



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 419710 BC LTD INC NO 419710  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, OLC, FF, O

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution (the "Application") filed on August 4, 2017 for the following reasons: to dispute an additional rent increase; for the Landlords to comply with the *Manufactured Home Park Tenancy Act* (the "Act"), regulation or tenancy agreement; to recover the filing fee from the Landlords; and for "Other" issues.

One of the Tenants and one of the Landlords named on the Application appeared for the hearing. The Landlord was also an agent for the company named on the Application, and the Tenant was represented by an agent who I note was a resident of the same manufactured home park related to this dispute. All testimony was taken under affirmation.

The Landlord confirmed receipt of the Tenants' Application and the Tenants' paper evidence which was served prior to the hearing. The Landlord also confirmed that he had not provided any documentary evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and to cross examine the other party on the evidence provided.

At the start of the hearing, the Tenant was asked to clarify what relief the Tenants were seeking under the "Other" issues. The Tenants' agent explained that the Landlord had imposed a rent increase on the wrong date in 2016 which is now having a knock on effect to rent increases applicable in 2017. Therefore, the Tenants are seeking clarity of this issue.

Issue(s) to be Decided

- Is the rent increase imposed on the Tenants in 2016 compliant with the Act?
- Does the Landlord have to issue a revised notice of rent increase?
- When is the Landlord allowed to impose the next rent increase in this tenancy?

Background and Evidence

The Tenants started renting the home site in the manufactured home park (the "Park") on September 1, 2013. A written tenancy agreement was signed by the parties requiring rent to be paid on the first day of each month.

The Tenant's agent explained that on June 30, 2016, the Landlord attended all of the sites in the Park and served the residents with a notice of rent increase on the approved form. This notice of rent increase, dated June 28, 2016, was provided into evidence and shows the increased rent amount of \$481.70 payable on October 1, 2016.

The Tenants' agent explained that during this time the Tenants were away on vacation and did not receive the notice of rent increase until they returned on July 3, 2017 where they discovered the notice of rent increase which was attached to their door.

The Tenants' agent submits that because the Act allows three days for the rent increase notice to be considered as received, on this basis, the increased rent payable on the notice of rent increase should have been corrected and payable starting November 1, 2016, and not October 1, 2016.

The Tenants' agent explained that the Tenants wrote to the Landlord on July 3, 2016 indicating the error on the notice of rent increase and asked for this to be corrected. However, no response was forthcoming from the Landlord. Therefore, the Tenants paid the increased amount of rent starting on November 1, 2016. However, the Tenants were then personally served with another notice of rent increase on June 29, 2017 requesting the Tenants to pay the increased amount of rent of \$499.50 starting October 1, 2017.

The Tenants' agent stated that the Tenants again wrote to the Landlord explaining that the new notice of rent increase could not be imposed because it was invalid due to the incorrect date the increased amount was payable on. Therefore, the Tenants have refused to pay the increased amount pending the outcome of this hearing and confirmed that for November 2017, the rent paid to the Landlord was \$481.70.

The Tenants seek relief by ordering the Landlord to comply with the Act by providing a valid notice of rent increase and an order that the increased rent cannot be imposed on the Tenants until the month of November of each year in this tenancy.

The Landlord disagreed with the Tenants' evidence and their submissions. The Landlord testified that he served the first 2016 notice of rent increase on June 27, 2016 and not on June 30, 2016 as submitted by the Tenants. I asked the Landlord why was it that the notice of rent increase was dated for June 28, 2016 if he had indeed served it on June 27, 2016. The Landlord replied stating that he had a back injury and was not sure if he could serve all the notices of rent increases to the residents of the Park on June 27, 2016. Therefore, he prematurely dated it for June 28, 2016 even though he claims to have actually served them on June 27, 2016.

The Landlord testified that he had a witness with him when he served the residents of the Park with the notice of rent increases on June 27, 2016; that same witness was present when he attached the notice of rent increase to the Tenants' door on June 27, 2016. The Landlord was asked whether he had any evidence from the witness to confirm his oral testimony, but none was provided for this hearing.

The Landlord was also asked why he had not responded to the Tenants' letter sent to him on July 3, 2016. The Landlord explained that he had contacted the Tenants verbally and informed them that he had served the notice of rent increase on June 27, 2016. The Landlord confirmed that he did not send the Tenants a written response to this effect.

The Landlord insisted that the Tenants' increased rent for 2016 was payable on October 1, 2016. The Landlord asserted that therefore, the notice of rent increase served to the Tenants in June 2017 correctly details October 1, 2017 as the date the increased amount is payable. The Landlord submitted that the Tenants are lying about receiving the 2016 notice of rent increase in July 2016.

The Tenants' agent asserted that the Landlord was the one lying in this hearing because she is also a resident of the Park and she received her 2016 notice of rent increase on June 30, 2016 after it had been posted to her door on the same day by the Landlord. The Tenants' agent testified that the Landlord had not served the residents, including her, with the notice of rent increase on either June 27, 28, 29 or 30, 2016.

The Tenants' agent stated that the Tenants had brought this Application against the Landlord because when the Tenants informed the Landlord that they were not going to pay the increased amount of rent, the Landlord threatened them with a daily late rent

fee of \$3.00. The Tenant testified that the Landlord has jeopardised previous sales of manufactured homes by imposing these late fees. The Tenant disputed any contact by the Landlord either verbally or in writing.

### Analysis

Part 4 of the Act explains the rent increase provisions that parties must follow during a tenancy. Section 34 of the Act states that a landlord must not increase rent except in accordance with the Act. Section 35 of the Act states:

**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.*

[Reproduced as written]

I begin my analysis by first making findings on the 2016 notice of rent increase. When a landlord serves a tenant with a document, the landlord bears the burden to prove service of that document. Therefore, I must first determine what date the Tenants were served with the 2016 notice of rent increase.

The Landlord relied only on his oral testimony that he served the Tenants with the 2016 notice of rent increase on June 27, 2016. However, I find the Landlord has failed to provide any corroborating or supporting evidence of service on this date. The Landlord claimed to have a witness present with him on June 27, 2016 but provided no witness evidence for this hearing. Neither, did the Landlord provide any evidence from other residents in the Park who could have corroborated service on this date.

I find it reasonable to expect the Landlord would have provided such evidence because the date the 2016 notice of rent increase was served is the key issue in this dispute.

Certainly, the Landlord had sufficient time to furnish such evidence to prove service. I find the Landlord's explanation of the June 28, 2016 date to be weak and not believable.

Furthermore, I find that the Tenants wrote to the Landlord on the day they claim they got back from vacation. This gives credibility and plausibility to evidence that they did not receive the 2016 notice of rent increase until July 3, 2016.

After considering the totality of the above evidence, I prefer the Tenants' version of events and find that the Landlord failed to serve the 2016 notice of rent increase to the Tenants before the end of June 2016. Therefore, I concur with the Tenants and find that they rightly paid the increased amount of rent on November 1, 2016 pursuant to the Act.

Flowing from the above finding, the Landlord would not have been able to impose the 2017 rent increase payment until November 1, 2017; this being 12 months after the last increase came into effect pursuant to Section 35(1) (b) of the Act.

The Act states that if the date of a rent increase does not comply with the Act, the notice takes effect on the earliest date. The Act places no requirement on the Landlord to provide the Tenants with a new notice of rent increase detailing the correct date. As a result, I find the 2017 notice of rent increase served to the Tenants on June 29, 2017 is valid and compliant with the Act; apart from the effective date the new rent amount is payable which is now corrected to November 1, 2017.

Accordingly, the Tenants are required to pay rent for November 2017 onwards in the amount of \$499.50. Any balance of rent owing for November 2017 must be paid to the Landlord forthwith as the Tenants do not have authority under the Act to withhold the increased amount.

The *Manufactured Home Park Tenancy Regulation* only permits a landlord to charge a late rent payment fee of \$25.00 if the tenancy agreement allows for this fee. Therefore, the Landlord cannot charge the Tenant a daily fee of \$3.00 per day.

As the Landlord disputed the Tenants' Application, and the Tenants have been successful in the outcome of this dispute, I grant the Tenants recovery of the \$100.00 filing fee pursuant to Section 65(1) of the Act. The Tenants may achieve this relief by deducting \$100.00 from their next installment of rent pursuant to Section 62(2) of the Act. The Tenants may want to serve the Landlord with a copy of this Decision when making the reduced rent payment.

I also provide the following cautions to the parties. The Landlord is cautioned that he bears the burden to prove service of a notice of rent increase. Therefore, the Landlord should take additional steps and measures to document and retain evidence of service affected under a tenancy. In addition, the Landlord should carefully consider the deeming provisions of the Act and seek to serve such documents in plenty of time that would potentially avoid such a dispute in the future.

The Tenants are cautioned that the deeming provisions of the Act are intended to determine when a document has been considered served **in the absence** of evidence to show they were received earlier, such as a party's acknowledgment of the date they received the document. The deeming provisions do not allow additional time if there is evidence of the documents being received prior to the deeming provisions taking effect.

### Conclusion

The rent increase imposed by the Landlord in 2016 takes effect on November 1, 2016. Therefore, the Landlord was not able to impose the next rent increase until November 2017. The Landlord may not impose the next rent increase payable until November 2018 or in accordance with the Act. The Tenants rent payable from November 1, 2017 onwards is \$499.50 until it is changed in accordance with the Act. The Tenants may recover their filing fee by deducting \$100.00 from rent.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 02, 2017

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Residential Tenancy Branch