



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, FFT

Introduction:

A hearing was convened on February 14, 2022 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act*(Act) and to recover the fee for filing this Application for Dispute Resolution.

The hearing on February 14, 2022 was adjourned for reasons outlined in my Interim Decision. The hearing was reconvened on May 30, 2022 and was concluded on that date.

As stated in my interim decision, evidence submitted by the parties prior to the original hearing will be considered as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct name of the Landlord, as that name was provided by the Agent for the Landlord at the hearing.

Preliminary Matter #2

At the hearing on May 30, 2022, the Tenant stated that her concern with the proximity of a neighbor's addition has been addressed and does not need to be considered at these proceedings.

Issue(s) to be Decided:

Does the rent increase imposed on January 01, 2022 comply with the legislation?

Background and Evidence:

The Landlord and the Tenant agree that:

- Rent is due by the first day of each month;
- Rent in 2021 was \$285.21;
- The Landlord served the Tenant written notice that the rent would increase, to \$314.51, effective on January 01, 2022;
- The rent was previously increased in 2019; and
- The Tenant has paid the increased rent of \$314.51 since January 01, 2022.

The Agent for the Landlord stated that the property taxes and garbage disposal costs in 2020 were \$23,979.11 and in 2021 they were \$30,099.46. This is consistent with information provided on the notice of rent increase submitted in evidence. The Tenant does not dispute this information.

The notice of rent increase submitted in evidence declares that the hydro costs in 2020 were \$21,100.00 and in 2021 they were \$42,008.00. The Tenant stated that she does not believe this amount is correct.

The Agent for the Landlord stated that the \$42,008.00 hydro costs shown on the notice of rent increase is incorrect. He stated that he believes the amount cited for 2021 is calculated from a three year average and he does not know the exact hydro costs from 2021.

The Agent for the Landlord stated that there are 85 sites in the manufactured home park. He stated that the 90 sites cited on the notice of rent increase is incorrect, and includes areas not currently being used as sites for manufactured homes.

At the hearing the parties agreed that any overpayment of rent made by the Tenant can be deducted from future rent due.

Analysis:

Section 36(1)(a) of the *Act*, permits a landlord to impose a rent increase only up to the amount calculated in accordance with the regulations.

Section 32(3) of the *Manufactured Home Park Regulation* stipulates that for the purposes of section 36(1)(a) of the *Act*, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

inflation rate + proportional
amount.

The *Regulation* defines the “inflation rate” as the 12-month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect. The inflation rate for 2022, as determined by the Residential Tenancy Branch, is 1.5%.

The *Regulation* defines the “proportional amount” as 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 manufactured home park.

The *Regulation* defines the “change in local government levies” as the local government levies for the 12- month period ending at the end of the month before the month in which notice under section 35 of the *Act* was given, less the local government levies for the previous 12-month period. “Local government levies” are defined as the sum of the payments respecting a manufactured home park made by the landlord for property value taxes, and municipal fees under section 194 of the Community Charter.

On the basis of the testimony of the Agent for the Landlord, I find that property taxes and garbage fees increased in 2021 by \$6,120.35.

The Regulation defines “change in utility fees” as the utility fees for the 12-month period ending at the end of the month before the month in which notice under section 35(2) of the *Act* was given, less the utility fees for the previous 12-month period. “Utility fees” are the sum of the payments respecting a manufactured home park made by the landlord for the supply of electricity, natural gas, water, telephone services or coaxial cable services provided by the following:

- a public utility as defined in section 1 of the *Utilities Commission Act*;

- a gas utility as defined in section 1 of the *Gas Utility Act*;
- a water utility as defined in section 1 of the *Water Utility Act*; and
- a corporation licensed by the Canadian Radio-television and Telecommunications Commission for the purposes of that supply.

On the basis of the testimony of the Agent for the Landlord, I find that hydro costs are recorded incorrectly on the notice of rent increase. I find that the actual increase in hydro costs between 2020 and 2021 was less than the amount recorded on the rent increase. I am unable to determine the actual increase in hydro costs for this period, as the Agent for the Landlord was unable to provide this information.

On the basis of the testimony of the Agent for the Landlord, I find that the number of sites in the manufactured home park is recorded incorrectly on the notice of rent increase. I find that there are actually 85 sites in the manufactured home park, not 90 as is recorded on the notice of rent increase.

As the increase in utility fees in 2021 was less than the amount recorded on the notice of rent increase and there only 85 sites in the manufactured home park, I find that the Landlord has incorrectly calculated the proportion of levies and fees that can be applied to this rent increase .

I find that there has been a miscalculation on the bottom of page 3 of the Notice of Rent Increase. When calculating the amount of the rent increase, the Landlord is required to provide the current annual rent in box 1 of step 3 of section 3. In this section the Landlord recorded the current annual rent is \$4,369.68. On the basis of the undisputed evidence, however, I find that the annual rent prior to the proposed rent increase was \$3,422.52.

When calculating the amount of the rent increase, the Landlord is required to provide the inflation increase in box 2 of step 3 of section 3. In this section the Landlord recorded the inflation increase to be 1.5% of the incorrectly recorded annual rent (\$65.95). It should reflect the inflation increase to be 1.5% of the correct annual rent (\$51.34).

For all of the reasons noted above, I find that the rent increase imposed on January 01, 2022 exceeded the amount permitted by section 36(1)(a) of the *Act*. As such, the notice of rent increase must be set aside and the rent remains at \$285.21 until it is increased in accordance with the *Act*.

The Landlord retains the right to serve the Tenant with another notice of rent increase for 2022.

As the Tenant has paid the increased rent of \$314.51 since January 01, 2022, I find that the Tenant has overpaid the rent by \$146.50.

Section 36(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. As the Tenant has overpaid the rent by \$146.50 and the parties agree that this overpayment can be deducted from rent due, I find that the Tenant has the right to reduce one monthly rent payment by \$146.50.

I find that the Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application.

Conclusion:

The Tenant has established a monetary claim of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce this Order, the Tenant may withhold \$100.00 from one monthly rent payment which will serve to fully satisfy this monetary claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 30, 2022

Residential Tenancy Branch