



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coho Marina Resort a.k.a. 25801 BC
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FFT

Introduction

Pursuant to section 51 of the *Manufactured Home Park Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. The applicant filed on April 13, 2022 seeking:

- to dispute a rent increase that is above the amount allowed by law;
- an order for the landlord to comply with the Act, regulation, and/or tenancy agreement; and
- the filing fee.

The hearing was attended by the applicant and his advocate, but not the respondent. The applicant's advocate testified he had been in contact with the respondent, who had said they would not attend the hearing. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The advocate testified their Notice of Dispute Resolution Proceeding and evidence was served on the respondent by registered mail on April 28, 2022, to the address on the rent increase notice, and provided a tracking number as noted on the cover page of this decision. I find the applicant served the respondent in accordance with section 82 of the Act, and deem the documents received by the respondent on May 3, 2022, in accordance with section 83 of the Act.

Preliminary Matter – Jurisdiction and Order for Landlord to Comply

In their application the applicant submitted the respondent did not believe the MHPTA applied to their contract. The advocate testified the applicant owns his manufactured home, which is the applicant's exclusive home. The applicant has built a deck for the

home, the home has not been moved for the past 20 years, and during this time the applicant has been paying a fixed monthly rent.

Policy Guideline 9. *Tenancy Agreements and Licences to Occupy* includes the following:

Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

...

In *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371, the BC Supreme Court found:

the MHPTA is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place for a primary residence and not for short-term vacation or recreational use where the nature of the stay is transitory and has no features of permanence.

Features of permanence may include:

...

- The tenant has added permanent features such as a deck, carport or skirting which the landlord has explicitly or implicitly permitted;
- The tenant lives in the home year-round;
- The home has not been moved for a long time.

Based on the applicant's affirmed undisputed testimony that he owns the manufactured home and has paid a fixed monthly rent for the site; it has been his permanent, full-time home for 20 years; it has not been moved in that time; and he built a deck for the home; I find that the applicant is a tenant pursuant the Act, and that an oral tenancy agreement was established between the tenant and the former landlord. Accordingly, I continued with the hearing. For the rest of the decision I will refer to the parties as "landlord" and "tenant."

As a result of finding that the tenant's occupancy of the site is a tenancy under the Act, I order the landlord to comply with the Act, and bring the landlord's attention to section 5:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Issues to be Decided

- 1) Did the landlord increase the rent in contravention of the Act?
- 2) Is the tenant entitled to the filing fee?

Background and Evidence

The tenant provided the following particulars regarding the tenancy. It began July 6, 2002, and the property was purchased by new owners in early 2021. Rent is now \$496.00, due on the first of the month. The tenant testified there is no written tenancy agreement.

The tenant's application states he is seeking \$500.00. The advocate submitted this amount is incorrect as, at the time of filing, the advocate was not aware there was an additional earlier illegal rent increase.

The advocate testified that the \$500.00 claim is for \$100.00 for each month from April 20, 2022 to the present. No breakdown of the rent overpayment sought is submitted as evidence.

The tenant testified that they were given the following rent increases:

- from an unspecified amount, to \$350.00 on an unspecified date in 2021;
- to \$450.00 effective April 1, 2021; and
- to \$475.00 plus GST effective April 1, 2022, with notice given on March 20, 2022.

The tenant testified that in 2021 the manager said there would be a rent increase, so the tenant gave him post dated cheques for \$350.00 to cover a year.

The tenant testified that as of March 31, 2021, rent was \$350.00. In April 1, 2021, his rent increased by \$100.00 to \$450.00, which he paid for 12 months.

The tenant testified that on December 8, 2021, the landlord stated the tenant was in arrears, and demanded the tenant pay \$1,069.00 that day, or the debt would go to collections. The tenant testified that was the first time he knew he was in arrears.

The tenant testified he received a notice in March 2022 regarding an additional rent increase, which brought the rent to \$475.00. The notice also indicated GST would now be charged.

Submitted as evidence is the notice from the landlord, dated March 20, 2022, stating that attached is the “revised trailer registration form and letter from the [landlord’s name], effective April 1st, 2022 to March 31st, 2023.” The form includes the following on “rental rates”:

RENTAL RATES (check and complete where applicable):

☐ **Seasonal rate:**

\$5,400.00 + GST (Includes internet and septic)

\$0.10 per Kilowatt/hour for Hydro usage based on submeter reading and payable monthly to Management.

For the period:

April 1, 2022 to March 31, 2023

The rate for the site must be payable by the **FIRST** day of the season.

☐ **Monthly Rate:**

\$475.00 per month + GST

\$0.10 per Kilowatt/hour for Hydro usage based on submeter reading and payable monthly to Management.

For the period:

Starting _____ (dd/mm/yyyy)

The rate for the site must be payable by the **FIRST** day of the month.

The form states that “in absence of a new rental agreement, the user will be required to vacate and to sell or remove the recreational vehicle.” It also states that “the site must **ONLY** be used for vacation purposes and no full time occupancy is permitted.”

The advocate submitted that the rent increases contravene the Act as the tenant was not given 3 months advance notice, the notice it is not in the approved form, and the \$100.00 increase exceeds that permitted by the Act.

The tenant testified that he had given the landlord postdated cheques, and that for the April 2022 rent the landlord cashed two of the tenant's cheques: one for \$350.00 and one for \$498.00, so the tenant paid \$848.00 for April 2022. No documentary evidence is submitted in support.

The tenant testified the landlord had not cashed the tenant's rent cheque for August 2022.

The advocate submitted that the April 1, 2021 and April 1, 2022 rent increases were illegal, and that the tenant is seeking to recover the additional rent amounts he paid following these increases.

Analysis

The Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas, and services and facilities.

Section 14 of the Act states:

Changes to tenancy agreement

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

- (a) a rent increase in accordance with Part 4 of this Act;
- (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 21 *[terminating or restricting services or facilities]*;
- (c) park rules established in accordance with section 32 *[park rules]*;
- (d) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

Considering section 14, I find that the current landlord's position that no full-time occupancy is permitted in the mobile home park is of no force of effect, and that the tenancy will continue until it is ended in accordance with the Act.

The tenant has testified that they were given the following rent increases:

- from an unspecified amount to \$350.00 on an unspecified date in 2021;
- to \$450.00 effective April 1, 2021; and
- to \$475.00 plus GST effective April 1, 2022, with notice given on March 20, 2022.

From March 31, 2020 to December 31, 2021 no rent increases were allowed during the COVID-19 emergency orders: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/1st-session/bills/first-reading/gov07-1>. Therefore, I find that the 2021 increase to \$350 and the April 1, 2021 increase are of no force or effect.

Considering the March 20, 2022 notice of rent increase, sections 35 and 36 of the Act include:

Timing and notice of rent increases

35 ... (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

Amount of rent increase

36 (1) 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.

...

(5) 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.

The tenant's advocate submitted that the April 1, 2022 increase is in contravention of sections 35 and 36 of the Act as the tenant was not given 3 months advance notice, and the notice was not in the approved form. Documentary evidence is submitted in support; the March 20, 2022 notification of the April 1 increase provides only 11 days notice, and it is not in the approved form ([#RTB-45](#)).

Based on the undisputed affirmed evidence before me, I find there is no evidence that the tenant agreed in writing to the three rent increases, and I find any payment was in error and not indication that the tenant agreed to a rent increase that is not in compliance with the Act.

The undisputed evidence before me indicates the three rent increases were not imposed in accordance with the Act. Therefore, I find them of no force or effect.

As the tenant has not provided testimony or documentary evidence clearly showing the rent prior to the 2021 increase to \$350.00, and the total amount of rent they overpaid, I decline to make a finding on the amount of rent the tenant overpaid. The tenant is at liberty to make a monetary claim to recover their rent overpayments.

Section 65 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in his application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 65 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenant's application is granted.

The rent increases are of no force or effect.

The landlord is ordered to comply with the Act, regulation, and the tenancy agreement in their dealings with the tenant.

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: September 08, 2022

Residential Tenancy Branch