Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTCAN PROPERTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AARI

Introduction

This hearing dealt with a landlord's Application for Additional Rent Increase ("AARI") made under the Manufactured Home Park Tenancy Act ("the Act) for seven rental sites on the subject property. The landlord seeks an AARI under the following ground: "after the allowable 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". The landlord was represented at the hearing along with the tenants or representatives for five of the rental sites identified in this application.

All parties present at the hearing were provided the opportunity to make relevant submissions and to respond to the submissions of the other party. Although I heard and considered a significant amount of oral testimony and arguments, along with written submissions and evidence, I have only summarized the most relevant facts and positions with a view to brevity.

Preliminary and Procedural Matters – Service of hearing documents and evidence

The landlord testified that the tenants were notified of the landlord's application and this proceeding by way of registered mail sent to them on February 13, 2017. The landlord provided five registered mail receipts, including tracking numbers, as proof of service along with two signed documents indicating that two of the tenants were served in person. The tenants present at the hearing confirmed that they were served with the landlord's application by registered mail or personal service.

As for the tenants of the two rental sites that were not represented at the hearing, I noted that the landlord had provided registered mail receipts for those tenants. The landlord stated that one of the registered mail packages was returned to him as unclaimed despite using the tenant's service address that had been provided to the park manager. Section 83 of the Act deems a person to be in receipt of documents five days

after mailing, even if the recipient refuses to accept or pick up their mail. I was satisfied that the tenants not in attendance at the hearing had been duly served or deemed to be served with the landlord's application in accordance with the Act.

I noted that the landlord identified two rental sites as having two co-tenants. Although the landlord was required to serve each of the co-tenants separately, the landlord had used one registered mail package to serve both co-tenants. None of the tenants raised this as an issue and there was representation by at least one of the co-tenants at the hearing. Accordingly, I deemed the co-tenants sufficiently served with the landlord's application pursuant to the authority afforded me under 64 of the Act.

In light of the above, this decision applies to all of the tenants of all seven sites identified by the landlord on the application.

I proceeded to confirm service of written submissions and evidence I had received from the tenants. I was in receipt of written submissions and evidence from the tenants of four rental sites. The submissions from rental sites 3 and 33 were sent to the landlord by way of registered mail and the landlord acknowledged receiving these submissions. Accordingly, the written submissions and evidence of sites 3 and 33 have been considered in making this decision.

The tenant of rental site 1 acknowledged that she had not served her submission upon the landlord and it was excluded from further consideration.

The tenant of site 22 testified that he had sent his submission to the landlord using regular mail. The landlord denied receiving submissions from the tenant of rental site 22. A party who serves documents has the burden to prove service occurred. Although regular mail is an acceptable method for serving evidence, the tenant of site 22 was unable to prove service upon the landlord. As such, I excluded his written submissions and evidence from further consideration.

Having excluded the written submissions and evidence from the tenants of two rental sites, I informed parties that the tenants would be permitted to make their relevant submissions orally during the hearing.

Issue(s) to be Decided

Has the landlord established that that the rents payable for the rental sites, after applying the annual rent increase permitted by the Regulations, is significantly lower than rent payable for similar sites in the same geographic area?

Background and Evidence

The manufactured home park ("the park") currently has 35 sites on a 10 acre parcel of property; however, the landlord is in the process of expanding the number of sites to 55 on the 10 acre parcel. The park was constructed approximately 25 – 35 years ago and the landlord acquired the property approximately 1.5 years ago. Tenants in the park are provided city water, city sewage disposal and garbage collection as part of their monthly rent. In addition, the landlord is responsible for snow removal, street lights and maintenance of common areas.

The current rents payable for the sites range from $265.40 to $288.10 per month and the rents were last increased in January 2016 by the former owner/landlord after approximately 10 years without a rent increase. The landlord calculates that the annual rent increase permitted by the Regulations would result in a monthly increase of only $9.82 to $10.66 respectively yet the landlord has determined that rents payable for similar sites in comparable manufactured home parks are approximately $403.23 per month. Accordingly, the landlord seeks to increase the rents payable for the subject sites to $360.00 per month, an increase of 21% to 34%; on the basis the rent payable for the subject sites is significantly lower than rents payable for similar sites in the same geographic area.

The landlord submitted that before making this AARI in February 2017 all of the tenants in the park were asked to agree in writing to increase their monthly rent to $360.00 and that the majority of tenants did agree. As evidence of this, the landlord provided a listing of the rental sites in the park, referred to as a "rent roll", which provides for several handwritten notations beside many site numbers. Beside 23 of the site numbers on the rent roll is a notation that states: "360 agreed April 1". Beside another site number is a notation "new tenant" and "380". Three sites are indicated as being "owned", presumably meaning the manufactured homes on these sites are owned by the landlord. Accordingly, the landlord has filed this AARI so as to increase the rent for the existing tenants who did not agree to the landlord's request to agree to a rent increase.

In support of its application, the landlord referenced three manufactured home parks that are located a similar distance from the city center where city water, sewage disposal and garbage disposal is provided to tenants ("the comparable parks"). However, the landlord acknowledged that one of the parks used as a comparable is not in the same area as the subject property. The landlord also explained that he did not use manufactured home parks that are on septic systems as a comparable property as

he was of the view that those parks are often plagued with septic disposal issues which would negatively impact the value of those tenancies.

The landlord provided photographs of some of the rental sites in the three comparable parks; and, determined the site rent payable at those parks along with the area of those parks. The landlord noted that the manufactured homes in the other parks are of the same vintage as those in the subject park; however, the manufactured homes in the comparable parks are located closer together than those in the subject park.

In the landlord's written submission the landlord states that the subject park is "superior" to the three comparable parks "in most aspects" although he does not specify the aspects to which he refers, with the exception of the number of sites per acre of land. Based on the landlord's calculations, the subject property currently has fewer sites per acre of land in the park, resulting in less density, than in the comparable parks.

The tenants were of the position that the subject park is not comparable to the three parks the landlord used as a comparable property and the subject park is actually inferior in many ways. Most of the tenants pointed to the same differences that they experience at their park that are not evident at other parks: its location and entrance on a major highway; location next to an industrial area that provides irritating noise and lights much of the time; torn up and dirt roads in the park; a mud pit in front of the park's garbage dumpsters making them largely inaccessible if one is not wearing boots; an unsightly and messy sand berm; and fewer trees. The tenants also provided testimony with the landlord's testimony that one of the three comparable parks is not in the same geographic area as the subject park.

The landlord denied or dismissed most of the inferior qualities of the park as described by the tenants. Considering the parties were in dispute as to the attributes of the subject property in comparison to the other parks I turned to the photographic evidence. I noted that I was provided two black and white photographs of the subject park by the landlord. Although the tenant of site 22 stated that he had provided photographs in his evidence package, his evidence had been excluded. As for the landlord's photographs of the subject park, I noted that both of the photographs appear to be taken at the entrance of the park, one from an aerial view and the other from the road. In one photograph I see two manufactured homes and the roadway at the main entrance and in the other photograph I see the same two manufactured homes plus two others further down the road. The tenants pointed out that the landlord's photographic evidence of the subject park is very insufficient to demonstrate that it is comparable to other parks. In response, the landlord took the position that photographs are not all that relevant and

that the critical factor to consider in establishing market rent is the size of the land where the sites are located.

One tenant pointed out that the landlord did not include another manufactured home park in the area as a comparable property, which she described as being lovely and much different than the subject park, and she determined that the tenants at that park pay rent of $360.00 per month. In the tenant's view, the other park is much nicer yet the landlord seeks to increase their rent to the same amount as at that park. In response, the landlord stated that he had attempted to contact the landlord at that park when researching comparable properties and that landlord did not respond to his enquiries.

Finally, a few of the tenants before me suggested that the other tenants in the park who had provided the landlord with their agreement for a rent increase were bullied or pressured by the landlord to do so. Included in the tenant's evidence before me was "petition" purportedly signed by a number of tenants indicting they were pressured or felt threatened when the landlord approached them with a request to agree to a rent increase. Neither the landlord, nor the tenants, had called any other tenants of the park as a witness at the hearing.

Analysis

Section 36 of the Act permits a landlord to increase the monthly rent by more than the annual rent increase permitted under the Manufactured Home Park Tenancy Regulations (the Regulations), by gaining the tenant's written agreement, or by obtaining the Director's authorization pursuant to an AARI. A landlord may file an AARI in certain circumstances, as described in section 33 of the Regulations, including the following:

> (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;

The landlord has filed this AARI under the ground described above.

Residential Tenancy Branch Policy Guideline 37: *Rent Increases* provides information and policy statements with respect to an AARI, among other things. The policy guideline provides the following, in part, under the heading "Significantly lower rent":

> 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.

Given the reference to rental units and buildings in the paragraph above, it is apparent that the above policy statements contemplate an AARI made under the Residential Tenancy Regulation which also permits an AARI. However, I find it reasonably simple and appropriate to interpret the above statements so that they may apply to an AARI made under the Manufactured Home Park Tenancy Regulations as seen below:

> Where a landlord makes an AARI, the landlord has the burden and is responsible for proving that the rent for the rental site is significantly lower than the rent payable for similar sites in the same geographic area. An additional rent increase under this provision can apply to a single site or several sites in a park. If a landlord wishes to compare the site to rental sites in other parks in the geographic area, he or she will need to provide evidence not only of rents in the other parks, but also evidence showing that the state of the rental sites and amenities provided for in the tenancy agreements are comparable.

The policy guideline also provides for the interpretation of “similar rental unit” that would apply where a landlord seeks an AARI under the Residential Tenancy Regulations. It provides that a “similar rental unit”: *means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.* I am of the view that the interpretation can reasonably be made for “similar rental site” for an AARI made under the Manufactured Home Park Tenancy Regulations, as follows: “similar rental site” *means a site that is comparable in size, age (of the improvements to the site or common areas), ambiance (including view), and sense of community.*

The “same geographic area”, as provided in the policy guideline is: *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. This interpretation may simply be applied to an AARI under the Manufactured Home Park Tenancy Regulations by replacing “rental unit” with “rental site”.

In this case, I was provided disputed testimony and submissions from the parties as to the condition of the amenities and improvements to the common property in the park in comparison to other parks, such as the roads, the garbage disposal area, and sand berm; as well as, disputed positions with respect to inferior ambience of the park due to its location to a major highway, industrial area, and having fewer trees. I find the two black and white photographs that were provided to me by the landlord depicting a very small and limited area of the park are insufficient to show me the amenities, common areas, ambiance or view. As explained earlier in this decision, it is the landlord’s burden to provide sufficient evidence, including photographic or video evidence, so that a decision maker may make a reasonable evaluation of the landlord’s assertions that other sites in the area are similar to the subject sites. Therefore, I find the landlord has failed to provide sufficient evidence to meet this burden.

I reject the landlord’s position that the critical determining factor in establishing market rent payable for the rental sites is the size of the land. As provided in the policy guideline and explained in this analysis, many factors are to be considered in determining whether sites are similar and the meaning of similar rental sites is not limited to size only.

I have also considered the landlord’s submission with respect to other tenants in the park agreeing to increase their monthly rent to $360.00. Section 33(3) of the Regulations provides that I am bound to consider the certain factors in making a decision with respect to an AARI. Section 33(3) provides, with my emphasis underlined:

> (3) <u>The director must consider</u> the following in deciding whether to approve an application for a rent increase under subsection (1):
>
> > (a) <u>The rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect</u>;
> >
> > (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.

As seen in section 33(3)(a) I must consider rent payable for similar sites in the same park in making this decision. Although the landlord asserted that the majority of tenants in the park have agreed, to increase their monthly rent to $360.00, this assertion was not corroborated by copies of the written agreements, or copies of Notices of Rent Increase issued in the approved form. It is important to note that even where a tenant has agreed to an additional rent increase in writing, the landlord remains obligated to give that tenant a Notice of Rent Increase in the approved form and the appropriate amount of time before the increase takes effect, which is a minimum of three full months after the Notice of Rent Increase is given under section 36 of the Act. I was provided no indication that a Notice of Rent Increase has yet been given to any of the tenants who allegedly agreed to a rent increase.

Considering I was not provided a copy of the written agreements signed by the other tenants or a copy of the Notice of Rent Increase served upon those tenants, I am unsatisfied that the rent payable for the other rental sites has or will be lawfully increased to $360.00 per month. Where a tenant has not agreed to an additional rent increase in writing or been served with a Notice of Rent Increase, the rent remains at its current rates. The rent roll suggests that all tenants, except for the “new tenant” pay rents within the same range of $265.40 to $290.00. I note that I was not provided a copy of the tenancy agreement for the “new tenant” to verify that the monthly rent is $380.00 as indicated on the rent roll or the terms of tenancy which may or may not be the same as for the tenants before me. Therefore, I find the landlord has not provided sufficient evidence to establish that the rents payable for the subject seven sites are significantly less than the rent payable for other sites in this park.

Based on all the above findings and reasons, I find the landlord failed to provide sufficient evidence to establish that the rents for the subject sites are significantly lower than rent payable for similar sites in the same geographic area and I dismiss the landlord’s application for an additional rent increase.

As additional information for both parties, the landlord remains at liberty to increase the tenants’ rent by the annual rent increase as calculated in the Regulations by way of serving a Notice of Rent Increase in the approved form.

Conclusion

The landlord's application for an additional rent increase is dismissed due to insufficient evidence.

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 25, 2017

Residential Tenancy Branch