



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding 0707904BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed on November 30, 2022, under the *Manufactured Home Park Tenancy Act* (“the Act”) to dispute a rent increase, to request an order that the Landlord comply with the Act, and to recover the filing fee for their application. The matter was set for a conference call.

The Tenant and an Agent for the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Was the rent increase issued by the Landlord in excess of the allowable amount?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on August 1, 1982. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that the Landlord issued them a rent increase notice on September 19, 2022, which indicated that their rent was going up \$16.94 per month, from a monthly rent of \$467.34 to a new monthly rent amount of \$484.28 effective January 1, 2023. The Tenant testified that they started paying the new rent amount as of January 1, 2023. The Tenant and Landlord submitted a copy of the Notice of Rent Increase – Manufactured Home Site into documentary evidence.

The Tenant testified that another renter in the park had won a dispute resolution proceeding with the Residential Tenancy Branch, against this Landlord, for this rent increase, as the Landlord had included a “hook-up charge” in their calculations for the allowable rent increase, which is a charge that is not transferable to a tenant.

The Tenant testified that they believe the same hook-up charge was included in the calculation in their rent increase notice, and therefore their rent increase should also be cancelled.

The Landlord testified that the rent increase had been calculated to include a proportional amount for utility fees, as permitted under the *Act*. The Landlord agreed that they had been in a previous dispute resolution proceeding with the Residential Tenancy Branch, regarding this rent increase notice, and that their notice was cancelled in those proceedings due to a single site connection fee inadvertently being included in the calculations. The Landlord submitted copies of the utility bills used to calculate the proportional amount of rent increase into documentary evidence.

The Landlord asked if the Residential Tenancy Branch could amend the amount indicated on the notice through this hearing, so they did not have to start over with new a Notice of Rent Increase, which would require the observance of a new three-month notice period.

The Landlord was advised during these proceedings, that there was no provision in the *Act* that granted an arbitrator the authority to correct/amend their notice of rent increase.

## Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 36 of the Act states the following regarding rent increases:

### ***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.*

*(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.*

*(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.*

*(4) [Repealed 2006-35-11.]*

*(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.*

Pursuant to section 36(1) of the Act a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. Section 32 of the *Manufactured Home Park Tenancy Regulations* (the "Regulations") states the following:

### ***Rent increase***

*32 (1) In this section:*

***"change in local government levies"*** means 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 (2) of the Act was given less the local government levies for the previous 12-month period;

**"change in utility fees"** means 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;

**"inflation rate"** means 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;

**"local government levies"** means the sum of the payments respecting a manufactured home park made by the landlord for

- (a) property value taxes, and
- (b) municipal fees under section 194 of the Community Charter;

**"proportional amount"** means 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 landlord's manufactured home park;

**"utility fees"** means 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) a public utility as defined in section 1 of the Utilities Commission Act;
- (b) a gas utility as defined in section 1 of the Gas Utility Act;
- (c) a water utility as defined in section 1 of the Water Utility Act;
- (d) a corporation licensed by the Canadian Radio-television and Telecommunications Commission for the purposes of that supply.

(2) Repealed. [B.C. Reg. 184/2022, Sch. 1, s. 1.]

(3) 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.*

Pursuant to section 32 of the *Regulation*, a landlord may increase the rent using a calculation that includes a proportional amount of the utilities supplied by the landlord to the park.

I accept the testimony of the Landlord that a fee for a connection charge for a single unit was factored into figures used to calculate the proportional rent increases they issued on their notice of rent increase dated September 19, 2022.

In this case, the Landlord has included a utility charge incurred for services at one site on the park in their proportional rent increase calculations for the full park. The *Regulation* states the following:

- “utility fees” means the sum of payments respecting a manufactured home park made by the landlord for the supply of electricity, natural gas, water, telephone services or coaxial cable services . . .

As this charge was for an individual manufactured home site and not “respecting a manufactured home park” as specified in the definition of “utility fees” set out in the *Regulation*, I find that the Landlord improperly factored in a utility charge they incurred for an individual site in this notice of rent increase.

Therefore, I find that the rent increase notice issued by the Landlord was calculated incorrectly and was in excess of the legally allowable amount. Therefore, I find that the Landlord was in breach of section 36 of the *Act* when they issued this rent increase to the Tenant in excess of the allowable amount. Consequently, I cancel the Notice of rent increase dated September 19, 2022, and order that the rent for this tenancy is returned to the pre-notice amount of \$467.34.

Additionally, I accept the testimony of the Tenant that they had paid this, no cancelled, rent increase for the months of January, February, and March 2023. Therefore, I find that pursuant to section 36(5) of the *Act* the Tenant has successfully proven that they are entitled to the return of their overpayment of rent in the amount of \$50.82; consisting of a \$16.94 per month for the months of January, February, and March 2023. I award the Tenant a monetary award of **\$50.82** in the recovery of this overpaid rent.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their

application, I find that the Tenant is entitled to recover the **\$100.00** filing fee paid for her application.

### Conclusion

I find that the Landlord breached section 36 of the *Act* when they issued a rent increase above the allowable amount.

I order that the rent increase issued by the Landlord dated September 19, 2022, is of no effect.

I grant the Tenant permission, pursuant to section 36(5) of the *Act* to recover the amounts awarded to them in this decision by deducting **\$150.82** from a future rent payment.

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: March 15, 2023

---

Residential Tenancy Branch