



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MID VALLEY INVESTMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Mobile Home Park Tenancy Act* ("Act") for an Order for the Landlord to Comply with the Act or tenancy agreement; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord, D.R. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses, one for the Landlord, R.M., and one for the Tenant, A.T., were also present and provided affirmed testimony.

During the hearing, the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties' email addresses were provided in the Application and confirmed by the Parties in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence, to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Should the Landlord be Ordered Comply with the Act and/or tenancy agreement?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the Tenant has rented a pad in the Landlord's mobile home park ("Park"), since July 2005, and that she pays the Landlord a monthly pad rent of \$493.00, due on the first day of each month.

The Tenant said that she has been trying to sell her mobile home since December 2018 through her realtor, A.T. She said she has not sold it, but that she has had a few viewing enquiries and offers.

Pad Rent Increase

The Tenant said there was an offer from one woman, C.E., which the Tenant accepted. However, the Tenant said C.E. needs to get an "assignment of rent" from the Park, and that this is what led to the collapse of the sale. The Tenant said that Park representatives did not approve C.E. for the assignment of rent, saying that she is not capable of paying the monthly rent.

The Tenant said that C.E. has been approved for a rent of \$686.00 in another park, but that she likes this Park. The Tenant said that C.E. "...has just sold a property worth \$399,000.00, and is selling her house for \$165,000. So as far as she is concerned, she has the ability to pay the rent monthly." The Tenant said the Landlord is asking for the pad rent to go from the Tenant's rent of \$493.00 to \$775.00 a month. She said:

That's why my house sat there. They lowered it to \$675.00. That's still okay for me, but it depends on the buyer. All I want to do is sell the house. But if the buyers are having a hard time getting into the Park for \$675.00, it makes my life a lot harder to sell the home. This particular person – I like her offer, she's ready to move in. She's selling her house and then this first requirement happens.

The Agent said:

We are asking \$675 for that pad to the new buyer, of which we've only had one interaction with [C.E.]. She came to meet with us unexpectedly, and we had her saying 'I'm not paying that.' That's not an approach we're use to. We normally don't interfere.

We've owned the Park for 45 years. This is our first time to this type of hearing. We've never had problems with people. We've done hundreds of transactions. This is the first time we've ever had an issue.

We told her the pad rent would be \$675.00, which is closer to market value. We phoned around [the city] to the parks in the area and \$675.00 – \$695.00 is the common thread. We've prided ourselves that we keep people with [the Tenant's] rent lower, because we try to be generous. They don't have bumps in the rent. When the home sells, the rent is below market value, and rather than continually raising rent, we try to get just below market rent when the trailer sells.

When I talked to Ms. [E.] on the phone in February, I told her the pad rent would be \$675.00. She said 'that's too much, because I can't pay that much'. As a whole, the majority of the people in the Park are seniors; we've known a lot of them for many, many years. We try to keep their pad rent below the market rate and help them out with their situations. But when new people move in, for the viability of the Park, we have to get back to the market rate - that's just upon sale.

The Agent referred to his submission, Appendix C, saying that this documents the Tenant's rent increases over the years. He said:

We haven't increased rent at the rates we are allowed to do. I feel like I'm being punished for being generous. If I just raised the rent like I'm allowed to do. . . , but through being generous to people this is how I'm paid back.

The Tenant's witness, A.T., said:

[The Agent] is probably correct that they did not do increases that are permitted, but you cannot play catch-up. There's been no improvements or upgrades in the Park. I've been selling for years, and the park owners are increasing rents. People can't sell because of the amount of rents that are charged. I am required to view those assignments to protect them – part of due diligence. [The Agent] can say that that's the market rent, but I disagree with him. There are many parks

throughout [the area] who are charging lower rent. As for the grounds – he stated the reason, but is he correct? Did he do a credit report? She was capable, if she needed to pay \$675, but he refused her, and she has a concern. She still may want to move into this Park, because there are limited parks in [the city].

[C.E.] said she can't afford it. She's given me permission to speak on her behalf. She said she wasn't willing to pay that. She is an older lady and knows her rights. She is a pensioner and a single woman.

The Agent referred to Appendices H and I of his submissions, saying: "The pad rents noted in Appendix H include: \$695.00, \$622.00, \$662.00, \$669.00, \$642.00, \$660.00. . ., \$694.00." Appendix I is C.E.'s application for another park in which the monthly pad rent was \$686.00 per month. He went on to say:

Their comments about the rent and the jump. One of the reasons is why the rent is going to go up is that [the Tenant's] trailer is on a double pad, and she's been paying a single rate for her single trailer. Also, their comments on me making up rent, when I hear those comments, I'm trying to make up lost rent; I'm trying to be closer to market value - slightly under market value to still be affordable.

Our Park is the #1 park in the [area] in terms of upkeep. My father built the park, himself, and it has been in the family for many years. I'm looking for the long-term viability. Other parks are shutting down, due to land values and redevelopment. I've done my best to tell people that we are invested in the Park, and to make it a better place for people to live. We serve lunches in the summer, take them to events in the winter. From a business perspective that doesn't make sense, but I'm trying to make it a community that has been attractive for people.

We've had the Park for 45 years; that's several thousand tenants. I've never had a problem with anybody. The whole reason is because I have heart for the people. That's why we do what we do. It should be way higher, but I try my best; we almost know everybody, personally. We try to encourage and help them in any ways we can. Looking at our track record, we're not trying to gouge or go after more rent. I have rising costs that exceed what I've charged [the Tenant's] rent in the past. Garbage, sewage.... I think that rent is completely fair.

Park Rules/Guidelines

The Parties also discussed improvements that are required to be made on older

manufactured homes. The Tenant said it is not common practice in other parks. She said:

If it something dangerous, okay, but it's not unlivable. The question here is that they are older units. The park owners are not requiring this in other parks. This is mainly aesthetic or cosmetic. There may be good structural reasons in some cases, but is this legal? Can a park owner require this, if the home is liveable in its existing condition? It's quite an added cost to a new buyer. They cannot move into the Park until these are done. Buy the mobile, live somewhere else, or put a large deposit of \$40,000, and also have the money to do these improvements. Many chose to walk away and did not want to deal with this.

The Agent said:

The only thing I would say, the reason for the requirement is that homes are getting dilapidated and are not viable for long-term sustainability of the Park. What triggered some of that is a couple trailers in the Park, which I ended up with ownership, due to people walking away. The banks just left them on the property, at which point, I thought I would renovate. When I did my inspections of the homes. The flat roofs and metal siding were extremely rotten inside, because there's no overhang of the structure. Homes built in the 70s with this type of construction were going to be a problem.

We inspected many of them, through inheriting them. If we have homes deteriorating, it's going to be bad for everybody. It's protecting their values and their health and safety. If I let homes like that be sold, I'm not protecting their interests. It's a tough balancing act; I didn't feel I could let the Park deteriorate, with half the homes not looked after and the other ones that have done the work – it's not a good situation. The rules are only there upon sale of the home. I never went to [the Tenant] saying that she had to upgrade up. But during the sale - that was the point to get it done. Everything is for the protection of the home and home owner. It is not an aesthetic thing; it is a structural thing. The walls were rotten, and the roof was leaking. In this climate, a lot of homes were built in the States, where they don't have the weather we do here. That's how they were built back in the 70s.

The Landlord's witness, R.M, said:

The upgrade requirements, these guidelines and recommendations are not new. We have done about half the park this way – 40 units. Re [the Tenant's] comment that it has to be done with [the Agent's] approved contractor, that's not

correct. It has to be “an approved contractor”. I don’t want them to be taken advantage of. They don’t need to use my contractor, I just don’t want it to be someone who can take advantage of them. We have the best intention of our people in the park.

The Tenant’s witness, A.T., said:

First, when he speaks that ‘we’ are doing these improvements, it’s the homeowners, not them. [The Tenant] could stay here for the next 20 years and [they would] not require her to do anything. But they need these improvements, because of the age, just like housing put up many years ago. But there’s no requirements of the city that have deemed these unsafe or unlivable. It doesn’t mean that all homes have been leaking. I feel it is unfair to require these and vinyl siding. Tie downs were required many years ago, but yours is the only one that I’ve dealt with that makes it harder for a seller that goes forth with the sale. They should be the one who decides. It’s not for you to state that. This home is still existing through the wind storms, snow storms. [The Tenant] lives in hers quite comfortably.

I then asked the Parties to make their last statements before the end of the hearing. The Tenant went first:

The bottom line is for me to sell my house, it’s so much hardship, and it lets them move on and make their Park beautiful, like the new home owner would want. I wasn’t required to do these improvements. It’s almost a year and a half [since I’ve tried to sell it]. Once in a while you get people who would like to do the renovations. But old people, women, want to move in and have a beautiful home. Whatever the law is we have to follow without giving one party a hardship. I’m on the side here that I have no choice, as opposed to this Landlord. I just want to sell my house.

They’re unconscionable requirements. My roof? There’s nothing wrong with it. The vinyl siding, slowly, but surely, they pay for this. It’s not only me, it’s the whole Park. I’m near with the people here in the Park. Even the people who inherited the homes. It’s always like debt in this Park, because it’s . . . we don’t have the money for that. We don’t have this. I’m really pushed to the wall. I’d love to live here, but I’m alone, no kids, my health is going somewhere.

The Agent said:

I was going to say we haven't done anything to treat [the Tenant] or her home differently than anyone else. I care about [the Tenant] and her situation. Her rent has been undervalued for 15 years. I want the best for her, but I haven't done anything to treat her differently than anybody else in the Park, and we try to do our best to look after everybody whose here and people moving in. We keep our Park sustainable and not dilapidated – the prices would all drop, otherwise. I don't feel at all that putting these guidelines in have decreased the house value; I would beg to differ that it's the other way. This has helped increase the value of all the homes [he referenced his Appendix K]. We want to keep it a nice Park for people to live in, and I have a long history in real estate. The first thing that causes redevelopment is dilapidated homes. Our rent is in line with everybody else's. If I drive through the Park on a daily basis, I know that people are happy we put those guidelines I place. If I just wanted the rent, I would not care what it looks like; I'm not interested in this becoming a slum.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Pad Rent Increase

Section 32 (1) of the Act, states that 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.

In the case before me, the Tenant's potential buyer, is not a "tenant" under the Act until a tenancy is in place. Under section 1 of the Act, "tenancy" is defined as "a tenant's right to possession of a manufactured home site under a tenancy agreement". The potential buyer must come to their own agreement with the Landlord in order to become a tenant of the Park. Landlords are allowed to charge new tenants what they choose, without limitation to what the previous tenant was charged for pad rent.

I find that the Tenant has not provided sufficient evidence that the Landlord failed to comply with the Act, regulation or tenancy agreement in this matter.

Park Rules/Guidelines

In terms of the Park Rules, section 32 of the Act states:

Park rules

32 (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

Section 30 of the Regulation states:

Making rules

30 (1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:

(a) it promotes the convenience or safety of the tenants;

(b) it protects and preserves the condition of the manufactured home park or the landlord's property;

(c) it regulates access to or fairly distributes a service or facility;

(d) it regulates pets in common areas.

(2) If there is a park committee, the rules must be established, changed or repealed according to the procedure set out in sections 22 [*park committee decisions*] and 23 [*vote by landlord and tenants*].

(3) A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if

(a) the rule applies to all tenants in a fair manner,

- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
 - (c) notice of the rule is given to the tenant in accordance with section 29 *[disclosure]*, and
 - (d) the rule does not change a material term of the tenancy agreement.
- [emphasis added]

Based on the evidence before me, I find that the Tenant has not provided sufficient evidence that the Park Rules or Guidelines are inconsistent with the Act, regulation or tenancy agreement.

I find on a balance of probabilities that the Tenant has not provided sufficient evidence to establish that the Landlord has failed to comply with the Act, regulation or tenancy agreement in this matter. Accordingly, I dismiss the Tenant's Application wholly without leave to reapply.

Conclusion

The Tenant is unsuccessful in her Application, as she did not provide sufficient evidence that the Landlord failed to comply with the Act or tenancy agreement in these matters. As such, the Tenant's Application is dismissed wholly, 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: June 04, 2020

Residential Tenancy Branch