Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLANDS PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants disputing a rent increase and seeking recovery of the filing fee from the landlord.

One of the tenants and an agent for the landlord company attended the hearing and the tenant also represented the other tenant. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

Although evidence of both parties has been received later than provided by the Rules of Procedure, I advised the parties that given that they agree that all evidence has been exchanged, all evidence provided is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that the landlord has increased rent contrary to the law?

Background and Evidence

The tenant testified that this month-to-month tenancy began in March, 2019 and the tenants still reside in their manufactured home in the manufactured home park. There is no written tenancy agreement, but an Application for Tenancy, an Addendum and 2 Pet Agreements signed by the parties. The Application for Tenancy specifies rent in the amount of $675.00 per month payable on the 1st day of each month, and there are no rental arrears. The tenants paid the first month's rent in March, 2018 to hold the lot, and that money was applied to the first month of rent for April, 2019.

The tenants were given an Invoice for $2,000.00 for sewer connection to the tenants' manufactured home. The park owner developed new rental pads over the last 2 years

and submitted similar Invoices to the 9 new lot tenants only, without any written notification of the fee when the tenancy application was received, but billed 7 months after the tenants moved in. The tenants feel the owner is charging new tenants for infrastructure development that generates income for the owner in addition to the monthly rent.

The tenant further testified that in April or May, 2018 the tenants were advised by email that lot preparation fees for a new section of the manufactured home park were required; $5,000.00 for a new concrete pad and $2,000.00 for City sewer hook-up, and the tenants questioned it. The tenants arranged for their own contractor and paid the contractor $4,631.00 in November or December, 2018 for the concrete pad. On June 21, 2019 a form-letter type of Invoice was found in the tenants' mailbox from the landlord for $2,000.00 and a copy has been provided for this hearing. The Invoice said it was a City hook-up fee, but the City advised the tenant that the City doesn't charge a hook-up fee, but a usage fee of about $231.00 per month, which is included in the tenants' pad rental. The tenants paid a contractor to connect the sewer. The letter also says that the tenants would get 2 months' free rent, but that didn't happen.

The tenants received a blank tenancy agreement from the landlord on or about January 9, 2020, not signed by a landlord, which includes water, sewer, 2 parking spots, garbage and recycling pick-up.

The tenant seeks an order that the tenants don't have to pay the $2,000.00 Invoice.

The landlord's agent testified that the landlord purchased the park in January, 2007, and management has been in place for the entire time, and the current manager has been living in the park for 4 years. Sometimes things are done verbally.

In 2017 the landlord changed the septic system to sewer. The park has 166 units, and the landlord dug up the park, put it into a sewer system, which work was completed in 2018.

Last year the landlord dug out a field and built some new pads because some were unstable and had to be moved requiring some concrete pads as opposed to gravel. It was made clear to the 9 new tenants moving into the park that they could do it themselves or pay the landlord to do it.

A number of fees are charged, and Environmental Services run the system for the City. There is no user fee, but a connection fee for power and sewer and additional piping is required to connect plumbing appliances.

An error was made by the landlord by not getting it in writing. Others had agreed to pay the fee, but have now decided to wait until after this hearing.

There is a shortage of places in the area for people to move their manufactured homes to. Tenants rent the site and own the home and improvements and tenants are responsible for water, heat tape, sewer, television and fuel.

Copies of numerous emails exchanged between the tenant and an agent for the landlord have been provided for this hearing.

Analysis

It is obvious to me that the landlord erred by not ensuring that a tenancy agreement was signed prior to the commencement of the tenancy. However, the *Manufactured Home Park Tenancy Act* specifies that standard terms of every tenancy agreement are the terms of every tenancy agreement whether or not the agreement is in writing. Albeit the parties have not signed it, the tenancy agreement provided to the tenants for signature after the tenancy began does not include a term requiring the tenants to pay the $5,000.00 concrete pad fee or the $2,000.00 connection fee.

The regulations specify:

> **5** (1) A landlord may charge any of the following non-refundable fees:
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> (a) direct cost of replacing keys or other access devices;
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> (b) direct cost of additional keys or other access devices requested by the tenant;
>
> (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
>
> (d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
>
> (e) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.
>
> (2) A landlord must not charge the fee described in paragraph (1) (d) unless the tenancy agreement provides for that fee.

The fees charged by the landlord in this case do not fall within Section 5 of the regulations.

I also refer the parties to Residential Tenancy Policy Guideline #8 – Unconscionable and Material Terms, which states:

> Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Further, Section 3 of the *Act* states:

> (3) A term of a tenancy agreement is not enforceable if
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> (a) the term is inconsistent with this Act or the regulations,
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> (b) the term is unconscionable, or
>
> (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The term, "unconscionable" is defined in Section 2 of the regulations:

> **Definition of "unconscionable"**
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> **2** For the purposes of section 6 (3) (b) of the Act *[unenforceable term]*, a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

A landlord in a manufactured home park **may not** charge a security deposit, and the *Act* specifies what may be considered a security deposit. I refer to Residential Tenancy Policy Guideline #29 – Security Deposits:

> "… As a result of the definition of a security deposit in the Residential Tenancy Act and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit:
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> - The last month's rent;
> - A fee for a credit report or to search the records of a credit bureau;
> - A deposit for an access device, where it is the only means of access;
> - **Development fees in respect of a manufactured home site;**
> - **A move-in fee in respect of a manufactured home …"**

The tenant testified that the fees were a surprise, however an agent of the landlord corresponded with the tenant on April 22, 2018 advising that there is a hookup fee for sewer and the tenant pays $2,000.00 and the landlord will pay $3,000.00, as well as a

tenant's cost for pad installation at $5,000.00. That is reiterated in another email to the tenant on May 10, 2018.

The tenants' evidence also shows that the tenants paid to have the sewer connected. The parties agreed in their testimony that the $2,000.00 fee for connection to the City sewer system is not a fee that the landlord has to pay to the City. It is a fee charged carte blanche to each new tenant absent of any supporting evidence that the $2,000.00 fee is justified, and is imposed by the landlord for the sole purpose of recovering costs associated with adding more sites to the manufactured home park.

A concrete pad is part of the infrastructure of the manufactured home park, and remains with the landlord at the end of the tenancy. To collect money, in addition to rent would be unjust enrichment.

In consideration of the above, I find no authorization for a landlord to charge the amounts to the tenants, and I find that the fees charged by the landlord for development of the manufactured home site and the charge for connecting to City sewer are unconscionable and not enforceable.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the $100.00 filing fee. I grant a monetary order in favour of the tenants in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount or may file the order for enforcement in the Provincial Court of British Columbia, Small Claims Division.

Conclusion

For the reasons set out above, I find that the fees charged by the landlord for development of the manufactured home site and the charge for connecting to City sewer are unconscionable and not enforceable.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of $100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: January 31, 2020

Residential Tenancy Branch