



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **DRI**

### Introduction

This hearing dealt with the Tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (Act) for an Order to dispute a rent increase that is above the amount allowed by law under Section 36 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package issued on December 21, 2022, and evidence served by registered mail, the Landlord confirmed receipt, deemed served on December 26, 2022; and,
- the Landlord's evidence package served by registered mail on April 1, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenant confirmed receipt, deemed served on April 6, 2023.

Pursuant to Sections 81, 82, and 83 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issue to be Decided

Is the Tenant entitled to an Order to dispute a rent increase that is above the amount allowed by law?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this periodic tenancy began on June 7, 1995. Monthly rent is \$261.23 payable on the first day of each month. The Tenant stated that garbage collection, parking, and the yard are included in his rent

The Landlord issued two formal rent increase notices, one on September 19, 2022 for \$25.00, the second one on September 29, 2022 for \$26.23. The Tenant uploaded his copies of these increase notices on form #RTB-11a. On page three of the notice, the Landlord noted the number of sites in the park as 67. On December 7, 2022, the Landlord sent the Tenant his description of how he calculated the number of sites for the park:

4. Number of Sites : As rent increases goes into effect as of January 2023  
Notices were issued in September 2022.  
Total Number of Homes that were present in the park as per City of [REDACTED] were 67 as of September 1, 2022  
( Vacant sites do not count : Double Wide sites are considered as one Site : Sizes of the sites does not matter, the number of sites do matter)

For your information: There were only 4 occupancies in the new Park as on September 1, 2022.  
Other tenants moved in after the cutoff / deadline date in October 2022.

The Tenant argued that there are 89 sites in the park, 67 of them are rented. The Tenant stated form #RTB-11a states that the number of sites:

**B) Total number of sites**

- The total number of sites is often the number of sites in a manufactured park. However, some manufactured home parks may have various widths of sites. For example, the site width may vary for a garden or to accommodate a double-wide unit.
- If the park has varying site sizes, describe how the number of sites was determined. This description should be attached to this Notice of Rent Increase.

The Landlord testified that the park has two kinds of sites, serviced and unserviced. The park has 67 serviced sites, and 22 unserviced sites. The city and district are only billing the Landlord of the manufactured home park for the serviced sites. The Landlord used 67 as the total number of sites in the manufactured home park for his rent increase calculation.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Although this decision will be rendered more than 30 days after the conclusion of the proceedings, Section 70(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period set out in subsection (1)(d).

Relevant definitions in the Act for this matter follow:

***"manufactured home park"*** means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

***"manufactured home site"*** means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home; (emphasis added)

Definitions for proportional amount under Section 32(1) of the *Manufactured Home Park Tenancy Regulation* (Regulation) dealing with rent increases states:

***"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;

Residential Tenancy Policy Guideline #37-Rent Increases is intended to help parties understand issues likely to be relevant in imposing a rent increase or in making an application to dispute a rent increase.

For a manufactured home park, the 2023 rent increase limit is 2% plus a proportional amount for changes in local government levies and regulated utility fees.

The definitions for manufactured home park and manufactured home site both include the words, "rents or intends to rent, or rented or intended to be rented." Whether a site is serviced is not a consideration applicable to the Act or Regulation. The Landlord used form #RTB-11a to determine his proportional amount; however, I find the Landlord incorrectly used the number of sites in his home park to be 67 rather than 89. Vacant sites do count.

I find the Landlord's rent increase notice does not comply with the rent increase provisions in the Act and Regulation. Accordingly, I cancel the rent increase notice and I grant the Tenant's application disputing this notice.

I do not have evidence on whether the Tenant has paid the rent increase from January 1, 2023, but if so, I direct the parties to Section 36(5) of the Act which states:

***Amount of rent increase***

**36** ...

- (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.*

Conclusion

The Tenant's application is granted, and the Landlord's rent increase notice is cancelled.

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 26, 2023

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Residential Tenancy Branch