



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on November 1, 2017, and amended by an Amendment to an Application for Dispute Resolution (the "Amendment"), received at the Residential Tenancy Branch on January 4, 2017 (the "Application"). The Landlord applied for an additional rent increase, pursuant to section 36 of the *Manufactured Home Park Tenancy Act* (the "Act").

The Landlord was represented at the hearing by J.N. and A.K., agents. The Tenants were represented at the hearing by K.D., an advocate. The only Tenant who attended the hearing was N.M. All testimony was provided under solemn affirmation.

On behalf of the Landlord, J.N. testified the Landlord's Application package was served on the Tenants by registered mail on November 10, 2017. On behalf of all Tenants, K.D. acknowledged receipt. In addition, J.N. stated the Amendment, referred to above, was served on the Tenants by registered mail, with the exception of the occupants of units #7 and unit #1A, who were sent the documents by regular mail. K.D. acknowledged receipt of the Amendment on behalf of all tenants.

The Tenants submitted documentary evidence in response to the Application. On behalf of the Tenants, K.D. testified the evidence was served on the Landlord by registered mail on January 12, 2018. J.N. acknowledged receipt on behalf of the Landlord.

No other issues were raised with respect to service or receipt of the above documents during the hearing. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord submitted an Amendment, referred to above, which confirmed the Landlord wished to discontinue the Application relating to units #40, #53, and #14. The occupants of units #40 and #14 have agreed to the proposed increase; the former occupant of unit #53 is deceased and the site is vacant. Accordingly, this Decision will only address rent increases with respect to the following sites: #42, #63, #38, #1, #1A, #7, #56, #104, #111, and #27.

In addition, the written submissions provided by the Tenants' advocate correctly state that, effective December 11, 2017, the regulations were changed to eliminate additional rent increases based on rent being significantly lower than rent payable for other similar sites in the same geographic area. However, in this case, the Application was received on November 1, 2017, before this provision was repealed. Accordingly, the Application proceeded based on the statute in effect at the time the Application was made.

Issue to be Decided

Is the Landlord entitled to an order permitting rent increases in amounts greater than the amount calculated under the regulations?

Background and Evidence

The Landlord operates a manufactured home park in a rural area (the "Park"). The Landlord sought rent increases in amounts greater than the amount calculated under the regulations.

Specifically, the Landlord sought phased-in increases to the pad rents in the Park as follows:

Site #	RENT				
	Current	Jun 2018	Mar 2019	Dec 2019	Sept 2020
42	\$359.42	\$400.00	\$440.00	\$480.00	\$520.00
63	\$359.63	\$400.00	\$440.00	\$480.00	\$520.00
38	\$359.85	\$400.00	\$440.00	\$480.00	\$520.00
1	\$366.70	\$407.00	\$447.00	\$487.00	\$527.00
1A	\$369.40	\$409.00	\$449.00	\$489.00	\$529.00
7	\$376.94	\$417.00	\$457.00	\$497.00	\$537.00
56	\$376.94	\$417.00	\$457.00	\$497.00	\$537.00
104	\$402.55	\$443.00	\$483.00	\$508.00	**
111	\$402.55	\$443.00	\$483.00	\$508.00	**
27	\$402.55	\$443.00	\$483.00	\$508.00	**

** The proposed increases for these units in September 2020 are to be in accordance with the annual increase allowable under the regulations at that time.

On behalf of the Landlord, J.N. provided testimony with respect to the Park, and two comparable parks in the same geographic area, roughly eight kilometres away (the "Comparable Parks"). He testified the Park includes 43 single-wide and 34 double-wide sites. J.N. confirmed the proposed increases would impact only the 10 pads which pay the lowest pad rent in the Park. The sites in the Park are, on average, larger than the sites in the Comparable Parks. Submitted in support were site plans for several of the sites, photographs of the parks, and a table indicating the average pad rent paid per square foot.

J.N. also testified the Park is a more desirable place to live due to the surrounding properties. The Park is bordered on three sides by a regional park, a farm, and residential housing. However, the Comparable Parks are bounded by a railway line and a highway. In addition, the table referred to by J.N. indicates that the Park includes a clubhouse and recreational vehicle storage, whereas the Comparable Parks do not.

Addressing the proximity of various services and amenities, J.N. again referred to the table prepared for this hearing. He testified the Park is located 1.3 km from shopping, 1.2 km from the local hospital, 2.0 km from a bank, and 1.0 km from a recreation centre. On the other hand, the two Comparable Parks are located from 5.0 km to 8.0 km from these amenities. J.N. also advised the Park is on a sewer system, whereas the comparable parks are on a septic system.

The Landlord submitted signed letters from the owner of the Comparable Parks, G.L. The first indicates the lowest pad rent is \$442.78 per month, whereas the highest pad rent is \$480.00 per month. The second confirmed the lowest pad rent in that park is \$439.66 per month, whereas the highest pad rent is \$480.00 per month.

In reply, K.D. submitted that many of the Tenants who would be impacted by a rent increase have lived in the park for many years. One such Tenant is a single mother, several have fixed incomes, and several have health issues that require hospital care in other communities. An increase would create an additional financial burden on the Tenants and would put the Tenants at risk of losing their homes. K.D. submitted these Tenants should not have to pay the same pad rent as other tenants who recently moved into the Park.

The Tenants provided written submissions regarding other parks in the area. Although not specifically referred to during the hearing, they appear to be based on information obtained by N.M. Although these submissions refer to low and high rents in each park, they do not address on-site services or amenities, or refer to distances from other services or amenities in the community. In oral testimony, N.M. echoed the submissions of K.D., emphasizing the financial burden a rent increase would have on the Tenants.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 36 of the Act, in effect at the time the Application was made, permits a landlord to apply for a rent increase where the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit. The Landlord's Application has been made on this basis.

Policy Guideline #37, in effect at the time of the Application, provided specific guidance when considering an application made on this basis. It states, in part:

In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors. The arbitrator will determine which factors are relevant to the application before him or her:

- *the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;*
- *the rent history for the affected unit for the preceding 3 years;*
- *any change in a service or facility provided in the preceding 12 months;*
- *any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;*
- *a relevant submission from an affected tenant;*
- *a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation;*
- *whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;*
- *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.*

An arbitrator's examination and assessment of an AARI will be based significantly on the arbitrator's reasonable interpretation of:

- *the application and supporting material;*
- *evidence provided that substantiates the necessity for the proposed rent increase;*

- the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation; and
- the tenant's relevant submission.

...

The rent for the rental unit may be considered "significantly lower" when (i) the rent for the rental unit is considerable below the current rent payable for similar units in the same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit...

"Similar units" means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

The "same geographic area" means 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.

Additional rent increases under this section will be granted only in exceptional circumstances... To determine whether the circumstances are exceptional, the arbitrator will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

[Reproduced as written.]

In this case, the Landlord has provided oral testimony and documentary evidence indicating that the pad rent payable is less than in two Comparable Parks. This was confirmed in signed letters provided by the owner of the Comparable Parks. In addition, the Landlord has provided oral testimony and documentary evidence confirming the Park is closer to services and amenities such as shopping, a hospital, financial services, and a recreation centre, than the Comparable Parks. Further, the Park is on a sewer system, includes a clubhouse and recreational vehicle storage, and is in a quiet location. On the other hand, the Tenants' submissions focused primarily on the financial impact on the Tenants, health issues, and the duration of the tenancies. I am satisfied and find that the Landlord has provided sufficient evidence to show the rents are lower in the Park than those in a comparable geographic area. As a result, the Landlord is entitled to a rent increase.

Policy Guideline #37 confirms an arbitrator's ability to order a phased increase. Based on the above, including the submissions of the Landlord, I find that a phased rent increase is appropriate. I order that the Landlord may increase rents in 2018, 2019, and 2020, which increases may be implemented in June of each year, as follows:

Unit #	Current rent	Permitted increase
42	\$359.42	7.0%
63	\$359.63	7.0%
38	\$359.85	7.0%
1	\$366.70	7.0%
1A	\$369.40	7.0%
7	\$376.94	7.0%
56	\$376.94	7.0%
104	\$402.55	5.0%
111	\$402.55	5.0%
27	\$402.55	5.0%

The above phased-in increases are ***in addition to*** any allowable annual rent increases made in accordance with the *Act* and Regulation. For example, the first allowable increase for unit #42, to be implemented in June 2018, is 11.0% (7.0% + 4.0%).

Conclusion

The Landlord is granted an order that the rents may be increased as described above. The Landlord must provide the Tenants with a Notice of Rent Increase in the approved form, providing the required three month notice period, and must serve the Tenants with a copy of this entire Decision along with the Notice of Rent Increase.

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: February 8, 2018

Residential Tenancy Branch