject sites are \$388.00 and \$430.00. The agent stated that numerous factors were taken into account in determining the amounts. The agent stated that site size, location in the park, lack of rent increase over the past three years, length of tenancy, access to amenities, access to transportation, and access to shopping facilities. The agent stated the reason there are two "goal rents" is that the tenants living in the older portion of the park with

smaller pads and narrower roads would be offered a lower rent increase than those in the newer portion of the park.

The agent stated that they have submitted a detailed and thorough comparison to three other manufactured home parks in a nearby proximity. The agent stated that many of the characteristics, amenities and sense of community are “very comparable” to the subject sites and that the average rent for those sites are \$388.00 to \$460.00. The agent stated that the landlord has worked in conjunction with the parks committee and received their approval and support for this increase. The agent stated that the landlord has made all reasonable attempts to minimize the impact of the increase on the tenants and will impose any increase if successful, over three years.

The landlord is seeking the following increase for the following sites.

Site	Current Rent	Requested Increase	Total Rent
1	\$232.51	\$155.49	\$388.00
11	\$235.50	\$155.50	\$388.00
47	\$304.74	\$125.26	\$430.00
55	\$304.74	\$125.26	\$430.00
62	\$232.50	\$155.50	\$430.00
67	\$241.53	\$146.47	\$388.00
70	\$232.50	\$155.50	\$388.00

Analysis

In considering the landlords application I have turned my mind to Residential Tenancy Policy Guideline 37, Section 33 of the Manufactured Home Park Tenancy Regulations and Section 36 of the Manufactured Home Park Tenancy Act.

*Residential Tenancy Policy Guideline # 37 speaks to “Rent Increases” and under the heading - **Significantly lower rent**, provides 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.

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.

“Similar units” means rental units of comparable size, age (of unit and building), 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.

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 or those of surrounding buildings.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and 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. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographic area, it is **not** sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord.

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.

Although none of the tenants chose to participate in today's hearing and formally provide oral submissions or argument, the tenants made comments at times when the agent was presenting their application. The tenants made general comments that due to many of them being seniors on a fixed income, any rent increase would be a hardship. Other comments were the park is not as nice as some of the comparable parks presented in the landlords' application.

I fully accept the tenants' position that an increase could cause them financial hardship however the Manufactured Home Park Tenancy Act and the Policy Guidelines do not allow an Arbitrator to factor in personal circumstances when considering an additional rent increase. As for the other parks being "nicer" than the subject property, the agent has provided detailed site maps, rent rolls, and listings of amenities, features, services and facilities' of comparable parks in the same geographic area. I find that the properties the agent has provided to support the landlords' application is in fact comparable properties and that the subject property is at a significantly lower rental rate.

Having reviewed the evidence of the landlord and applied Residential Tenancy Policy Guideline 37, Section 33 of the Manufactured Home Park Tenancy Regulations and Section 36 of the Manufactured Home Park Tenancy Act, as well as the extensive documentary evidence submitted by the landlord, the undisputed testimony of the landlords agent, I find that the landlord has satisfied the above criteria and is entitled to an additional rent increase above the regulations and as proposed below.

Site	Current Rent	Requested Increase	Total Rent
1	\$232.51	\$155.49	\$388.00
11	\$235.50	\$155.50	\$388.00
47	\$304.74	\$125.26	\$430.00
55	\$304.74	\$125.26	\$430.00
62	\$232.50	\$155.50	\$430.00 \$388.00
67	\$241.53	\$146.47	\$388.00
70	\$232.50	\$155.50	\$388.00

Conclusion

I grant the landlord the additional rent increase as outlined in their application. That increase is to be implemented in three equal amount amounts and phased in over a three year period.

I direct that the rent increases shall take effect 3 full months after the landlord has served the tenants with a Notice of Rent Increase in accordance with the Act, along with a copy of this entire Decision, granting the additional rent increase.

August 2, 2016 Hearing

The tenants gave the following testimony:

SK testimony is as follows – SK stated that the parks in the area are much different than the subject park. SK stated that the condition and the amenities of the park do not warrant the rent increase as sought by the landlord. SK stated that the subject park has smaller lot sizes; it's an older park, no storm sewers, high density, no fire hydrants, no RV parking and irregular non-conforming lot sizes. SK stated that it was like comparing Chevrolets to Cadillac's. SK stated that Sharman Park is much newer and has a better view from most sites. SK stated that the increase is unfair and that the regulated increase is more than enough.

SP gave the following testimony- SP stated that the landlord is "all about the money" and doesn't care about the people that live in the park. SP stated that she feels the other parks used for comparative purposes are much newer, nicer and full of amenities. SP stated that she spent a considerable amount of time preparing for the hearing and taking photos to compare the properties. SP stated that "a picture is worth a thousand words" and feels that her photographic evidence clearly shows the difference between the subject park and the parks used as a comparison. SP stated that the park lacks an onsite manager and that they need to address problem tenants in the park.

SP stated that the subject park lacks nice lighting, security cameras, setbacks, and a commitment from the management to maintain this park as an over 55 year old Resident Park. SP stated that tenants in the subject park have shrubbery growing to an unruly state and that the condition of many of the homes has deteriorated because of the lack of the onsite manager. SP stated that the increase is unfair; it's only about making money and should not be granted.

The landlords' agent LM provided the following submissions and response to the tenants' testimony. LM stated that he agreed that there were some differences with the subject park in relation to the comparable properties but submits no two parks can be exactly the same and that concessions were made for those differences. LM stated that the landlord is very mindful of people's personal financial circumstances and chose to "soften the blow" by asking for the additional rent increase to be spread over three years instead of seeking it all at once. LM stated that tenants such as SP are going to be given the lower range of the increase because of the differences in the park and that they reside in an older portion of the subject property.

LM stated that the parks committee was fully supportive of this increase because it was done in consultation with the committee and an increase amount was worked out in collaboration with the committee. LM stated that because the landlord is seeking to spread the increase out over three years the comparable properties will still be increasing each year; in essence leaving the subject property still behind in comparable rent giving the subject tenants even more value. LM stated that the increase is reasonable, fair, and appropriate.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

I fully accept and can appreciate that the tenants feel that the increase sought by the landlord is too much, however the landlords agents have provided sufficient evidence to show that the subject property rents are significantly lower than comparable properties in the area. I also accept that there are differences in the properties; however, I agree with LM that it is very difficult to find two properties that are exactly alike for comparative purposes. I find that properties provided by the landlord and his agents are a fair comparison. I also find that the landlord and his agents have met the burden as is required when seeking an additional rent increase.

After having an opportunity to hear from the tenants and consider all of the testimony and evidence before me, I find that the decision and finding made on May 19, 2016 is the appropriate one and is confirmed.

Conclusion

The original decision dated May 19, 2016 is confirmed.

For easy reference I have attached the table outlining the additional rent increase for each unit.

Site	Current Rent	Requested Increase	Total Rent
1	\$232.51	\$155.49	\$388.00
11	\$235.50	\$155.50	\$388.00
47	\$304.74	\$125.26	\$430.00
55	\$304.74	\$125.26	\$430.00
62	\$232.50	\$155.50	\$388.00-
67	\$241.53	\$146.47	\$388.00
70	\$232.50	\$155.50	\$388.00

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: August 15, 2016

Residential Tenancy Branch