Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARPER GREY LLP PER MICHAEL DROUILLARD, LEGAL COUNSEL and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

The original hearing of this matter addressed an application by the landlord pursuant to section 36(3) of the *Manufactured Home Park Act* ("the Act") for authorization to implement an additional rent increase to all tenants of the manufactured home park ("the Park"). After hearing from all parties and considering the evidence submitted, I granted the landlord's additional rent increase of 7.3 % to be imposed in two (2) phases.

On May 26, 2017 the landlord sought a clarification of my decision, specifically in regard to the time period for the next allowable rent increase. The landlord wrote, "*the landlord wishes to know the earliest – when it may impose a second standard rent increase in 2017."* In response to the clarification request, I wrote to the landlord as follows,

> *To clarify, the landlord may choose to increase the tenants' rental rates again one year after the second phase of the additional rent increase takes effect. For example, if the first phase takes effect October 2016 and the second phase of the additional rent increase takes effect April 2017, then the landlord could choose to impose an allowable annual increase on April 2018.*

The landlord then applied to the Supreme Court of B.C. to have the original decision and clarification decision reviewed. As a result of the judicial review, the matter was returned to the Residential Tenancy Branch to hear further arguments from the landlord. At this reconvened hearing, the landlord submitted that my order for a phased in additional rent increase in conjunction with the clarification decision effectively eliminates the landlord's opportunity to increase the tenants' rent during 2017.

At the reconvened hearing, the landlord was represented by their lawyer. The landlord's property manager (who is also a tenant at the manufactured home park) attended this hearing. One tenant ("Tenant K") attended this reconvened hearing. Regarding service of the notice of

this hearing to the respondents, the landlord relied on an alternative method of service: posting of the Notices of Hearing on the door of each residence. I also note that the landlord applied and was denied approval for substituted service. However, I accept the testimony of the landlord's property manager who testified at this reconvened hearing that he served each tenant with a copy of the landlord's Notice of Hearing. I further accept the testimony of the landlord's property manager that he was able to confirm that each respondent had received their Notice of Hearing and hearing package. In all of the circumstances, I find that the landlord provided sufficient evidence to prove that all tenants/respondents named were sufficiently served with the materials for this hearing.

Issue to be Decided

When is the landlord entitled to impose their next rental increase in an amount allowable for a Manufactured Home Park by the Residential Tenancy Branch?

Background and Evidence

In January 2016, the landlord made an application to increase the rent in an amount greater than the annual allowable increase determined by the Residential Tenancy Branch. I accepted the landlord's submissions that $124,359.79 worth of repairs to the sewage system at the Park were required and necessary. I also accepted the evidence (over 20 written statements and approximately 10 oral submissions at the hearing) of the tenants that the majority of the tenants in the Park were seniors on fixed incomes. Based on the submissions of both parties, I ordered that an additional rent increase at 7.3% be imposed in two phases.

The argument of the landlord is that my original decision and clarification decision regarding the timing of the additional rent increase prohibits the landlord from imposing a standard rent increase until 12 months after the imposition of the last rent increase. Therefore, according to the argument of the landlord, I have effectively prohibited the landlord from imposing another rent increase rent increase in 2017. The landlord submitted that the *Manufactured Home Park Tenancy Act* does not restrict a party from imposing a standard rent increase after having imposed an additional rent increase in the previous 12 months. The landlord stated that the landlord would not be in a better position than if the landlord had imposed a standard rent increase.

The landlord submitted as documentary evidence for this hearing a copy of the Judicial Review decision dated June 23, 2017. The landlord testified that his argument is provided within the decision as the judge outlined it,

> *The Petitioner [the landlord] submits that the Arbitrator's Order was arbitrary because it was illogical and not based on any principled analysis… The Arbitrator's reasons, on one hand, clearly set out that the Petitioner achieved success…On the other hand, the Arbitrator's Order then largely deprived the Petitioner of the purpose of applying for an additional rent increase by disallowing*

> *any further standard rent increases while the additional rent increase was being phased…The Arbitrator provided no reasons …for why it was necessary to deprive the Petitioner …of its right to impose a standard rent increase. . . her decision in this regard doesn't make sense…"*

The landlord argued that an additional rent increase is conceptually different from a standard rent increase. He argued that an additional rent increase is literally "in addition to" the standard rent increase. He argued that my decision infringed on the landlord's right to impose an annual standard rent increase. The landlord argued that I must weigh the landlord and tenant rights and apply the statutory interpretation of the sections and regulations in the Act related to rental increases.

Analysis

When the landlord refers to the landlord's right to impose a "standard rent increase", the landlord is referring to a standard **annual** rent increase. By definition, this increase can only be imposed once a year: annually. However, the landlord was able to impose an additional rent increase above and beyond the standard rent increase. The additional rent increase was phased in: a portion of it (the standard rent increase for 2016 + an additional amount totalling 4%) was to be imposed and, six months later, the landlord was entitled to impose a second additional rent amount (also above the standard annual rent increase amount for 2016 totalling 3.3%) during 2017.

The landlord's argument on judicial review included that I did not inquire, hear and make a determination on a matter of my discretion arising in a dispute resolution proceeding. The landlord argued that I took irrelevant factors into account and not the statutory requirements. My decision was primarily based on the requirements under the Manufactured Home Park Act and Regulations as well as Residential Tenancy Policy Guidelines. Over the course of a three (3) hour hearing held by phone with several tenants and witnesses, the landlord's lawyer received the bulk of the hearing time to present his case for an additional rent increase and, by the end of the hearing (as noted on pages 88 and following of the court report), an opportunity to comment on how the rent increase should be imposed.

The testimony heard from the tenants was almost entirely provided with respect to the practical implementation of a rent increase and The landlord had substantial opportunity at the original hearing to speak to any issues that the landlord, with counsel present and aware of my legislated discretion, that he determined he should address in light of the respondent's testimony. Practicalities including the financial strain of the tenants as well as a variety of other considerations including (and figuring most prominently) the landlord's position requiring additional funds for the excessive costs associated with the sewer system repair were considered and balanced as I deemed necessary considering the principles of fairness that are central to dispute resolution hearings.

In making my original decision regarding the timing for the landlord's rent increase, I relied on section 35(1)(b) as found within Part 4 of the *Manufactured Home Park Tenancy Act* (rent increases).

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.

[emphasis added]

Section 36(3) of the *Act* allows a landlord to apply to the Residential Tenancy Branch for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase (an "additional rent increase").

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.

I make the following observations with respect to the reading of the rent increase section of the Act;

- Part 4 of the Act is titled “rent increase**s”** using plural and this Part of the Act addresses both standard and additional rent increases
- Section 35 of the Act that dictates the timing and notice of rent increases and does not differentiate between a standard increase and an additional increase
- Section 36 encompasses all types of rent increases from standard increases to additional increases

The landlord claims that there is a distinction (a “fundamental difference”) between a standard rent increase and an additional rent increase however I note that there is no distinction made at section 35 between the requirements to meet for a standard increase versus an additional rent increase.

In considering section 36 of the rent increase part of the Act, I also consider the forms that were prepared by the landlord in making his original application for a rent increase. The form titled “Application for Additional Rent Increase” was submitted to the Residential Tenancy Branch by the landlord on January 18, 2016. On the first page of that application, the landlord must provide the “percentage rent increase requested”. There are 3 boxes for the landlord to complete. Under the box labelled “permitted increase”, the landlord wrote 2.9%. Under the box labelled “additional increase”, the landlord wrote 4.4%. Under the box labelled “total increase”, the landlord wrote 7.3%. The total amount sought by the landlord at the original hearing and granted in the original decision included both the standard annual increase permitted by the Residential Tenancy Branch as well as the additional amount sought by the landlord. The calculation created a total amount more than double the standard annual increase.

In reading Part 4 of the Act that provides the practical framework for rent increases, particularly section 35(1)(b) of the Act, I find that this subsection is intended to address both types of rent increases. The section prohibits a landlord from imposing a rent increase (with no distinction between a standard annual rent increase or an additional rent increase) for at least 12 months after if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

I disagree with the landlord’s submissions that an additional rent increase and a standard annual rent increase are fundamentally different. The requirements to meet in seeking an increase (in terms of timing and form of a notice) are the same. Part 4 of the Act provides the legislative framework for both types of increases. The application form allows a landlord to add an amount to a standard rent increase in certain, exceptional circumstances. Within the application form, the additional amount is quite literally added to the standard amount and the two are combined for a total amount sought by the landlord. The provisions that require

additional steps in applying for an additional rent increase instead of a standard annual rent increase are just that: additional or supplemental: adding an additional amount or additional steps to the standard amount or practice. An additional rent increase is inclusive of a standard rent increase amount. Both a standard and additional rent increase serve one purpose: to increase the tenant's rent on a monthly basis.

The synonymous purpose of the standard and additional rent increase is highlighted by their inclusion in the same section of the Act. While they are treated differently in terms of permission or authorization to the landlord, this is a tool of protection from egregious or unconscionable rent increases by landlords. The Residential Tenancy Branch acknowledges both the rights of the tenant and the rights of the landlord under the Act. The two sometimes divergent rights (and obligations) of landlords and tenants must always be weighed and balanced in order to maintain the intention of both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. It is with those rights in consideration that I determined a phased in rental increase in an amount more than twice the standard annual rent increase at the time addressed the needs of both parties at this hearing.

In my original decision, I considered both the need of the landlord to have an increased rental amount and the rights of the tenants against an unreasonable financial hardship as well as other considerations relevant to the consideration of both granting a rent increase and determining how to implement a rent increase. I note that both granting an additional rent increase and determining how to implement the increase are at my discretion in accordance with *Manufactured Home Park Tenancy Act*. Residential Tenancy Policy Guideline No. 37 also provides guidance with respect to a standard annual rent increase and an additional rent increase: one is calculated in accordance with the regulations and one is ordered by an arbitrator on calculation. With respect to rent increases, the guideline states, "[the] tenant's rent can only be increased once every 12 months".

Policy Guideline No. 37 provides factors for an arbitrator to consider in granting an additional rent increase and establishes that the landlord bears the burden of proving the validity of any request for the Director to approve an additional increase. In examining the evidence submitted on an additional rent increase application, an arbitrator will consider a variety of factors including but not limited to;

- *whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;*
- *whether an arbitrator has set aside a notice to end a tenancy within the preceding 6 months; and*
- *whether an arbitrator has found, in a previous application for an additional rent increase that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.*

I also refer the landlord to section 33(4) of the Act that provides me with the discretion to phase in a rent increase. There are no restrictions on the timing or nature of a phased in additional increase: the discretion lies with the arbitrator in determining if a phased in additional rent increase is appropriate. In the original decision, I ordered a phased in additional increase in an attempt to balance the landlord's right to increase the rent after significant and unexpected repairs were required with the possible hardship to the tenants in increasing their rent at once.

I find that both Acts and the attendant Policy Guideline (No. 37) provide further indication that past rent increases will play a role in determining the issuance of a new additional increase. Therefore, the criteria outlined above provide evidence of the arbitrator's obligation to look backwards to consider the timing and implementation of a previous rent increase.

Based on all of the indicators identified above, I find that the standard rental increase and the additional rental increase are not fundamentally different. I find that both types of increase are subject to the same legislative and policy considerations. Further, I find that my discretion allows me to make a decision that determines the timeline under which a landlord may impose an additional rent increase.

The landlord submitted that I have "effectively prohibited the landlord from imposing another rent increase in 2017". I respond that this is merely a function of the time of year that the landlord's matter was heard and determined. I find that I am entitled (and required) to prohibit the landlord from imposing another rent increase (standard annual or additional) for 12 months.

The landlord submitted that the landlord would have been better off to impose the standard annual increase for the park. In 2016 (the year the landlord applied originally for an additional rent increase), the standard allowable increase was 2.9%. In 2017, the standard allowable increase is 3.7%. The total of these two amounts is 6.6% while the landlord was permitted to increase the rent by 7.3% - an additional 0.7% beyond the allowance for the two years. As well, assuming the same timeline for a rent increase, the landlord may have served a notice to increase rent by the standard annual amount at the same time that the landlord made the original application: that date was January 2016.

With the dates in the paragraph above as a guideline, the landlord would have been able to increase the standard amount again in January 2017. My decision allowed an additional amount above the 2016 and 2017 standard increase amounts and allows the landlord to impose a standard annual rental increase in April 2018 – 3 months later than he would otherwise be entitled to. I find that my original considerations of a financial hardship to the tenants outweigh the landlord's opportunity for a standard rent increase amount for a maximum period 3 months. Both procedural fairness and overarching fairness are goals in the residential tenancy dispute resolution process. It is with these principles in mind that my decision regarding implementation of the rent increase was determined. Further, while the practicality of this timeline has been opined by the landlord in that it impacts the landlord financially, that is the very argument that the tenants relied on in requesting a reprieve from a one-additional rental increase in an amount

more than double the standard rental increase. I find that the legislation and the policy of the Residential Tenancy Branch as well as the principles of fundamental justice and fairness of process require me to prohibit the landlord from imposing another rent increase, as originally stated, 12 months after the effective date of the last rental increase.

Conclusion

I confirm my original decision dated May 19, 2017 as well as my clarification dated June 17, 2017. This decision is to be read together with the original decision and clarification decision.

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 20, 2017

Residential Tenancy Branch