



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Elk Valley Investments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, RR, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants, which have been joined to be heard together. The tenants dispute a rent increase and seek to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fees from the landlord for the cost of the applications.

The hearing did not conclude on the first day scheduled and was adjourned from time-to-time for continuation. On each of the scheduled dates the landlord attended the hearing with legal counsel, and most tenants attended on at least some of the scheduled dates, however not all of the tenants remained in attendance for the entire proceeding. One of the tenants represented other tenants who did not attend or remain in attendance.

The landlord and 5 of the 9 named tenants gave affirmed testimony, and the landlord called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

After the hearing had commenced, the tenants provided an additional 108 pages of evidence. Due to the lateness of the material, and in accordance with the Rules of Procedure, that evidence is not considered in this Decision.

Also, a lot of testimony was heard and evidentiary material provided with respect to repairs still required in the manufactured home park, and other testimony that is not relevant to the applications before me. Only the evidence that is relevant to this application is included in this Decision.

During the course of the hearing all tenants withdrew the applications for an order reducing rent for repairs, services or facilities agreed upon but not provided.

### Issue(s) to be Decided

The issue remaining for me to decide is:

- Have the tenants established that the landlord is not entitled to increase rent pursuant to Section 42 of the *Manufactured Home Park Tenancy Act* while an order reducing rent remains outstanding?

### Background and Evidence

The parties agree that the manufactured home park is owned by an investment company operated by a person, hereinafter referred to as the landlord.

The parties also agree that previous hearings have been conducted by the director, Residential Tenancy Branch and copies of the resulting Decisions have been provided for this hearing, as follows:

- Hearing dated January 26, 2009;
  - Tenants' application for orders that the landlord comply with the *Act*, regulations or tenancy agreement; for a repair order and emergency repairs; for an order that the landlord provide services or facilities; and other relief;
  - Conclusion:
    - "The rent increase given August 28, 2008 to take effect December 1, 2008 is therefore void and of no effect. The tenants are entitled to recover the amount of the rent increase if paid for the months of December, January and February by deducting the amount of the increase paid for those months from a future installment of rent due to the landlord.
    - "The landlord is free to give the tenants a new Notice of Rent Increase calculated in accordance with the *Act*, but the landlord must give the tenants the required three months notice of the rent increase.
    - "I order that the landlord hire a certified plumbing specialist and within the next 30 days have the plumber investigate and repair the cause of the low water pressure.
    - "I order that the landlord have the streetlights in the manufactured home park replaced forthwith.
    - "I order that the landlord promptly post speed limit signs in the manufactured home park and that he install a reflector marker and

repaint or replace the entrance sign to the manufactured home park.

- "I order that the landlord have the roads in the park graded and treated as soon as weather permits.
- "If the landlord does not take steps to comply with these orders within a reasonable time, I grant the tenants leave to make a further application for an order reducing the amount of rent to be paid to the landlord until such time that he has carried out the required work and repairs"

- Hearing dated June 17, 2009 with a Decision dated June 18, 2009:
  - Tenants' applications for an order permitting a reduction in rent for repairs not completed; disputing a rent increase; for an order that the landlord comply with the *Act*; for an order that the landlord perform repairs; for an order that the landlord provide services or facilities required by law; and for an order permitting the tenants to reduce rent for repairs not completed.
  - Claims for orders that the landlord comply with the *Act*, make repairs, and provide services or facilities were dealt with on February 2, 2009 and are dismissed;
  - Issue(s) remaining to be decided:
    - Did the landlord comply with the February 2 orders?
    - Are the tenants entitled to a rent reduction until repairs are completed?
    - Is the landlord's notice of rent increase valid?
  - Conclusion was: Notices of rent increases were found to be invalid and of no force or effect, and "The tenants are each permitted to reduce their rent by \$50.00 per month until required repairs as enumerated above are completed."
- Hearing dated September 8, 2009 with a Decision dated September 8, 2009:
  - Landlord's application for an order cancelling a rent reduction;
  - Issue(s) to be decided:
    - Has the landlord fully complied with the February 2, 2009 order?
    - Should the rent reduction cease and the full rental rate be reinstated?
  - Conclusion was: "The rental reduction is decreased to \$35.00 per month. The tenants are ordered to pay the landlord \$30.00 as the rental reduction has been applied retroactively to August 1, 2009."
- Hearing dated March 30, 2011 with a Decision dated April 12, 2011:
  - Landlord's application for a monetary order and for an order that all required repairs have been completed;

- Issue(s) to be decided:
  - Are the landlords entitled to recover the amount of the rent reduction for the period of October 1, 2009 to November 1, 2010 (\$35.00 per month for 14 months x 7 Tenants = \$3,430.00)?
  - Are the landlords entitled to an Order that the rents return to the rates prior to the reductions taking place?
- Conclusion was: “The landlord’s application is dismissed in its entirety. Each Tenant’s rent reduction of \$35.00 per month will continue until such time as:
  1. Each Tenant agrees in writing that the water pressure is restored to an acceptable rate; or
  2. The Landlords comply with the order to hire a certified plumbing specialist to investigate and repair the cause of the low water pressure and are successful in an Application for Dispute Resolution for a determination that the repair has been completed.”
- Hearing dated May 11, 2016 with a Decision dated May 11, 2016:
  - Landlord’s application for an order reinstating the monthly site rental units;
  - Issue(s) to be decided:
    - Has the landlord established that the previous monthly rental rate should be re-instated or rent increased?
  - Conclusion was a dismissal of the landlord’s application.

**The first tenant** (KS) testified that her rent is \$217.50 less the \$35.00 reduction ordered on February 2, 2009, for current monthly site rental of \$182.50. Rent is due on the 1<sup>st</sup> day of each month, and there are no rental arrears.

On May 24, 2016 the landlord served the tenant with a notice of rent increase stating that rent will be \$191.00 per month commencing September 1, 2016. A copy of that notice has been provided and it is dated May 24, 2016.

The tenant further testified that the landlord had applied to reinstate the monthly rental decreases, and at the May 11, 2016 hearing, the landlord’s application was dismissed and the Arbitrator granted leave to reapply once the landlord had results in writing of having complied with the February 2, 2009 order. However, on May 24, 2016 the landlord served the notices of rent increase without any improvements completed or the repairs completed as ordered.

The tenant also alleges loss of quiet enjoyment of the rental sites and stated that each tenant received a threatening letter from the landlord without justification stating that if the tenants didn't pay the rent increases, they would be evicted.

**The second tenant** (BS) testified that back in 2009 the landlord was told that rent could not be raised. Water pressure and quality is a big issue, and the tenant pays about \$10.00 per week for potable water.

During the June 18, 2009 hearing the landlord asked if he could re-submit another increase and was told by the Arbitrator that he could not and no increases could be issued until the problems in the park were fixed.

A copy of a Notice of Rent Increase has been provided, and it is dated May 24, 2016 and increases rent from \$177.50 to \$186.00 per month effective September 1, 2016.

**The third tenant** (RS) testified that until the landlord has satisfied that repair issue, rent should remain the same as it is now. Interior Health and the District also want the repairs made as ordered.

A copy of a Notice of Rent Increase has been provided, and it is dated May 24, 2016 and increases rent from \$177.50 to \$186.00 per month effective September 1, 2016.

**The fourth tenant** (AM) testified that last year a sewer backed up, and the landlord shrugged it off. The tenant had to continue to call and remind the landlord who replied that she couldn't afford it and told the tenant to clean up her yard. The tenant's daughter had graduated and the tenant had to pay for a hotel for guests due to the backed up toilet and tub. The tenant couldn't shower for 12 days.

A copy of a Notice of Rent Increase has been provided, and it is dated May 24, 2016 and increases rent from \$177.50 to \$186.00 effective September 1, 2016.

**The fifth tenant** (PK) testified that the landlord has caused the tenant to have to move a shed and another shed as well. The tenant has no means to do so.

A copy of a Notice of Rent Increase has been provided, and it is dated May 24, 2016 and increases rent from \$177.50 to \$186.00 per month effective September 1, 2016.

Another Notice of Rent Increase has been provided for tenant WF, who did not testify. It is dated May 24, 2016 and increase rent from \$177.50 to \$186.00 effective September 1, 2016. Also provided is a Notice of Rent Increase for tenant MP, who did

not testify. That notice is also dated May 24, 2016 with an increase from \$182.50 to \$191.00 effective September 1, 2016.

**The landlord** testified that a company who deals in commercial water systems was hired, who tested pressure on the homes and the result came back as over, or better than 40 pounds. The landlord also had an electrician test the water pressure to each home. The landlord applied for dispute resolution to have the \$35.00 rent reduction reinstated but was not successful because the landlord didn't hire a certified plumber.

The landlord is intending to replace the distribution pump which pushes water from the system to each of the homes, put a cover inside the pump house and securing it. The well cap has been replaced and the landlord does chemical tests on the water system and has been conducting weekly water tests since about June, 2016 to ensure the water is safe to drink. A "Boil Water Advisory" was in effect on June 16, 2016 but removed on July 15, 2016 because water samples were good.

The landlord's understanding of what the Arbitrators said in previous hearings about future rent increases, is that the landlord is permitted to increase the rent yearly like anyone else, but the landlord has to base any increase on the amount each tenant now pays, which includes the \$35.00 per month reduction.

**The landlord's first witness** (MM) testified that he has resided in the manufactured home park for over 20 years.

An Arbitrator at a previous hearing stated that water pressure had to be up to 60 pounds, but the witness testified that tenants were mislead, and it only has to be about 40 pounds. The witness was a part of the dispute process in previous applications, but has since voluntarily removed the \$35.00 rent reduction that was ordered. The tenant also received a notice of rent increase this year.

**The landlord's second witness** (WT) testified that he performs maintenance at the manufactured home park, including repairs to water systems, cleaning trailers after people leave, general clean-up, clearing roads and approaches to the roads, and providing pump information for the landlord. The witness has worked in the infrastructure trade for 40 years on water systems for numerous subdivisions. Repairs have been made to the systems in this park and other upgrading is planned and parts have been ordered. As far as the witness knows, there are no orders from the health department that are not being complied with. The water quality is very high, and the

entire town near the manufactured home park is under a boil water advisory as of yesterday due to a glacier melt and rain.

#### Closing Submissions:

The tenants submit that because the landlord has not taken reasonable steps to complete the work ordered in 2009 the landlord may not increase the rent while the reduction in rent remains in effect.

Counsel for the landlord submits that pursuant to the *Manufactured Home Park Tenancy Act*, the landlord may increase the rent annually, notwithstanding previous orders of the director, so long as the annual increase is the appropriate percentage permitted by the *Act* and the regulations and is an increase to the reduced amount of rent payable by the tenants.

#### Analysis

The *Manufactured Home Park Tenancy Act* provides a landlord may only increase rent in accordance with the *Act* and the regulations. The *Act* further states as follows:

#### **Timing and notice of rent increases**

- 42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
  - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

#### **Amount of rent increase**

- 43** (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 2006-35-66.]

(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.

Section 43 means that the tenants may not dispute a rent increase that is calculated correctly, so long as the rent hasn't been increased within the last 12 months and the landlord gives the tenants at least 3 months notice in the proper form. A landlord may apply for an additional rent increase over and above the annual amount permitted and if successful, the increase takes effect on the date ordered.

In this case, the landlord has not applied for an additional rent increase under Section 43(3), and the onus is on the tenants to establish that the landlord is not entitled to increase rent under Section 42.

Counsel for the landlord submitted that the landlord has given a notice of rent increase in an amount lower than the annual percentage permitted by the *Act* and the regulations. I have reviewed each of the Notices of Rent Increase and I find that they are in the approved form and contain information required by the *Act*. There is no evidence that the rent has been increased within the previous 12 months.

The only way the tenants could be successful in disputing the increase is under Section 43(3) - if the landlord had made an application for an additional rent increase and was not successful, and the Arbitrator made an order restricting an increase. The landlord has made applications to have rent reductions reinstated, but none of the landlord's applications were for an additional rent increase under Section 43(3).

One of the tenants testified that during the June 18, 2009 hearing the landlord asked if the landlord could submit another increase and was told by the Arbitrator that he could not, and no increases could be issued until the problems in the park were fixed. I have read the entirety of each of the Decisions, and I find no orders or findings in the Analysis or the Conclusion portions of the Decisions that restrict the landlord from increasing rent pursuant to Section 43(1). Therefore, the tenants' applications must be dismissed.

One of the tenants also testified that each tenant received a threatening letter from the landlord stating that if the tenants didn't pay the rent increases they would be evicted. A



landlord is entitled to issue a notice to end a tenancy if rent remains unpaid, but must do so in accordance with the *Act*. Each of the rent increases are effective September 1, 2016 which is prior to the dates of this hearing. I order that the tenants pay the increases retroactive to September 1, 2016, and I order that the tenants do so within 5 days of receiving this Decision. If the tenants fail to do so, the landlord will be at liberty to enforce the unpaid amounts in accordance with the *Manufactured Home Park Tenancy Act*.

### Conclusion

For the reasons set out above, the applications of the tenants are hereby dismissed.

I order that the tenants pay the increased rent retroactive to September 1, 2016 within 5 days of receiving this Decision, and if the tenants fail to do so, the landlord will be at liberty to enforce the unpaid amounts 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: October 03, 2016

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Residential Tenancy Branch