



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WHISPERING SPRUCE MOBILE HOME PARK  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AARI

### Introduction

This matter dealt with an application by the Landlord for an Additional Rent Increase.

The Landlord's agent said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 13, 2016. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with 4 of the Tenants present.

At the start of the hearing Tenant J.B. said that the copy of the Notice of Hearing that he received was of such poor quality that he had to refer to other Tenants documents to get the information about the hearing.

The Landlord's agent said that this was the first time Service BC in Golden had prepared documents for a hearing like this and he was sorry there were mistakes and the copies were not better quality.

Tenant J.B. said he just wanted his concern noted.

### Issue to be Decided

1. Is the Landlord entitled to an additional rent increase and if so how much?

### Background and Evidence

The Landlord said he made this application for an additional rent increase of 10% for (rent 1) tenants and 9.6% for (rent 2) tenants. The application is made under section 36(3) of the Manufactured Home Park Act and in accordance with section 33 (a)(b) of the Manufactured Home Park Regulations. The Act says a landlord can make an application for an additional rent increase if the landlord has completed significant repairs or renovations to the Manufactured Home Park and these repairs or renovations are reasonable, necessary and will not recur in a reasonable period of time. Further a landlord may apply for an additional rent increase if the rent paid is not comparable to similar rents paid in similar mobile home parks to the Mobile Home Park in question.

The Landlord's agent said the application is partially a result of the work done to repair a broken water main in the infrastructure of the water system in the Mobile Home Park. The Landlord's agent said the repairs to the water main happened in November, 2015 at a cost of \$8,128.15 and he has included copies of the repair invoices with the application.

Further the Landlord's agent said that over the last year water and sewer utility costs have increases because of increases in the water rates and increased usage in the Mobile Home Park. The Landlord submitted copies of the water invoices to support the Landlord's claims.

The Landlord's agent continued to say the rents in this Park are considerable less than the only comparable park in the area. The Landlord's agent said the rents in this Park are \$242.55 to \$289.26 and the other comparable park the rents are \$300.00 to \$350.00. The Landlord's agent said the other park is the only other licensed park in the area. The Landlord's agent continued to say he only phoned the other park and he did not submit any written evidence to support the rental rates in the area. The Landlord's agent said he is requesting the additional rent increase partially due to the rents in this Mobile Home Park being below comparable rents in the other park.

In addition the Landlord's agent said the Landlord has included the annual rent increase of 2.9% and the adjustment for the increase in water utilities, the water main repairs and the request to raise the rent to a comparable park. The Landlord's agent said the total requested rent increase is the annual rent increase of 2.9% plus the additional rent increase of 7.1% for a total rent increase of 10%.

The Landlord's agent provided a list of rent increases to 21 of the Mobile Home Park Tenants and the Landlord's agent said there are 3 tenants that are not included because they are not being given a rent increase. The list of rent increases the Landlord's agent submitted shows 15 rent increases of \$24.25, three rent increases of \$10.74, one rent increase of \$17.87 and one rent increase of \$20.00. The Landlord's agent said he was trying to make the rent increases fair that is why there are different amounts for different tenants.

The first tenant to respond was Mrs. F. and she expressed her concerns that the Landlord's agent was not knowledgeable about the Mobile Home Park as he manages the campground that is attached to the Mobile Home Park.

The Landlord's agent said his company does manage the campground attached to the Mobile Home Park and the agent said the Landlord requested him to handle this application for an additional rent increase for the Mobile Home Park.

The Arbitrator told the parties the Landlord is within his rights to appoint an agent to act for him. The Tenants said they understood.

Tenant Mrs. F. said the owner / Landlord of the Park is a difficult person to deal with and this is the first the Tenants have heard about the rent increase.

The Landlord's agent said he understands the Tenant's comment about the owner as he has discovered the owner has two sets of accounting books for the Mobile Home Park which has created some issues for him.

The Tenant Mrs. F. said this is the problem with the Landlord's application. The information is wrong or confusing and so the Landlord's application should be dismissed. The Tenant said the utility bills are addressed to the campground address and this address is also for the service or usage address for water and sewer. As a result the Tenant said it is not clear if the invoice is for the Mobile Home Park or the campground or both. The Tenant said the invoices are not clear and prove nothing.

Further Tenant Mrs. F. said there is 6 mobile home parks in the area and the one the Landlord's agent is using for comparison is not a good comparable because it has 200 sites and it is an upscale park with playgrounds, paved roads, snow removal and other services that this Mobile Home Park does not have. The Tenant continued to say there are comparable parks with 10 to 20 sites in them and their rent is around \$240.00 which is what the rent is in this Mobile Home Park.

The Landlord said the park he used was the only one that he believes is a licenced mobile home park in the area. He said he used this park because the Landlord's Mobile Home Park is a licensed park as well.

Tenant Mrs. F. also said one of the invoices for the water main repairs says it is for a repair at the trailer at the campground. The Tenant said the invoices are not clear and could be for the campground or the Mobile Home Park. The Tenant said the Landlord has not proven all the repairs are the responsibility of the Tenants of the Mobile Home Park.

The Landlord's agent said that one invoice must have been a billing mistake as the invoices does show the bill is for the trailer in the campground.

The next Tenant to speak was Mrs. P and she said that the Landlord probably deserves a rent increase but not as much as the Landlord is requesting and she would like to see some services improve. The Tenant said the Landlord does not maintain the Mobile Home Park and there is no snow removal in the winter which is a health and safety issue for all the tenants in the Mobile Home Park.

The Landlord's agent said that because the campground is staying open in the winter for the first time the Landlord has purchased a truck and blade for snow removal and this should improve the snow removal at the Mobile Home Park.

The third Tenant to speak was J.B. and he said there are at least 4 comparable mobile home parks in the area to compare rents too. The park the Landlord's agent chose is not comparable to this Mobile Home Park. Further the Tenant J.B. said that water rates have not increased and the increase of usage is probably because the water is leaking out of the pipes. The Tenant said this is a maintenance issue not a water usage issue. The Tenant said the Landlord has not maintained the Mobile Home Park at all.

The Landlord's agent said he understands the water infrastructure in the park is aging and that is why he is seeking an additional rent increase so that he can start maintaining the Mobile Home Park better. The Landlord's agent said he is trying but the owner of the Park is not easy to work with.

The Tenants said in closing that there have been no financial statements provided as proof that the Park is losing money, the comparable rental rates are from a park that is not comparable to

this Park and there is no evidence to support the rental rates, one of the invoices for the water main repairs is not for the Mobile Home Park and the utility bills are addressed to the campground address and the invoices show that address is also the service or usage address. The Tenants said that the Landlord's evidence and application is poorly done and there are many inaccurate or unclear items in it. The Tenants continued to say that the Landlord's application should be dismissed and the process should start over with clear and correct information.

The Landlord's agent said in closing that he is trying to improve the Mobile Home Park and in order to do that he needs the additional rent increase to provide money to do the improvements and maintenance. The Landlord requested the additional rent increase as applied for.

#### Analysis

#### **The Act says in section 36:**

- 36** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
  - (b) ordered by the director on an application under subsection (3), or
  - (c) agreed to by the tenant in writing.
- (2) A tenant may **not** make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3) **In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.**
- (4) [Repealed 2006-35-11.]
- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

#### **The regulations say in section 33:**

- 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.

**(2) If the landlord applies for an increase under paragraph (1) (b), (c), or (d), the landlord must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage.**

(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.

(4) In considering an application under subsection (1), the director may

- (a) grant the application, in full or in part,
- (b) refuse the application,
- (c) order that the increase granted under subsection (1) be phased in over a period of time, or
- (d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the manufactured home park.

(5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

I have reviewed the Landlord's application and evidence. In the Landlord's application the Landlord has requested the annual rent increase of 2.9% and an additional rent increase of 7.1% for a total of 10 %. Further in the Landlord's application the actual rent increases are stated for each tenant and the amounts of rent increase vary from \$24.25 for 15 tenants and \$10.74 for 3 tenants and \$17.87 and \$20.00 for one tenant each. As well 3 tenants have not been included in the rent increase. The Landlord's application does not comply with regulation 33 (2) which states rent increases for significant repairs must be equal for all sites. The Landlord's agent said he varied that amounts to try to be fair to the tenants but the Landlord's first responsibility is to follow the Act and regulations in applying for an additional rent increase.

Further I accept the Tenants' testimony that one of the invoices for the water main repair is for the trailer in the campground and should not be included in the calculation of the additional rent increase for extraordinary repairs.

In addition that utility water bills are unclear as the invoices are addressed to the campground address and the service or usage address on the invoices are also the campground address. This inconsistency in the invoices makes it unclear if the invoices are for the Mobile Home Park or the campground or for both the properties. A further explanation from the municipality may be required to adequately explain the invoices.

The Landlord has also requested the additional rent increase because the rents in the Mobile Home Park are less than a comparable park in the area. The Landlord has not submitted any corroborative evidence to support his claim that comparable rents are \$300.00 to \$350.00 in a comparable park. The Tenants said there are 4 to 6 comparable parks in the area and the rents are similar to this Mobile Home Park. I find the Landlord has not established grounds to prove an additional rent increase on the grounds of comparable rents in the area due to lack of evidence.

Consequently because of inconsistency in the amounts of the additional rent increases, the error in the water main repair invoices, the unclear utility bills and lack of evidence; I find the

Landlord has not established grounds for an additional rent increase. The Landlord's request for an additional rent increase is dismissed with leave to reapply.

The Landlord is at leave to issue a notice of an **annual** rent increase as provided by the Act and regulations at the Landlord's convenience.

Further the Tenants are at leave to dispute any **additional rent increases** that are inconsistent with the Act, regulations or tenancy agreement.

#### Conclusion

The Landlord application for an addition rent increase is dismissed with leave to reapply.

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 27, 2016

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Residential Tenancy Branch