A matter regarding Parkbridge Lifestyle Communties Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, DRI, FFT**

Introduction

This joined hearing dealt with joined applications filed by the tenants of a manufactured home park, seeking orders under the *Manufactured Home Park Tenancy Act* (the "Act") for:

- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 55;
- An order to dispute a rent increase above the amount allowable under the Act pursuant to section 36; and
- Authorization to recover the filing fee from the other party pursuant to section 65.

Each of the tenant/applicants attended the hearing and some were represented by advocates as noted on the cover page of this decision. The landlord was represented by counsel, HD, property manager CB and a regional manager, GM. As all parties were present, service of documents was confirmed. The landlord acknowledged receipt of each of the tenants' applications for dispute resolution and the tenants acknowledged service of the landlord's evidence package. Nobody took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act. All parties confirmed that they were not recording the hearing.

Issue(s) to be Decided

Can the landlord apply a third incremental rent increase several years after the second year?

Background and Evidence

The parties agree on the following facts. Following a review on August 16, 2016, an arbitrator of the Residential Tenancy Branch confirmed a May 19, 2016 decision granting the landlord a rent increase to each of the tenants named on this application. In his review decision, the arbitrator confirms the earlier decision, writing:

"I grant the landlord the additional rent increase as outlined in their application. That increase is to be implemented in three equal amounts and phased in over a three-year period.

I direct that the rent increases shall take effect 3 full months after the landlord has served the tenants with a Notice of Rent Increase in accordance with the Act, along with a copy of this entire decision, granting the additional rent increase."

The landlord sent each of the affected tenants a letter on August 26, 2016, advising that the rent would be increased by one third of the amount granted by the arbitrator. For clarity, I provide the table given to one of the tenants from the August 26th letter:

Current Rent	Amount of Increase December 1, 2016	Rent Effective December 1, 2016	Amount of increase December 1, 2017	Rent effective December 1, 2017	Amount of increase December 1, 2018	Rent effective December 1, 2018
$232.50	$51.83	$284.34	$51.83	$336.17	$51.83	$388.00

The landlord increased the tenants' rent in 2016 and 2017 in accordance with the arbitrator's order and the tenants do not dispute those rent increase.

In 2018, the landlord did not implement the third rent increase as contemplated by the arbitrator's order. Instead, the landlord implemented the annual rent increase of 2.5% plus a proportional amount of increase in local government levies and public utility fees. In the example above, the tenant's rent for 2018 increased by $18.39 – bringing her rent from $336.17 to $354.56, effective February 1, 2019 – rather than the $388.00 effective December 1, 2018, as contemplated by the arbitrator's order.

In 2019, this tenant's rent was similarly increased in accordance with a subsequent arbitrator's order for storm upgrades (2.81%) plus the maximum allowable increase of 2.4%, a 5.31% rent increase, in total. The landlord did not seek to implement the last third phase of the rent increase given by the 2016 arbitrator.

In 2020, the tenants' rents were raised by the allowable maximum rent increase of 1.4% and the additional portion of government levies, fees and utilities, effective January 1, 2021. Once again, the landlord did not seek to implement the third phase of the 2016 rent increase.

On September 22, 2021, the landlord served each of the named tenants a rent increase, seeking the 1.5% maximum allowable rent increase plus the proportional amount for government levies, fees and utilities. This time, however, ***in addition*** to the 1.5% rent increase (above), the landlord added the additional $51.83 that they did not collect on the third year (2018) as contemplated by the arbitrator in his 2016 order and as outlined in the landlord's letter dated August 26, 2016. The tenants dispute the additional third phase added to the rent increase, not the allowable percentage increase of 1.5% and the proportional amount for government levies, fees and utilities.

The landlord's counsel acknowledges that the landlord did not implement the rent increases 3 years in a row but argues that there is nothing in the decision that says the landlord is not allowed to delay the implementation of the rent increases. In delaying the implementation, the tenants have each benefitted. For example, if each of the traunches was $55.00, the tenant who was not served with the rent increase pursuant to the order has saved approximately $660.00 per year. Over the 3 years between 2018 and 2021, this tenant has saved over $1,800.00. Further, the savings for the tenants are compounded, since calculating the percentage increase is based on total rent which would be higher if the landlord had implemented the third traunch back in 2018.

Each of the tenants had an opportunity to provide testimony. Essentially, each tenant argued that the landlord has lost the right to claim the third phase of the rent increase granted by the arbitrator in 2016 when they received their rent increases for 2018. 2018's rent increase was calculated using a new additional amount for government fees, levies and utility costs. When the Act was changed in 2018, the reason for the rent increase (to match similar properties) was repealed, leading the tenants to believe that the third phase of the rent increase was no longer eligible to be collected.

While the first two phases were captured by the landlord in 2016 and 2017, the landlord never again brought up the third phase of the rent increase except in the letter from the landlord dated August 26, 2016. The choice of the landlord to not collect the third phase of the rent increase in 2018 essentially extinguished the landlord's ability to collect it in the future argue the tenants.

The tenant RP made a further submission that the landlord should not be able to collect the annual rent increases or proportional rent increases because in 2016 a voluntary agreement to increase rent was proposed by the landlord. If the agreement was signed, the landlord would not collect annual rent increases as allowed under the Act for 3 years. RP's advocate later reiterated that neither RP nor any of the other applicants involved in this hearing signed the agreement in 2016 and that by not signing, the terms of that agreement do not apply to these tenants.

Analysis

In his decision, the arbitrator granted the landlord a rent increase that was to be implemented over a 3 year period. In his August 16, 2016 decision, the arbitrator wrote: *"I grant the landlord the additional rent increase as outlined in their application. That increase is to be implemented in three equal amounts and* ***phased in over a three year period."***

I find the arbitrator's order to be both clear and unambiguous. The phase in period was to happen over three years; not two phases in the first two years and the third phase whenever the landlord chooses. The landlord's letter to the tenants of the mobile home park, dated August 26, 2016, reflects the landlord's understanding of the arbitrator's order, advising of the rent increase in three consecutive years: December 1, 2016, December 1, 2017 and December 1, 2018.

I accept that the first phase was implemented in accordance with the landlord's letter, on December 1, 2016 and that the second phase was implemented 13 months later, on January 1, 2018. The tenants do not dispute the timing of those implementations or the right of the landlord to increase the rent in accordance with the arbitrator's order.

Despite sending the August 26, 2016, letter advising their tenants that the third phase of the rent increase would occur on December 1, 2018; the landlord either chose not to do so or simply forgot that they were entitled to it. **Instead**, the landlord opted to increase the rent in accordance with section 32(3) of the *Regulations*, [maximum allowable rent increase plus the proportional amount for government levies, fees and utilities]. Whether it was due to an oversight or by choice, the failure to implement the third and last phase of the rent increase 12 months from the second phase has effectively led to an extinguishment of the landlord's right to collect it for the reasons set out below.

Not only did the arbitrator specify that the additional rent increase was to be implemented in three equal amounts and phased in over a three-year period; the

Manufactured Home Park Tenancy Regulations prevent the landlord from collecting the increase beyond the three-year period as set out in the arbitrator's decision.

The landlord applied for and was granted a rent increase under section 33 of the *Regulations* back in 2016. Pursuant to section 33(4)(c) of the *Regulations*, the arbitrator ordered that the additional rent increase be phased in over a specified period of time: **three years.**

Section 33(5) of the *Regulations* states:

> **If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).**

The August 16, 2016 order did not allow the landlord to carry forward their unused portion of the rent increase beyond the second year. Consequently, the landlord has lost the ability to add the third phase of the rent increase to a future rent increase pursuant to section 33(5) of the *Regulations.*

For the reasons set out above, I find the landlord has lost the ability to implement the last third of the additional rent increase order dated August 16, 2016. **The tenants are not required to pay the third phase of the additional rent increase that was granted pursuant the arbitrator's order on August 16, 2016.**

The tenants are required to pay any rent increase that is imposed by the landlord pursuant to section 36(1)(a) of the Act that is calculated in accordance with section 32(3) of the *Regulations*. If the tenants were served with the *Notice of Rent Increase – Manufactured Home Site* Form at least 3 months prior to January 1, 2022, the annual rent increase is to take effect retroactively to January 1, 2022. If any tenant was not served with the approved form 3 months prior to January 1, 2022, the landlord may increase that tenant's rent in accordance with section 35 of the Act.

If any tenant has been paying the third phase of the additional rent increase granted pursuant the arbitrator's order of August 16, 2016, that tenant may deduct the increase from rent pursuant to section 36(5) of the Act.

RP, the tenant in unit 1, and RS, the tenant in unit 55 are each authorized to have their $100.00 filing fee recovered. Each of these tenants may reduce a single payment of rent by $100.00 pursuant to section 65 of the Act.

Conclusion

The landlord may not carry forward the third unused portion of the additional rent increase granted on August 16, 2016 or add it to a future rent increase pursuant to section 33(5) of the *Manufactured Home Park Tenancy Regulations.*

The tenants are not required to pay the third unused portion of the additional rent increase granted on August 16, 2016.

The tenants are required to pay any rent increase that is imposed by the landlord pursuant to section 36(1)(a) of the Act that is calculated in accordance with section 32(3) of the *Regulations*.

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: April 10, 2022

Residential Tenancy Branch