



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RETIRE WEST COMMUNITIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FF

Introduction

This matter dealt with an application by the Tenants to dispute a rent increase, for the Landlord to comply with the Act, regulations and the tenancy agreement and to recover the filing fee.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on November 8, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Landlord entitled to the rent increase?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on October 1, 1995 with 30 year tenancy with renewals every 3 years. Rent is \$471.44 per month payable on the 1st day of each month.

This application was first filed on November 8, 2018 and then was amended on November 8, 2018 to correct names on the application and was further amended on November 20, 2018. The Tenants’ application is to dispute a rent increase, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee.

At the start of the hearing the Tenant said that he disagrees with the amounts used to calculate the Notice of Rent Increase dated October 22, 2018. The Tenant said the Landlord is proposing to adjust the rent down by \$44.67 as compensation for the removal of services of water costs and garbage pick that are presently in his tenancy agreement. The Tenant said he has not agreed to the loss of water and garbage from his tenancy agreement.

Further, the Tenant continue to say said he has submitted the water invoices from the City for the Park water consumptions and they do not match the numbers the Landlord has used for the proportional rent increase. The Tenant said the Landlord's numbers are inflated by \$41,854.31. The Tenant continued to say that he is not disputing the annual rent increase of 2.5%, but he is disputing the loss of services and the calculation of the proportional rent increase.

The Landlord said the Tenant is using the water bills on a calendar basis January to December and the Landlord is using the water bills from September to August. The Landlord said they do this because they have to prepare the Notice of Rent Increase 3 months prior to the increase which takes effect on January 1 of each year. Therefore the calculations have to be completed in September of each year. As a result the Tenant's and Landlord's calculations are different because they are using a different time period. The Landlord continued to say they are billed 3 times a year so they use the bills from January to September of the current year and September to December of the previous year for the rent increase calculation. The Landlord said it is still a 12 month period it is just from September to August, not from January to December.

The Tenant continued to say the high water consumption bills were caused by a leak in the water lines and this should not qualify as a proportional rent increase. It should be a one time rent increase only. The Tenant said the water invoice indicates the high consumption may be due to a leak.

The Landlord said there have been two small leaks that were repaired quickly so the increase in water consumption was not caused by the leaks. The Landlord's park manager and previous park manager both testified about the leaks. The first leak was around October, 2017 and 3/16 crack in a service line to one of the sites and the leak was repaired quickly but the landscaping and paving took about five weeks. The second leak happened in the spring of 2018 and was another small leak to a service line that was fixed quickly. The Landlord said they are very diligent in the repairs to the park. The Tenant said the park is one of the nicest and well maintained on the island. The Landlord continued to say that the leaks were not the reason for the water consumption to go up. Further the Landlord said the city didn't have an explanation for the increased consumption, so the Landlord believes the park occupants used more water and that is why he is requesting a proportional increase due to water costs.

The Tenant said he believes the water leak was partially responsible for the increased water usage because the leak by the rear entrance of the park is beside a storm sewer so the water from the leak did not pool, but went down the sewer line.

The Landlord said they have not hired any professionals to examine the water system for leaks but they should get a better understanding of the water usage when they can

compare the December, 2018 bill to the December, 2017 bill. The Landlord said they do not have that invoice as of yet.

The parties were offered an opportunity to adjourn the hearing to see if the December, 2018 invoices would clear up any usage and leakage issues. The Tenant agreed to an adjournment, the Landlord did not. The Arbitrator agreed to make a decision on the evidence provided and testimony given. It should be noted the Landlord did not submit any evidence for the hearing.

The Landlord said in closing that he believes the water consumption went up in the Park and he is just passing the costs along to the tenants as the Act allows him too. The Landlord said he believes the calculations are correct and the Rent Increase should stand.

The Tenant said in closing that the Landlord's calculations are incorrect because he is adjusting the rent for removing services agreed to in the tenancy agreement and the billing periods the Landlord used to calculate the proportional increase is incorrect. The Tenant said the rent increase should be dismissed or cancelled.

Analysis

I have reviewed the testimony of both parties and the evidence submitted by the Tenant. As well I have reviewed the Notice of Rent Increase dated October 22, 2018 and I have found the following.

First the Landlord's calculation of the proportional rent increase has been rounded up by a fractional amount. Policy Guideline 37 (B) indicates that a rent increase calculation **can not** be round up in any amount. Consequently the calculation does not comply with the Act, regulations and guidelines.

Secondly the Landlord has adjusted the rent because he is proposing to remove services from the tenancy agreement. The Landlord adjusted the rent down from \$471.44 to \$426.77 to compensate the Tenant for the loss of water costs and garbage pick up in his tenancy agreement. The Landlord has made the proportional rent increase calculations based on this new rent amount even though the Landlord knew the Tenant was disputing the loss of these services.

Terminating or restricting services or facilities

- 21 (1) A landlord must not terminate or restrict a service or facility if
- (a) The service or facility is **essential** to the tenant's use of the manufactured home site as a site for a manufactured home, or
 - (b) Providing the service or facility is a **material** term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) Gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) Reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

It is my finding that the Landlord has unilaterally adjusted the rent without agreement from the Tenant or an order from the Director. The Landlord has used the new amount of rent for the rent increase calculations when it is unknown if the loss of services will be allowed and if they are allowed how much the rent deduction will be. I find the Landlord has given a Notice of Rent Increase without confirming the information he has used in the calculations. Consequently the Notice of Rent Increase does not comply with the Act, regulations and guidelines.

Further I have reviewed the billing information from the City and I believe the following table is an accurate representation for the water invoices.

	<u>2016</u>	<u>2017</u>	<u>2018</u>
<u>Jan to May</u>	\$41,187	\$34,479	\$41,187
<u>May to Sept</u>	\$45,271	\$77,670	\$73,341
<u>Sept to Jan</u>	\$28,429	\$31,177	Unknown

I accept the Landlord's testimony that the invoice calculations includes the last quarter of one year and the first two quarters of the next year. Based on this method of calculating the invoices, I find the Landlord's calculation for the water usage increase is not \$41,854.31 but should be \$5,127.36. Consequently the Notice of Rent Increase dated October 22, 2018 does not comply with the Act, regulations and guidelines.

I find that the Tenant has established grounds to cancel the Notice of Rent Increase dated October 22, 2018. The order the Notice of Rent Increase dated October 22, 2018 is cancelled. The Landlord is at leave to issue a new Notice of Rent Increase in accordance to the Act, regulations and guidelines.

As the Tenants have been successful in this matter, I order the Tenants a one time rent reduction of their January, 2019 rent by \$100.00 to recover the filing fee. The January rent is reduced from \$471.44 to \$371.44.

Conclusion

The Notice of Rent Increase dated October 22, 2018 is cancelled.

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: December 19, 2018

Residential Tenancy Branch