Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF

Introduction

The tenants apply to dispute rent increases imposed by the landlord since the year 2007 and to recover money paid pursuant to those rent increases.

Prior to the hearing process a number of claims were resolved. Those are files: 91023483, 21023497, 21023503, 21023506, 21023508, 21023521, 21023566, 21023590 and 21023520.

At the hearing on December 5, Mr. R.C., whose tenancy started in August 2017 and who received a rent increase from $451.65 to $518.74 effective November 1, 2018, settled his claim on the basis that as of November 1, 2018 his monthly pad rent is $469.71 and that he may deduct any overpayment from future rent or apply for dispute resolution to have any overpayment calculated.

By agreement between the landlord and Ms. A.F., her claim was dismissed. Her tenancy started in May 2018. She received a rent increase notice in June 2018 and then another in July 2018. The landlord has written (email) indicating to her that those rent increases could be ignored. As a result, as of the date of her application there was no active rent increase for her to challenge.

In result, three applications remain for consideration, those of the lead applicants Ms. G.F. and Mr. S.A. in site #26 and of Ms. G-L.S. in site #32 and of the joint tenants Ms. J.G. and Mr. S.A. in site #4.

The listed parties and persons attended the hearing on the days indicated above and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary

evidence that had been traded between the parties was admitted as evidence during the hearing and only if referred to by a party during the hearing.

Issue(s) to be Decided

Has the landlord imposed a rent increase or increases not in accordance with Part 4 of the *Manufactured Home Park Tenancy Act* (the "*Act*")? If so what monies are the tenants entitled to recover for rent paid pursuant to the rent increase?

Background and Evidence

The landlord owns this 37 site manufactured home park and has been the owner since 2000.

Ms. G.F. testified. She and her husband Mr. C.F. are the lead applicants of this joined, multi-claim application. She says that in mid-2017 she discovered from her bookkeeper that the landlord, who imposes rent increases every year, had possibly been imposing increases that exceeded by 2% the percentage increase permitted under the law. She informed other tenants in the park. They got together and wrote the landlord about it. There was no resolution and so these applications were made and were joined together as one application by the Residential Tenancy Office.

She does not have a copy of any written tenancy agreement but says her tenancy started in 2008.

She does not know exactly when the G-L.S. tenancy in site #32 started but stated that she has been a tenant for about five years.

Ms. F. says the tenancy of Ms. J.G. and Mr. S. A. in site #4 started in 2007.

Ms. G.F. testifies that all rents in the park are the same between sites. She knows this by having spoken to the other tenants. The current rent is $520.92 per month.

Though the applications appear to challenge rent increases imposed since 2007, many of the tenants came into the park after that. At this hearing Ms. G.F. referred only to rent increases imposed in 2011 and later.

She has provided copies of a formal Notice of Rent Increase for each of the years 2011 to 2015 that had been given to the tenants Mr. and Mrs. K. in site #7. She says all the tenants in the park received notice of increases identical to these.

She says that in 2011 the rent was $332.15 and effective November 1 it was raised to $346.72. After accounting for proportionate charges (increases in the cost of certain underlying costs like local government levies and public utility charges) that by law a landlord is permitted to pass on to tenants, the rent increase in 2011 was a 4.2% increase whereas the *Act* (and the regulation promulgated under it) only allowed a landlord to increase rent by 2.2% (the true allowable percentage increase for 2011 was actually 2.3% under the Manufactured Home Park Tenancy Regulation).

Ms. G.F. says that in 2012 the tenants received another increase from $346.72 to $365.36, effective October 1 and that after accounting for the proportional charges that rent increase was of 4.3% (the allowable percentage rent increase for 2012 was 4.3%) and that the landlord charged “proportional charges” (which are allowed under the *Act* and Regulation) but which included charges for increased parking and snow removal costs. This point was resolved at hearing as it was clear that such charges were not being used as a basis to raise the rent.

Ms. G.F. refers to the Notice of Rent Increase issued to Mr. and Mrs. K. in 2013, raising rent from $365.36 to $388.63 effective October 1. She says that the landlord charged a 5.8% increase when only a 3.8% increase was allowed (the allowable percentage increase for 2013 was 3.8%).

She refers to the Notice of Rent Increase issued in 2014, effective October 1, raising rent from $388.63 to $404.94. She says the landlord charged a 4.2% increase when it should have been only 2.2% (the allowable percentage rent increase for 2014 was 2.2%).

Next Ms. G.F. refers to the Notice of Rent Increase issued in 2015 from $404.94 to $425.03. She says the landlord charged 4.5% when only 2.5% was allowed (the allowable percentage rent increase for 2015 was 2.5%).

Ms. G.F. did not produce a copy of a rent increase for 2016. She says that she received a Notice of Rent Increase effective October 1, 2016 raising rent from $425.03 to $451.65 based on a percentage rent increase of 4.9% when only 2.9% was allowed (the allowable percentage rent increase for 2016 was 2.9%).

She did not produce a copy of any rent increase for 2017 but she says her rent was again raised, this time from $451.65 to $518.74, effective October 1, 2017. After accounting for an extraordinary increase in the proportionate rate passed on by the landlord, Ms. G.F. says the landlord imposed a 5.7% increase when only a 3.7% increase was allowed (the allowable percentage rent increase for 2017 was 3.7%).

Ms. G.F. referred to a 2018 Notice of Rent Increase effective October 1, 2018, given by landlord but it is agreed that Notice was withdrawn by the landlord and so is not a Notice to be considered in this dispute.

It also appears that the landlord returned Ms. G.F.'s post-dated rent cheques for August and September 2018 and reduced her August rent by $280.50 as a unilateral rebate.

Ms. G.F. says that the joint tenants Ms. J.G. and Mr. S.A. could not attend the hearing because of work commitments and that she was authorized to speak on their behalf, referring to an email to that effect that they had sent and which was filed in this matter. She indicates that someone at the Residential Tenancy Branch told her that the other tenants need not attend.

The landlord testified. She indicates that the park manager Ms. D.M. attends to the move-ins and move-outs, preparing and securing tenancy agreements. She says that her brother Mr. W.F. attended to preparing all the rent increases and that she has no knowledge of them. He made all the mistakes. She could not say when the tenant Ms. G-L. S. or the tenants Ms. J.G. and Mr. S.A. moved in.

Analysis

Counsel for the landlord submits that the applications of Ms. G-L.S. and of the joint tenants Ms. J.G. and Mr. S.A. should be dismissed outright because they did not attend the hearing to give evidence.

I agree with counsel that the mere application itself is not evidence that can support a claim.

The *Act* does not set out the rights and obligations of applicants or respondents when applications have been joined by the Director pursuant to s.66. The Residential Tenancy Branch website gives some direction regarding joined applications. It states:

> **Join Applications**

> A landlord or a tenant may request that two applications be heard in one dispute resolution hearing where:
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> a. Two or more Applications for Dispute Resolution relate to the same property,
> b. The applications name the same landlord, and
> c. The matters are related and it makes sense to join the applications
>
> The lead applicant usually represents all the applicants at the hearing. If there are multiple respondents, they may choose to be represented by one or more of the individuals named. Any of the respondents can attend, or they can rely on the evidence presented by other parties. An arbitrator will normally dismiss an application if no one attends on behalf of the applicants.

In this case it is obvious that Ms. G.F. is under the impression that she represents all the applicants who have not resolved their disputes before the hearing. I consider it most likely that the other tenants whose applications have been joined with Ms. G.F and her husband's claim, think the same thing. The central issue, the validity of the rent increases, is the same in all of the applications and the applications have obviously been joined so that each applicant can rely on the evidence about that issue presented by the other parties.

For that reason I would not dismiss the non-attending applicants' applications outright merely because they did not attend and give their own evidence.

The landlord through her counsel disputes the commencement date of Ms. G-L.S.'s tenancy and the tenancy of Ms. J.G. and Mr. S.A. and argues that none of them presented themselves to be questioned on this evidence. She says that the onus is on them to prove their claims, including the start of their tenancies.

The evidence about these two tenancies is very thin, coming from the understanding or second hand knowledge of the lead applicant Ms. G.F. A mere whisper of evidence to the contrary could have dislodged that evidence from its precarious perch. There was no evidence to the contrary. The landlord denied having knowledge of the terms of any of the tenancies.

It must be taken into account that not only is the evidence about these two tenancies thin, it has not been tested by cross-examination. The fact that it has not been so tested goes to the weight that evidence is to be given in the face of competing evidence. However, there is no competing evidence.

I accept the uncontradicted evidence of the tenant Ms. G.F. regarding the imposition of identical, park-wide rent increases in each of the years 2011 to 2017, subject to the

correction of any actual percentage increases allowed under the *Act* and Regulation. I accept her uncontradicted evidence that Ms. G-L.S.'s tenancy started about five years ago, which I find to be the year 2013, and that the tenancy of Ms. J.G. and Mr. S.A. started in 2007.

I have take the liberty of reviewing the Notices of Rent Increase for the years 2007 to 2010, filed in this matter by the tenant but not referred to at hearing, and find them to be in accordance with the *Act* and Regulation.

2011 Rent Increase

The government provides an approved form to be used by a landlord imposing a rent increase. Under s. 36 of the *Act*, unless a landlord has a tenant's approval in writing or the authorization of the Director, he or she may impose a rent increase only in the approved form and only up to that amount permitted by the Regulation. Such an imposed increase cannot be disputed by a tenant.

The approved form sets out a calculation for the increase. Aside from the "proportionate amount" (the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the park) the landlord must calculate a 2% increase in the rent (an automatic increase permitted landlords every year until 2019, when it has been removed) and must also calculate an "inflation increase." The two, when added together with the proportionate amount, sum the maximum rent increase the landlord may impose.

The "inflation increase" is calculated by using the "inflation rate" defined by the Regulation with reference to the Consumer Price Index for British Columbia as it is in July of each year.

The "inflation rate" is not an easily determinable figure. While it may be assumed that it is published somewhere, the Residential Tenancy website does not appear to publish it. Rather, the website lists a "maximum allowable rent increase" for each calendar year. That amount, described in percentage terms, is really the sum of the inflation rate and the automatic 2% increase referred to above.

The landlord's 2011 Notice of Rent Increase appears to have inserted the maximum allowable rent increase amount (2.3%) in the box provided for the inflation increase and then added the additional 2% amount automatically allowed. This resulted in calculation

of a rent increase 2% over the maximum allowed. The maximum rent the landlord could have imposed would have been $340.08, not $346.72.

2012 Rent Increase

In this rent increase, from $346.72 to $365.36, the landlord appears to have realized that the inflation increase and the maximum allowable rent increase are two different percentages. The Notice shows a correctly calculated percentage rent increase the landlord was permitted to impose.

However the landlord has applied that percentage to the previous and incorrect rent figure of $346.72 (since the 2011 rent increase was not effective in raising the rent to $346.72) resulting in an increase in rent over that permitted by the *Act* and regulations. Had the previous rent increase been in compliance, the maximum increase in 2012 would have raised the rent to $358.44, not $365.36.

2013 Rent Increase

In this rent increase, from $365.36 to $388.63, the landlord again appears to have incorrectly used the maximum allowable rent increase amount for that year (3.8%) as the basis for the inflation increase, resulting in an over calculation of 2%.

As well, the increase was based on the incorrect rent figure of $365.36. Had the rent increases starting in 2011 been in compliance, the maximum rent increase would have been to $374.15 and not $388.63.

2014 Rent Increase

In this rent increase, from $388.63 to $404.94, the landlord has again overstated the maximum percentage increase by 2% above the permitted 2.2%.

As well, the increase was based upon the non-compliant rent figure of $388.63. Had the previous rent increases been in compliance, the maximum rent increase that could have been imposed in 2014 would have been to 382.38 and not $404.94.

2015 Rent Increase

This rent increase purported to raise rent from $404.94 to $425.03. As with the previous year's increase, it was 2% above the maximum and was based upon the non-compliant and invalid rent figure of $404.94.

Had the increase and those before it been in compliance and at the maximum allowable amount, the new rent would have been $393.81 and not $425.03.

2016 Rent Increase

This rent increase purported to raise the rent from $425.03 to $451.65. As with the 2015 increase, the maximum allowable increase percentage of 2.9% was erroneously used to calculate the inflation increase. The automatic 2% increase already contained in the maximum percentage increase was added again, resulting in an increase 2% over that permitted.

Once again, the increase was based upon the non-compliant current rent figure.

Had the increase and its predecessors been in compliance, the new rent would have been $411.03, not $451.65.

2017 Rent Increase

This rent increase raised the rent from $451.65 to $518.74. As with early increases the landlord incorrectly used the maximum allowable increase of 3.7% as the inflation percentage and added the 2% automatic increase, resulting in a percentage increase of 2% in excess of that allowed. In that year, the landlord calculated the proportionate increase to be $41.35 per site.

As well, the increase was based on the current year's non-compliant rent of $451.65.

Had this increase and its predecessors been in compliance, the maximum rent increase would have been to $467.58 not $518.74.

In result, all the annual rent increase imposed by the landlord from the years 2011 to 2017 inclusive have been increases over that amount permitted by the *Act*.

What are the Consequences of the Excessive Rent Increases?

The landlord through her counsel suggests that if a rent increase is found to be in violation of the *Act*, then each that rent increase should be rolled back to the maximum amount lawfully imposable for that year and not simply cancelled entirely. It is submitted that tenants should be entitled to set off or recover the amount of rent paid in excess of the permissible rent increase for each year not the entire increase.

Section 36(5) of the *Act* provides that if a landlord collects a rent increase that does not comply with the rent increase provisions of the *Act*, "the tenant may deduct the increase from rent or otherwise recover the increase."

There is no dispute but that the applicant tenants have paid in full the increases imposed in the years 2011 to 2017.

In my view, had it been the intention of the legislature to permit a tenant to deduct only that portion of a rent increase that did not comply with the rent increase provisions of the *Act*, it would have said so in clear language. That portion of the *Act* dealing with rent increases; Part 3 – Rent Increases, refers to only one "rent increase," namely, the difference between the old rent and the new. It is a principle of statutory interpretation and a drafting convention that the same term should not be used with different meanings within a single *Act*. It follows that the "rent increase" a tenant is entitled to deduct or recover is the difference between the rent being paid prior to the rent increase and the new rent.

I am supported in this view by Residential Policy Guideline 37, "Rent Increases." It says:

> If a landlord collects an unlawful rent increase, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected. In those circumstances, the landlord may issue a new three month Notice of Rent Increase, as the original notice did not result in an increased rent.

Time Limitations

At the first hearing of this matter and before she retained legal counsel, the landlord referred to the two year limitation period found in the *Limitation Act*, S.B.C. 2012, c. 13,and indicated that some of the tenants' claims were thus barred by time. It was indicated at that time that the landlord should obtain legal advice about this defense for

the next hearing. At the last hearing of this matter the landlord through her counsel specifically declined to advance a time limitation argument or defense.

In result, the remaining applicant tenants of three manufactured home sites are entitled to offset or otherwise recover rent paid pursuant to any or all of the seven rent increases imposed by the landlord in the years 2011 to 2017 that were imposed on them.

Ms. G.F. and Mr. C.F. of Site #26

The rent for this site has not been lawfully increased by the 2011 Notice of Rent Increase or any after it. The monthly rent for this site therefore remains at $332.16, the rent in 2010.

Between October 1, 2011 and September 30, 2012, the tenants paid an increase of $14.16 a month pursuant to an invalid Notice of Rent Increase. They are entitled to recover $169.92 for that period.

Between October 1, 2012 and September 30, 2013, the tenants paid an increase of $33.20 a month over their rent of $332.16, pursuant to an invalid Notice of Rent Increase. They are entitled to recover $398.40 for that period.

Between October 1, 2013 and September 30, 2014, the tenants paid an increase of $56.47 a month over their lawful rent, pursuant to an invalid Notice of Rent Increase. They are entitled to recover $677.64 for that period.

Between October 1, 2014 and September 30, 2015, the tenants paid an increase of $72.78 a month over their lawful rent of $332.16. They are entitled to recover $873.36 for that period.

Between October 1, 2015 and September 30, 2016, the tenants paid an increase of $92.87 a month over their lawful rent of $332.16. They are entitled to recover $1114.44 for that period.

Between October 1, 2016 and September 30, 2017, the tenants paid an increase of $119.49 a month over their lawful rent. They are entitled to recover $1433.88 for that period.

As of October 1, 2017 the tenants paid an increase of $186.58 a month over their lawful rent of $332.16. During this hearing it was indicated that in the summer of 2018 the

landlord made unilateral changes; a reduction in rent and a rebate of money for the excess charged as a result of the Notice of Rent Increase imposed effective October 1, 2017. The evidence about this adjustment is not clear enough to permit a calculation of what may be due. It is clear however that the landlord's adjustment was based on the extra 2% that the landlord had been incorrectly charging on the 2017 rent increase and was not an adjustment taking into account that the tenants' rent prior to the invalid 2017 increase was $332.16. I assume therefore that the tenants are likely to be entitled to an additional, significant rebate

For these reasons I calculate the tenants' entitlement only up to and including the month of June 2018. Over this nine month period the tenants are entitled to recover $1679.22 in rent overpayment.

I leave it to the parties to work out what rent in excess of $332.16 the tenants have paid since the end of June 2018, taking into account the landlord's adjustment and rebate. In the event that they are unable to reach agreement, I grant the landlord and the tenants leave to re-apply to have that amount determined.

In result the tenants of site #26 are entitled to a monetary award totalling $6346.86 plus recover of the $100.00 filing fee for this application.

Ms. J.G. and Mr. S.A. in site #4

These tenants have been paying the same rent and had imposed on them the same invalid rent increases as Ms. G.F. since 2011. For the same reasons I find that all rent increases from 2011 to 2017 were contrary to the *Act* and Regulation.

The rent for site #4 remains at $332.16. The tenants are entitled to a monetary award totalling $6346.86 plus recovery of the $100.00 filing fee.

As with Ms. G.F.'s award, this award is to recover overpayment of rent to and including the month of June 2018. I leave it to the parties to work out what rent in excess of $332.16 the tenants have paid since then, taking into account any adjustment and/or rebate the landlord may have made. In the event that they are unable to reach agreement, I grant the landlord and the tenants leave to re-apply to have that amount determined.

Ms. G.-L.S. in site #32

I find that this tenancy started five years before the application was made, that is, August 2013. At that time I find that the tenant's rent was $388.63 and that the landlord imposed on this tenant rent increases in the same amount as the other tenants. Ms. G-L.S.'s first Notice of Rent Increase would have been effective on October 1, 2014.

That and all subsequent rent increases imposed by the landlord were in violation of the *Act* and Regulation for the reasons stated above. This tenant's monthly rent is currently $388.63.

Between the period October 1, 2014 and September 30, 2015 she paid an increase of $16.31 per month. She is entitled to recover $195.72 for the period.

Between October 1, 2015 and September 30, 2016 she paid an increase of $36.40 over her rent of $388.63. She is entitled to recover $436.80 for that period.

Between October 1, 2016 and September 30, 2017 this tenant paid an increase of $62.99 over her rent of $388.63. She is entitled to recover $755.88 for that period.

After October 1, 2017 this tenant paid an increase of $130.11 over her monthly rent of $388.83. As with the other tenants remaining in this application, I award her recover of nine months of overpayments, to and including the month of June 2018, in the amount of $1170.99.

As with the other tenant applicants, I leave it to the parties to work out what rent in excess of $388.83 the tenant has paid since then, taking into account any adjustment and/or rebate the landlord may have made. In the event that they are unable to reach agreement, I grant the landlord and the tenant leave to re-apply to have that amount determined.

This tenant is entitled to a monetary award totalling $2559.39 plus recovery of the $100.00 filing fee for this application.

Conclusion

The tenants Ms. G.F. and Mr. C.F. will have a monetary order against the landlord in the amount of $6446.86.

The tenants Ms. J.G. and Mr. S.A. will have a monetary order against the landlord in the amount of $6446.86

The tenant Ms. G-L.S. will have a monetary order against the landlord in the amount of $2659.39.

As noted by the Policy Guideline mentioned above, the landlord is free to issue a Notice of Rent Increase to these parties.

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 16, 2018

Residential Tenancy Branch