Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Manufactured Home Park Tenancy Act* (the "*Act*") to dispute a rent increase, for claims of harassment from the Landlord and for the recovery of the filing fee paid for this application.

One of the Landlords and both Tenants were present for the duration of the teleconference hearing.

The Tenants confirmed receipt of the Landlord's evidence. The Landlord noted that two respondents were named on this dispute, while only one package with the Notice of Dispute Resolution Proceeding and copies of the Tenants' evidence was received.

The Landlord clarified that she is the Power of Attorney for the other respondent named and that they have the same address for service. She noted that the package received from the Tenants was addressed to both of the respondents. The Landlord requested an adjournment due to only receiving one package for both respondents.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* states that both respondents must be served with the hearing documents and copies of the applicants' evidence. Similarly, Rule 3.16 requires the respondent to serve copies of their evidence to each applicant.

As such, I find that both parties were in error to only serve one package to the other party and not serve each applicant and each respondent with separate packages. I also note that the package the Tenants sent was addressed to both Landlords, and therefore

I find the claim that the other respondent was not aware of the hearing to be unreasonable. Instead, I find that the Landlord should have shared the information as the package was addressed to both respondents at the same mailing address.

However, prior to continuing with the hearing, I confirmed that the Landlord present on the call had the information necessary to represent both respondents. As the Landlord confirmed she was able to speak to the tenancy and the claims on the Application for Dispute Resolution, the hearing proceeded.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written 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.

Issues to be Decided

Is the rent increase in compliance with the *Manufactured Home Park Tenancy Act* and the *Manufactured Home Park Tenancy Regulation?*

Should the Landlord be ordered to comply with the *Manufactured Home Park Tenancy Act,* and/or the *Manufactured Home Park Tenancy Regulation?*

Should the Tenants be granted the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenants testified that the tenancy began in 1994. They received a rental increase form on July 15, 2018 to increase the monthly rent from $255.00 to $268.00, set to take effect on January 1, 2019. A tenancy agreement signed December 3, 2002 was submitted into evidence. This tenancy agreement did not state the amount of the monthly rent at the time it was signed.

The Landlord clarified during the hearing that they are in the process of amending the rental increases due to the change in calculations that took effect on September 26, 2018. As a result of this change, the rent increase amount will be reduced.

The Tenants testified that they are not disputing the amount of the rent increase and stated their understanding of the changes from the provincial government that will change the amount of their rent increase. They provided further testimony that they are disputing the rent increase as they don't believe the rent should be increased if regular maintenance of the manufactured home park is not completed.

The Tenants submitted that they were promised a traffic light in 1994, which was never installed. They also noted that they had to install a fence to keep out unruly and disruptive neighbours and that they sweep rocks off the road on a daily basis to keep it clear. The Tenants also mentioned garbage and other debris left around the manufactured home park.

Although concerned with the Landlord's lack of regular upkeep of the park, the Tenants also stated their concern regarding a $5.00 per day late rent payment fee that was instated by the Landlord with the last rent increase. An undated letter regarding the late payment fee was submitted into evidence and states that as of January 1, 2019, a $5.00 per day late fee will be charged to tenants.

The Tenants submitted that if this fee is allowed, they should also get a $5.00 reduction in rent for paying rent early.

The Landlord testified that the rent increases are calculated in accordance with the *Act* and *Regulation* and are issued based on inflation and sustainability of the manufactured home park. She submitted that regular maintenance of the manufactured home park is completed. The Landlord noted that there was no evidence regarding a promise for a traffic light in 1994 and she is unsure of whether this was actually promised. She also questioned why this was not brought up by the Tenants until 2018.

The Tenants also applied for other concerns, which they clarified were related to their claims of harassment from the Landlord. They provided clarification by stating that she provided them constant notices regarding vehicles on their property and the condition of their manufactured home pad. They referenced letters dated June 3, 2018 and August 2, 2018, both of which were submitted into evidence.

The June 3, 2018 letter states that the Tenants have a responsibility to keep the surroundings clear of obstructions and also that utility trailers cannot be stored on the property without permission. The letter provided until July 3, 2018 for the shed and

debris in the backyard to be removed, as well as the utility trailer. Photos of the property were included in the letter. The letter was signed by the Landlord that attended this teleconference hearing.

The letter dated August 2, 2018 was a follow-up to the previous letter. In this letter, the Landlord thanked the Tenants for removing the trailer, some wood on the property and for mowing the weeds in front of the home.

The remaining concerns were noted as the condition of the back shed and debris in the back area of the property were mentioned and the Tenants were asked to submit a plan to removal of these items by August 31, 2018. Photos of the shed and debris were included in this letter.

The Landlord referenced clauses in the tenancy agreement which do not allow additional recreational vehicles on the property. The Landlord sated that after her letter on August 2, 2018 asking for a written plan regarding removal of the shed and debris in the yard, she did not hear back from the Tenants. She asked the Tenants about this in person and when they were not clear with their answer, she sent another letter.

The Landlord stated that this third letter was not submitted into evidence as it was not issued in time to be included in the evidence package. The Landlord submitted into evidence a photo of the shed in question which she states is in disrepair.

The Landlord agreed that they have implemented a new late payment fee of $5.00 per day, set to take effect on January 1, 2019. She also noted that the Tenants did not approach her regarding their concerns prior to filing an Application for Dispute Resolution and that they might have been able to talk about these issues outside of a hearing. The Tenants responded by stating that since they feel bullied and harassed by the Landlord, they were not comfortable approaching her outside of the Dispute Resolution process.

Analysis

In regard to the Tenants dispute of the January 1, 2019 rent increase, I refer to Sections 36(1) and 36(2) of the *Act* which state the following:

> **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.

I find that the parties were in agreement that the amount of the increase was in compliance with Section 36(1). I also accept the testimony of the Landlord that they are in the process of amending the increase amount, to reflect the changes issued by the Residential Tenancy Branch on September 26, 2018.

As such, I find that Section 36(2) applies, and the Tenants may not dispute the rent increase.

As for the additional claim of the Tenants for the Landlord to stop harassing them, I do not find evidence before me that the Landlord is harassing the Tenants. When asked to clarify what they meant by harassment, the Tenants stated that it was the “constant notices” that were stressful for them.

However, in the evidence submitted prior to the hearing, I find two letters from the Landlord to the Tenants, one provided in June 2018 and one in August 2018. I also accept the Landlord’s testimony that there is a third letter that was provided to the Tenants recently and therefore not included in the evidence.

As such, based on insufficient evidence, I do not find that the Tenants proved, on a balance of probabilities, that they are experiencing harassment from the Landlord.

As for the $5.00 late fee that was implemented for January 1, 2019, I note that this is not a fee that has been charged to the Tenants, nor has it taken effect yet. As such, I decline to make a decision regarding this fee, as this is not the matter before me and not an issue that is currently impacting the Tenants.

However, I do note that the Landlord should ensure that late fees are in compliance with Section 5 of the *Manufactured Home Park Tenancy Regulation* (the “*Regulation”).*

As the Tenants were not successful in their application, I decline to award the recovery of the filing fee. This application is dismissed without leave to reapply.

Conclusion

The Tenants' application is dismissed in its entirety, without leave to reapply.

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 10, 2018

Residential Tenancy Branch