Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI OLC FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Manufactured Home Park Tenancy Act* ("the Act") for orders as follows:

- An Order directing the landlord to comply with the *Act* pursuant to section 55;
- Disputing a Rent increase above the annual allowable amount pursuant to section 36; and
- A return of the filing fee pursuant to section 65.

Both the landlord and the tenants attended the hearing. The tenants were represented by tenant, G.G., who stated that he had full authority to speak on behalf of all named tenants. The landlord was represented at the hearing by counsel, H.D., with the park manager and other persons employed by the corporate landlord in attendance.

Both parties confirmed receipt of each other's evidentiary packages, while the landlord confirmed receipt of the tenants' application for dispute resolution.

Issue(s) to be Decided

Can the tenants dispute an additional rent increase?

Should the landlord be directed to comply with the *Act*?

Can the tenants recover the filing fee?

Preliminary Issue – Standing at the Hearing

Following introductory remarks, tenant G.G. who was the spokesperson for the tenants sought an order to add to the present application, all residents of the manufactured home park. G.G. explained that he had spoken with an information officer at the *Residential Tenancy Branch* and was instructed to make this request at the hearing because the tenant was told it was "impractical" to submit 200 separate applications.

Counsel for the landlord objected to this motion, arguing that he would have prepared very different for the proceedings had he been required to speak to 200 separate applications.

Residential Tenancy Rules of Procedure 7.12 & 7.13 discusses when another person may be added to the proceeding. They note, “In exceptional circumstances, a party may make an oral request at the hearing to add another party.” *7.13* states, “At the request of a party under Rule *7.12*, the arbitrator will decide whether a person will be added as a party.”

After considering the tenants’ request and reviewing the evidence submitted as part of their evidentiary package, I declined to allow any other persons to be added to the proceedings. I found that the number of persons whom the tenants sought to add to the proceedings would unfairly prejudice the landlord who had prepared to respond to an application from the six persons named in the proceedings. For these reasons, I declined to allow the tenants to add persons to the proceedings.

Background and Evidence

The tenants have submitted an application disputing the landlord’s alleged rental increase for 2018. The tenants argued that the landlord is demanding a 9.2% rental increase for April 2018. They stated that this was 5.2% above the allowable, legislated amount of 4%.

In their application for dispute resolution, the tenants noted that it was their position that a 2016 municipal sewer connection for which the landlord had claimed a 5.2% return was designated “common property” for the purpose of the proportional increase in local government levies. The tenants argued that the sewer connection is an internal business arrangement between the landlord and the Municipality and its cost should not have affected the tenants’ rent.

Counsel for the landlord argued that this was not a rental increase above the legislated amount, and was in fact a 4% rental increase as allowed per the terms of the *Act*, along with an increase of 5.2% in local government levies and public utilities serving the property as is allowed by *Section 32* the *Manufactured Home Park Regulations.*

The tenants argued at the hearing, that the use of the *Act* and *Regulations* in this manner was an attempt by the landlord to raise the rent above the allowable, legislated amount.

The tenants submitted over 145 pages of evidence to support their position. Among these documents was a nine page “background” on the events which led to the 5.2% of the levy. The tenants maintained that the landlord is seeking to raise the rent through deceitful means, arguing that sewer disposal is not a common area or common property, and was in fact “a standard term service wherein all costs are embedded to the Landlord’s account.”

The tenants said that the landlord justified the levy of 5.2% as a result of an “over-reaching” interpretation of the *Act*. The tenants claimed that this demand was “based on false assumptions and unethical Act interpretation.” The tenants referenced a past Arbitration from November 2017 where the parties reached a settlement agreement and the landlord withdrew their application for an additional rent increase, as evidence of the landlord’s true intentions to raise the rent above the allowable limit.

A review of the November 2017 settlement reached by the parties showed that, amongst other matters, the landlord agreed to withdraw their application for an Additional Rent Increase, that the landlord was at leave to implement normal annual rent increases in accordance with the *Act* and regulation, and that the parties agreed that a rent reduction of $35.25 would be re-instated starting April 2018. At that hearing the tenants were represented by legal counsel, while the landlord was not.

The final portion of the tenants’ application disputing the rental increase centered on the issue of what they referred to as proportionality. In their document marked, ‘Supplemental Evidence Submissions’ at page 8 and 9, the tenants submitted, “proportional means corresponding to the amount of an annual increment of a qualified levy. In this case, the Landlord is applying the levy amount that has built up over the entire life of the levy – in one year. The definition of that could be ‘cumulative’ which is the opposite of ‘incrementally proportional’.” The tenants continued by submitting that, “even if their claims that the sewer connection is not “common property” and the “proportional” intent of the *Act* has not been met, the Landlord is contravening the local municipality Sewage Works Bylaw by failing to meter their sewage discharge through the local municipality sewer connection.”

The tenants submitted that some charges which were previously embedded in the costs of on-site sewage treatment are now being charged to them twice. In particular the

tenants cited the cost of the electrical supply and argued that the landlord was not actually recovering his investment, but profiting from it.

In addition to an application disputing an additional rent increase, the tenants have applied for an Order directing the landlord to comply with the *Act.* The tenants argued that the landlord had "harassed" them for profit arising from an investment in a different sewage disposal method. They argued in their application that this harassment took the form of:

i) ignoring letters of request for information
ii) issuing false and misleading rent-increase notices to the tenants
iii) "dragging" tenants through a stressful and costly arbitration that they had no intention of "prosecuting"
iv) Forcing tenants into unnecessary legal costs.

The application continued by stating, "the tenants want the landlord to cease this type of misinformation and disruptive property management."

Counsel for the landlord disputed the tenants' position and questioned the manner in which they claim the landlord is meant to have violated the *Act*. Counsel sought to clearly highlight the fact that this was not the landlord's Application for an Additional Rent Increase, that it was the tenants who had brought the application disputing a regular, permissible rental increase which included an increase in the local government levies as allowed by the *Act* and *Regulations*.

Analysis

In order to understand the issue at hand, one must begin by examining which operating costs may be "passed through" to a tenant under the *Act* and *Regulation*. Section 32 of the *Regulations* provides a list of definitions related to the matters of rental increases. This section notes, "proportional amount" means the sum of 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.

This section must be read in conjunction with form #RTB-11A. This form entitled, "Notice of Rent Increase – Manufactured Home Site," provides a very detailed breakdown on the manner in which a rental increase for a manufactured home park site is calculated.

The tenants argued that the increase in the levy is not proportional. In the oral testimony of tenant G.G., the tenants submitted that use of a start-up of a levy in its first year as the basis for a “proportional” increase is not the intent of the “proportional increase” in section 32 of the *Regulation*, and that it is a totally new charge and a material change to the tenancy agreements signed by the parties.

Counsel for the landlord submitted that this was not the correct meaning of “proportionality” under section 32, that no legal doctrine of proportionality existed, and that the costs incurred by the landlord were real, as documented through numerous invoices and that they were in line with what was allowable under the *Act* and *Regulations*.

After reviewing the large volume of evidence submitted by the tenants, I find that their argument fails to identify any legal principle on which to base their argument concerning proportionality. While, I appreciate their efforts, the tenants have failed to show that the costs absorbed by the landlords are not tied to costs associated with the conversion to sewers and a specific communication from the municipality requesting the landlord to pay for sewer charges.

In a letter dated, August 23, 2017, the municipal manager of engineering services states, “a tenant of the manufactured home park recently raised a question as to the appropriate party to whom the annual sewer levies should be charged. Accordingly, the Township completed a legal review of relevant bylaws, and determined that all sewer user levies for the property should be sent to the registered owner of the property and not individual tenants.”

The tenants submitted decision #2XXXX8 rendered at an arbitration before the *Residential Tenancy Branch* in 2015 as evidence that a sewer connection upgrade as required by the local municipality did not meet the standard required to permit an additional rent increase under the *Act*. In arbitration #2XXXX8, the landlord sought to increase the rent on 140 manufactured home park sites by 7.6%. At this time, the annual allowable amount of rent increase was 2.5%, and the landlords sought an additional 5.1% in rent as submitted on an Application for Additional Rent Increase.

I find that the facts of arbitration #2XXXX8 differ greatly from those present at the hearing before. Most notably, the above cited file was an application brought on behalf of the landlord to raise the rent above the legislated allowable limit, while in this case, it

is the tenants who have applied to dispute a rental increase which is permissible under the *Act* and *Regulations*.

There is no evidence that the landlord has presently applied for an Additional Rent Increase, and in fact they agreed during a November 2017 settlement to withdraw their application for an Additional Rent Increase. They have simply issued a regular rental 4% increase to the tenants and have included an amount of 5.2% that reflects a percentage increase in local government levies and public utility fees as is permissible under the *Act* and *Regulations*.

Section 36(2) of the *Act* states, “A tenant may not make an application for dispute resolution to dispute a rent increase that complies with section 36(1).” After reviewing the evidence it is evident that the landlord is attempting to impose a rental increase which is calculated in accordance with the regulations (4%) and seeking to recover an extra 5.2% for an increased utility cost. This rental increase complies with section 36(1).

During the hearing, and in their written evidence, the tenants sought to establish that the true motivation for adding the levies to their rent was an attempt by the landlord to deceitfully increase their rent above the allowable limit. The tenants cited as proof of this, the past settlement reached by the parties where the landlord withdrew his application for an additional rental increase.

I find that this allegation is difficult to accept. During the November 2017 arbitration where the parties reached a settlement, the tenants were represented by counsel while the landlord was not. The “malicious behaviour” on the part of the landlord cited by the tenants (specifically a tax being incorrectly issued directly to them) appears to have arisen from mistakes made by of the local municipality and not the landlord.

The tenants did not have to agree to any settlement. The November 2017 settlement arose out of the landlord’s application for an Additional Rent Increase and the tenants would have been afforded an opportunity to argue their case against the landlord’s application. Ultimately, I find that this argument about the previous settlement is irrelevant to the matter before me today; that is, whether the tenants can dispute a utility levy as an Additional Rent Increase and whether the landlord should be directed to comply with the *Act.*

I find that the cost incurred by the landlord in converting the park to a municipal sewer connection to be one which is allowable under the *Act* and *Regulations* and find that the

figures cited by the landlord in the Notice of Rent Increase to correspond with the real costs borne by them as established by the invoices submitted into evidence before me. I find that no Additional Rental Increase beyond the permissible 4% was presented by the landlord, and the tenants failed in their attempt to connect the landlord's action to a past settlement reached by the parties as an indication of the bad faith in the manner in which these increases were levied and the exploitation of a "loophole" under the *Act*.

While I found these arguments of interest, I find that they have little weight as it is impossible to impute such a motive based on the actions of one party at a separate hearing when they did not have legal counsel.

The arguments raised by the tenants regarding proportionality, again, while of interest, are not based on any legal doctrine and fail to consider the real costs absorbed by the landlord and the fact section 32 of the *Regulations* provides that they can be divided equally between the sites in the park. For these reasons, I dismiss the tenant's application disputing an additional rental increase.

The second portion of the tenant's application concerned an application for an Order directing the landlord to comply with the *Act*. After reviewing the evidence and considering the oral submissions of the tenants, I find little indication that the landlord failed to fulfill his duties under the *Act*.

It is evident that the parties have a strained relationship and that there is some lingering tension of a settlement agreement reached by the parties in November 2017; however, this provision is intended to correct instances where the landlord has failed to comply with the *Act*, the regulations or the tenancy agreement.

The tenants submitted that the landlord had failed to reply to their letters of request for information, had issued false and misleading rent-increase notices and had cost the tenants a great deal of money and time when pursuing the past arbitration of November 2017. I find that all of these issues relate to personal grievances and better suited to a customer service environment. The matters identified in the tenants' application for dispute resolution while perhaps annoying to them do not represent a failure by the landlord to comply with the *Act*, the regulations or the tenancy agreement.

Conclusion

The tenants' application disputing a rental increase in excess of the annual allowable amount is dismissed.

The tenants' application for Orders directing the landlord to comply with the *Act* is dismissed.

I find that the notice of rental increase dated December 20, 2017 which was to take effect on April 1, 2018 to be valid.

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: May 15, 2018

Residential Tenancy Branch