



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEACH ARCH RV PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI MNDCT FFT O

Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Manufactured Home Park Tenancy Act* (the Act) for a monetary order of \$584.00 for overpaid site rent and the filing fee, to dispute a rent increase, for an order to determine jurisdiction under the Act.

On June 29, 2020, the hearing commenced and attending the teleconference hearing were the tenants SG and MG (tenants) and their advocate, PL (advocate). Attending for the landlord was AY, owner of the RV park (owner), office manager MA (office manager), and AS and WO as counsel (counsel). After one hour, the matter was adjourned to allow additional time for the parties to present their jurisdictional arguments. An Interim Decision dated June 29, 2020 was issued, which should be read in conjunction with this decision.

On September 1, 2020, all parties attended the reconvened hearing and after an additional 57 minutes, the jurisdictional portion of the hearing ended, and a second Interim Decision dated September 17, 2020 was issued, which should be read in conjunction with this decision. In the second Interim Decision, I determined that the Act does apply and that the applicants are tenants and the respondent is a landlord under the Act and as a result, the matter was adjourned for consideration of the remainder of the application.

On November 2, 2020, all parties except tenant MG attended the teleconference hearing. This was the final date of the hearing and lasted a total 44 minutes for a grand total of 161 minutes of hearing time. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Did the landlord impose a rent increase in accordance with the Act?
- If not, are the tenants entitled to monetary compensation and what should rent be under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

Given the two previous Interim Decisions, both of which should be read in conjunction with this decision, and of which I have determined that the Act applies to this matter, this decision will focus on the evidence and testimony presented at the final reconvened hearing date of November 2, 2020.

The advocate reiterated that on August 14, 2019, the tenants were sent a “Reminder” about the rent being increased and that the “Reminder” does not constitute a Notice of Rent Increase under the Act. The advocate also stated that between April 1, 2016 and August 31, 2019, the tenants paid a monthly site rent amount of \$590.00 per month and that GST was not charged during that time period. The advocate also referred to receipts submitted in evidence, which support the position of the tenants. The advocate also clarified that the only GST charged, was on the electrical portion, not the site rent itself. The position of the tenants and advocate was that by adding GST as of September 1, 2019, that that was functionally a rent increase of 5%, as the tenants were paying 5% less up to August 31, 2019. In addition, the advocate stated that the tenants had no choice but to pay the 5% GST and file a dispute with the RTB, so as not to be evicted for non-payment of rent.

The advocate referred to section 35(3) of the Act, which I will address later in this decision, and which states that a notice of rent increase must be in the approved form. The form is #RTB-11a and includes a total of 4 pages (rent increase form). In the rent increase form, section D is titled “Detailed Calculation” and reads in part:

Note for tenants: the landlord will provide access to a complete set of tax notices and invoices for local government levies and public utilities as indicated in section F (Documentation) or give you copies upon request.

The formula for calculating the amount of the rent increase is established in the Manufactured Home Park Regulation. The formula inflation + the proportionate increase in local government levies and utility fees for common property...

The rent increase form is very detailed and includes on the cover page of the form the following information:

This form is used by the landlord to notify a tenant of a site rent increase. The landlord must give the tenant at least three full months' notice of a rent increase...

The advocate also stated that after September 1, 2019, the landlord began to charge a daily rate instead of a monthly rate, which also added to the monthly rent for months with 31 days versus 30 days.

The tenants' monetary claim is set out as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. September 2019, 30 days x \$20 per day + 5% GST = \$630 - \$590 site rent	\$40.00
2. October 2019, 31 days x \$20 per day + 5% GST = \$651 - \$590 site rent	\$61.00
3. November 2019, 30 days x \$20 per day + 5% GST = \$630 - \$590 site rent	\$40.00
4. December 2019, 31 days x \$20 per day + 5% GST = \$651 - \$590 site rent	\$61.00
5. January 2020, 31 days x \$20 per day + 5% GST = \$651 - \$590 site rent	\$61.00
6. February 2020, 29 days x \$20 per day + 5% GST = \$609 - \$590 site rent	\$19.00
7. March 2020, 31 days x \$20 per day + 5% GST = \$651 - \$590 site rent	\$61.00
8. April 2020, 30 days x \$20 per day + 5% GST = \$630 - \$590 site rent	\$40.00
9. May 2020, 31 days x \$20 per day + 5% GST = \$651 - \$590 site rent	\$61.00
10. June 2020, 30 days x \$20 per day + 5% GST = \$630 - \$590 site rent	\$40.00
TOTAL	\$484.00

In addition to the above, the advocate provided additional information that since filing their application on June 5, 2020 the tenants have overpaid rent as follows:

1. July 2020, 31 days x \$20 per day + 5% GST = \$651- \$590 site rent	\$61.00
2. August 2020, 31 days x \$20 per day + 5% GST = \$630 - \$590 site rent	\$61.00
3. September 2020, 30 days x \$20 per day + 5% GST = \$651- \$590 site rent	\$40.00
4. October 2020, 31 days x \$20 per day + 5% GST = \$630 - \$590 site rent	\$61.00
5. November 2020, 30 days x \$20 per day + 5% GST = \$630 - \$590 site rent	\$40.00
SUB-TOTAL	\$263.00
GRAND TOTAL FOR BOTH TABLES (\$484 + \$263)	\$747.00

The tenants are seeking a finding that the monthly site rent remains \$590.00 with no GST as it last was in August 2019 before what the advocate describes is the landlord increasing the rent and adding GST contrary to the Act rent increase formula.

Counsel submits that since the start of the tenancy the landlord has acted honourably and honestly and that the landlord was simply acting on previous legal advice they were given. Counsel also stated that GST was paid and remitted and that I should take that into consideration. Counsel also reiterated that the landlord doesn't want to be a landlord but has been deemed so by the undersigned arbitrator, which was addressed in the second Interim Decision. While the Dogwood case was referred to by counsel, there was no specific details provided except to say "the city took it over" and additional information was not provided, which I will address later in this decision. Counsel also submits that the landlord is a fair person and never intended to take advantage of anyone.

Analysis

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

Rent increase – Firstly, given the lack of a formal notice of rent increase form from the landlord, I agree with the tenants and find that by changing the monthly rent from \$590.00 to a daily rate plus GST as of September 1, 2019 that the landlord has increased the monthly site rent in a manner not permitted under the Act. Therefore, I

find the site rent since August 2019 remains **\$590.00** per month and that GST may not be added as the landlord did not do so between April 1, 2016 and August 31, 2019.

The site rent will remain \$590.00 per month until such time that the landlord increases the site rent in a manner approved under the Act. In other words, the landlord may issue a proper Notice of Rent Increase, RTB form 11-a and is reminded that the landlord must give the tenants at least three months' notice before that rent increase form takes effect as required by section 35 of the Act.

I afford no weight to counsel's submission of the Dogwood case due to insufficient details as to how the case is relevant to this matter. I accept counsel's submission that the landlord was acting on previous legal advice; however, regardless of that legal advice, I find the landlord breached section 35 of the Act, and that the landlord owes the tenants **\$747.00** as claimed and as detailed in the tables above. I also grant the **\$100.00** filing fee to the tenants pursuant to section 65 of the Act as the tenants' application was successful.

As the tenancy continues, I authorize the tenants to deduct a total of **\$847.00** from future site rent in full satisfaction of the recovery of the amount of \$847.00 under sections 60 and 55(3) of the Act. I find a monetary order is not necessary as a result of the rent reduction I have authorized for the tenants.

Conclusion

The tenants' application is fully successful. Monthly site rent remains \$590.00 until increased in a method approved under the Act. The tenants are granted a rent reduction of \$847.00 as noted above. This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 12, 2020

Residential Tenancy Branch