Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

a. A monetary order in the sum of $3642.
b. An order that the landlord comply with the Act, regulation or tenancy agreement.
c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on a business on February 16, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the Tenant is entitled to recover a monetary order for illegal rent increases and if so how much?
b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2008. The rent at that time was $345 per month payable in advance on the first day of each month. There have been a number of rent increases since then and the rent is presently $428.50.

The tenant submits that the following rent increases are invalid and seeks an order that the landlord reimburse the tenant the amount collected by the increases totalling $3642 and an order the rent is $345 per month.

- Rent Increase dated June 1, 2011 - $10 per month x 12 months = $120.
- Rent Increase dated June 1, 2012 - $30 per month x 12 months = $360
- Rent Increase dated June 1, 2013 - $50 per month x 12 months = $600.
- Rent Increase dated June 1, 2014 - $60 per month x 12 months = $720
- Rent Increase dated June 1, 2015 - $70 per month x 12 months = $840.
- Rent Increase dated June 1, 2016 - $83.50 per month x 12 months = $1002.00

The tenant relies on the decision of a previous arbitrator dated August 7, 2014 which provided that the rent increases were invalid. In a summary of the evidence the arbitrator records that the landlord failed to provide the full 7 pages of the form as the last 4 pages which included the instructions to fill out the form were not attached. The arbitrator further stated:

> "The real problem for the landlord is that while it did comply with subsections 35(1) and (2) it did not comply with subsection (3) because it did not give notice of rent increase in the prescribed form. An essential part of the prescribed form is the obligation to attach the documents in support of the charges which the landlord wishes to "flow through" to the tenant. Allowing a tenant to look at the invoices in particular circumstances is not complying with the legal requirements as clearly set out in the instruction to the landlord on the form itself."

The tenant submits that the failure to provide the documents in support of the charges which the landlord wished to "flow though" to the tenant resulted in the form being invalid. The tenant did not argue that the landlord failed to properly calculate the "flow through charges" or included charges that were not properly associated with this provision. The basis of his submissions is the failure to attach the documents in support.

The landlord gave the following evidence and submission:

- The Tenant failed to deliver the Application for Dispute Resolution//Notice of Hearing within the time frame set out in the Act. The Application for Dispute Resolution is date stamped February 7, 2017. The hearing letter indicating shen the Registry completed the processing of the Application is date stamped February 8, 2017. The tenant provided the landlord with a copy of the documents by e-mail on February 17, 2017. The instruction to the Tenant by the

Residential Tenancy Branch was that these documents were to be served by February 11, 2017. The tenant purported to serve the Application for Dispute Resolution by registered mail. The landlord received the documents on February 20, 2017. They were mailed on February 16, 2017 and February 17, 2017.

- There is no requirement in the Manufactured Home Park Tenancy Act or the Regulations that the Landlord provide copies of the invoices of flow through expenses to the tenant. This is an unsupportable requirement of the Notice of Rent Increase and is onerous, time consuming and wasteful because of the number of pages involved.
- There are 77 rental units in the park. To meet this requirement it would require the landlord to send the 7 page notice plus copies of the 47 invoices for the subject year and all of the invoices from the previous year. There are invoices for the private water system, the Club House, a serious of street lights and a sewer pumping system and 7 different hydro meters. The end result is that the landlord would be forced to sent out 101 pages of paper to each of the 77 tenants in the rental unit totalling 7777 pages.
- All tenants have been advised that copies of these documents are available for review at the office.
- The Applicant has never requested that he be given an opportunity to review these documents.

The Law:

Section 34 to 36 of the Manufactured Home Park Tenancy Act provides as follows:

"Part 4 — Rent Increases

Rent increases

34 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

35 (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

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.

Section 32 of the Manufactured Home Park Tenancy Act Regulations provides as follows:

Rent increase

32 (1) In this section:

"change in local government levies" means the local government levies for the 12-month period ending at the end of the month before the month in which notice under section 35 (2) of the Act was given less the local government levies for the previous 12-month period;

"change in utility fees" means the utility fees for the 12-month period ending at the end of the month before the month in which notice under section 35 (2) of the Act was given less the utility fees for the previous 12-month period;

"inflation rate" means the 12-month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect;

"local government levies" means the sum of the payments respecting a manufactured home park made by the landlord for

(a) property value taxes, and

(b) municipal fees under section 194 of the *Community Charter*;

"proportional amount" means the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park;

"utility fees" means the sum of the payments respecting a manufactured home park made by the landlord for the supply of electricity, natural gas, water, telephone services or coaxial cable services provided by the following:

(a) a public utility as defined in section 1 of the *Utilities Commission Act*;

(b) a gas utility as defined in section 1 of the *Gas Utility Act*;

(c) a water utility as defined in section 1 of the *Water Utility Act*;

(d) a corporation licensed by the Canadian Radio-television and Telecommunications Commission for the purposes of that supply.

(2) For the purposes of section 36 (1) of the Act, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

inflation rate + 2 per cent + proportional amount.

Section 57(2) of the Manufactured Home Park Tenancy Act provides as follows:

Dispute resolution proceedings generally

57 (1) [Repealed 2006-35-28.]

(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Analysis:

I do not accept the landlord's submission that the tenant's application should be dismissed because the tenant failed to serve the Application for Dispute Resolution/Notice of Hearing within 3 days of receiving it from the Registry. The

landlord failed to provide evidence as to how he has been prejudiced by the delay in serving. The Manufactured Home Park Act and the procedures associated with it are designed to provide a method of conflict resolution that allows for a decision of the merits that is free from legalistic and technical impediments. It recognizes that many of the parties appearing before it do not have legal training. I order that the tenant be granted an extension of time to serve the Application for Dispute Resolution/Notice of Hearing to February 20, 2017 and that the Application for Dispute Resolution has been sufficient served.

After carefully considering all of the evidence presented by the parties I determined the Tenant failed to provide sufficient ground to have the six Notices of Rent Increases set aside for the following reasons:

- Section 57(2) provides that an arbitrator must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions.
- The Manufactured Home Park Act provides that the landlord must serve the Notice of Rent Increase in the approved form. The landlord served the approved form. .
- There is no requirement in the Manufactured Home Park Tenancy Act and/or Regulations that landlords include documents evidencing the “flow through charges” with the Notice of Rent Increase.
- I do not agree with the decision of the previous arbitrator that the failure of the landlord to include the documents evidencing the flow through charges means that the landlord has not used the approved form thus invaliding the Notices of Rent Increases.
- An approved form is a form that is consistent for all parties. The inclusion of these receipts and invoices varies from park to park.
- To impose this obligation on a landlord is unreasonably legalistic, onerous and costly given there is no requirement in the Act and Regulations to include them with the Notice of Rent Increase..
- The tenant did not argue the landlord failed to properly calculate the proportional amount or included charges in this amount that are not properly attributable to it. His argument is based solely on the failure of the landlord to include the receipts with the Notice.
- All tenants have been advised that these documents are available for inspection at the office. The tenant has not made an effort to inspect these documents.
- The result would likely be different if the landlord refused to make available to the tenants these documents for inspection.

- Further, in my view result in a result that is based on the merits. A significant portion of the rent increase relates to an amount set by Regulations plus the inflation rate. The Act does not permit a Tenant to challenge these sums. The tenant submits all of the Notices are invalid. The landlord would be denied the right to a rent increase set by regulations plus an inflation factor (both of which cannot be challenged by the Tenant) if the tenant's submission is correct.
- I determined such a result would not be consistent with a decision on the merits as required by the Act.

Conclusion:
In conclusion I determined the tenant has failed to establish sufficient grounds to have the Notices to Rent Increase set aside. As a result I dismissed the Tenant's application without leave to re-apply.

This decision is final and binding on the parties.

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: March 31, 2017

Residential Tenancy Branch