



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes DRI FF

Introduction

This hearing dealt with 4 different applications files by Tenants, all of which were joined together to be heard at this hearing. The Tenants are seeking an order regarding a disputed rent increase that does not comply with the *Manufactured Home Park Tenancy Regulations (Regulations)* pursuant to section 36 of the *Manufactured Home Park Tenancy Act*.

The Tenants, and their advocates, and the Landlord attended the hearing and provided affirmed testimony. All parties confirmed receipt of each other's documentary evidence and no service issues were raised.

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?
- Are the Tenants 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 Tenants filed this application because they do not feel the Landlord is legally entitled to include any of the following amounts that were included on page 2 of the Notice of Rent Increase (the Notice):

1) Local Government Levies

• See notes on completing this section after page 4 under section D (DETAILED CALCULATION, 1) Local Government Levies)

	Last year: Column A	This year: Column B	Increase: Column C = Col. B - Col. A
Property tax			\$ 0.00
School tax			\$ 0.00
Regional district tax			\$ 0.00
Hospital levy			\$ 0.00
Transit levy			\$ 0.00
Specified area charges			\$ 0.00
Solid waste management fees - Garbage collection			\$ 0.00
Solid waste management fees - Recycling fees			\$ 0.00
Solid waste management fees - Other	\$ 0.00	\$ 1,355.42	\$ 1,355.42
Liquid waste management fees - Sewage collection	\$ 1,958.25	\$ 7,580.14	\$ 5,621.89
Liquid waste management fees - Sewage treatment	\$ 0.00	\$ 1,502.42	\$ 1,502.42
Liquid waste management fees - Other	\$ 0.00	\$ 4,357.56	\$ 4,357.56
Water - Connection fee	\$ 0.00	\$ 0.00	\$ 0.00
Water - Metered services			\$ 0.00
BC Assessment Authority levy			\$ 0.00
Any other fee applicable to the park and payable to the local government (describe fees on separate page)			\$ 0.00
Total Local Government Levies for the entire manufactured home park	\$ 1,958.25	\$ 14,795.54	\$ 12,837.29
	Column A total = total of above	Column B total = total of above	Column C total = total of above

The Tenants pointed out that there are numerous charges for waste management (mostly “liquid” waste management). However, since this park is serviced by a private septic system owned by the Landlord, the Landlord cannot include this under the rent increase as a “local government levy”. The Tenants pointed out that the septic system and related expenses are not a municipal service, and they should not be considered a local government levy.

The Landlord stated that as an act of good faith, he removed all of the above noted items for “this years” expenses, except “liquid waste management fees – sewage collection” in the amount of \$7,580.14, plus a small increase in hydro. The Landlord provided invoices for amounts he paid to a private company to pump and dispose of the septic tanks on the property over the past couple of years, and he stated that his costs to maintain the septic system have increased dramatically in the last year, largely due to the costs charged by the local municipality to dispose of the waste. The Landlord opined

that his costs related to liquid waste management fees should be considered as allowable for the proportional amount of the annual rent increase, because the municipality is the one who has started charging more for disposal.

Analysis

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

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.

I turn to the following part of the *Regulations*, which states the following:

- **"local government levies"** means 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*...

In this case, as part of this rent increase, the Landlord has included a liquid waste management fee for sewage collection under the "local government levies" section of the Notice. I note the sewage at the park is handled by a private septic field installed and managed by the Landlord. As part of ongoing sewage management, I further note the Landlord hires a private company to pump and dispose of the accumulated sewage from the septic tanks, periodically. These fees and costs are paid directly by the Landlord to a third-party septic management company, as per the invoices provided into evidence.

Although the Landlord asserts some of his cost increases for the septic are due to the fact that the municipality has increased disposal fees, which get passed on to him by way of the sewage disposal company, I am not satisfied that this means the septic system, and disposal costs, are a “local government levy”, as laid out under the Regulations. The amounts for septic costs are paid by the Landlord directly to a private company, not to a municipality. I find the fees and costs paid by the Landlord do not qualify as property value taxes or municipal fees under section 194 of the *Community Charter*, and I find the Landlord is not entitled to include these amounts in the manner he did, under “local government levies”.

Therefore, I find that the rent increase notice issued by the Landlord was calculated incorrectly and was in excess of the legally allowable amount. I find that the Landlord was in breach of section 36 of the *Act* when they issued this rent increase to the Tenants in excess of the allowable amount. Consequently, I cancel the Notices, and order that the rent for this tenancy is returned to the pre-notice amounts for the respective home sites.

If any of the Tenants have paid the increased amount noted on the Notice (beyond the pre-Notice amounts), they may deduct their overpayments from future rent payments.

The Landlord will need to re-issue a new Notice of Rent Increase for these respective home sites, but the Landlord should take care to only include allowable amounts, otherwise the validity of the future rent increase may be disputed.

Finally, section 65 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were all successful in their applications, I find that the Tenants are each entitled to recover the **\$100.00** filing fees they each paid for their applications. The Tenants may each deduct their respective filing fee of \$100.00 from one future rent payment.

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 is of no force or effect.

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: May 8, 2023