



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AmVan Homes 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 the joined applications regarding the above-noted manufactured home park tenancies.

The tenants' applications pursuant to the Act is for:

- an order to dispute a rental increase, pursuant to section 34;
- an order for the landlord to comply with the Act, the Manufactured Home Park Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 55; and
- an authorization to recover the filing fee for this application, under section 65.

The tenants recorded on the cover page, their advocate FS (the Tenant), the landlords representative AM and counsel AE (the Landlord) attended the hearing. The Tenant represented all the tenants. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties confirmed receipt of the notice of joined application and evidence (the Proceeding Package) and that they had enough time to review it.

Based on the testimonies I find that each party was served with the Proceeding Packages in accordance with section 82 of the Act.

Issues to be Decided

Are the Tenants entitled to an order regarding the dispute of a rent increase?

Are the Tenants entitled to an order for the Landlord to comply with the Act?

Are the Tenants entitled to recover the filing fees for the applications from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.



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The parties agreed the tenants are currently living in their sites and rent is due on the first day of the month. The park has 76 sites.

The Landlord served notices of rent increase (form RTB 11-a) dated September 15, 2023 (the Notices). They indicate the proportional amount of rent increase is \$204.88 per tenant. The Tenant affirmed the correct proportional amount is \$23.69.

The parties also agreed:

- The property taxes increased from \$37,695.14 in 2022 to \$43,445.26 in 2023, and this increase includes a penalty for late payment in the amount of \$3,949.57.
- The garbage collection fee increased from \$21,840.84 in 2022 to \$22,249.08 in 2023 (an increase of \$408.24).
- The sewage collection fee increased from \$341.25 in 2022 to \$750.75 in 2023 (an increase of \$409.50).
- The Landlord paid a water connection fee of \$6,896.80 in 2023, as a result of leaks in two sites.
- The Landlord paid a fee to maintain the fire hydrants and sewers in the park and to repair smaller water leaks (hereinafter, the other fees) in the amount of \$2,106.48.
- The city where the park is located (hereinafter, the city) does not offer household waste collection service to the park.

I am referring collectively to the garbage and sewage collection fees, water connection fee and the other fees as the combined fees. The Landlord paid the combined fees to private companies because the city does not offer those services.

The Tenant stated the penalty for late payment is not a government levy and the combined fees are not utility fees. All these amounts are not applicable charges to calculate the proportional amount of rent increase.

The Landlord testified that as some tenants did not pay their rent on time the Landlord did not have money to pay the property tax on time in 2023. The Landlord had to pay the late penalty fee established in accordance with section 194(2)(d) of the Community Charter Act.

The Landlord said the park pays the garbage collection fee because the city does not offer household waste collection service to the park and the Landlord has to pay for this service, per the city's bylaw 2130-2017.

The Landlord's submissions states:

27. Garbage collection has traditionally been considered a cost that is passed onto the tenants as part of the proportional increase in local government levies, as it is a cost that the Landlord incurred due to the municipality expressly passing the responsibility on owners of manufactured home parks.

28. It should be noted that none of the Tenants' tenancy agreements incorporate "garbage collection" as one of the services or facilities that will be provided by the Landlord.

The Landlord explains it is justified to include the garbage collection fee in the proportional amount because:

57. Recognizing also that solid waste removal is not something that the Landlord is required to provide as part of the Tenants' tenancy agreements, but a service that the Tenants have been taking advantage of and have paid for as part of past rent increases, passing on the proportional amount of the increase in cost should be justified.

58. It would be perplexing for the legislature to have contemplated a situation where the owner of property in one part of the province – for example in Kelowna – is permitted to increase the rent for solid waste pick-up because E360S has increased their prices, but not allow a different property owner to do the same, for example in [the city].

59. It is therefore the Landlord's respectful submission that since the Waste Bylaw mandates the removal of solid waste from the Park, and because the City does not provide this service for the Park, that the requested proportional increase being sought by the Landlord qualifies as a "municipal fee" as that term is defined in section 194 of the Community Charter.

The Landlord paid the sewage collection fee, as this is necessary maintenance of the sewage system:

31. Unfortunately, some tenants do not abide by either the Park's rules, or the City's bylaws, resulting in the sewer line becoming plugged from time to time, unless routine maintenance is conducted. Due to the nature of sewage, it is difficult to determine which pad is not following the rules/bylaws.

32. The tenants are reminded to abide by the Park's rules as well as the City's bylaws, which is reflected in the notice sent by the Landlord to all tenants, a copy of which has been included in the Landlord's evidence, which the Landlord ultimately did not charge back.

33. While the City [redacted] incorporates all the tenants' overall sewage collection as part of the municipal taxes that the Landlord pays, these fees do not reflect the annual maintenance that the Landlord needs to perform to ensure that the sewage collection can be done without any issues.

34. For this reason, the Landlord retains the services of Norco Septic Service (2006) Inc. ("Norco") to jet plugged sewer lines, once a year.

The Landlord paid the water connection fee due to the repair of two water leaks:

38. In 2023, the Landlord was required to pay a total of \$6,896.80 as a result of leaks in two trailers, trailer [redacted for privacy]

[...]

40. The Landlord has included this expense as part of the proportional rent increase as the burst waterline piping under tenant's trailers is connected to the City [redacted for privacy] water supply. These lines are directly connected to the City's water and the City does not maintain the lines, nor is their maintenance or repair included in the property taxes. The burst was most likely due to tenants' improper application of heat tape during winter. As such, notices have been given out to all tenants to apply and maintain heat tape on exposed waterlines.

The Landlord paid the other fees to maintain fire hydrants, sewers and repair small water leaks:

42. In order to comply with the City's bylaws, the Landlord had to incur further costs in maintaining the fire hydrants, sewers, and smaller water leaks for the Park. These costs totaled \$2,106.48 arrived at in the following way:

- a) \$820.75 to repair a hydrant in March 2023;
- b) \$231.00 to conduct an annual inspection of the hydrants;
- c) \$361.00 to repair a sewer that had overflowed; and,
- d) \$693.73 to address a further water leak.

43. The sewer overflow charge was due to an excavation cost for sewer backup where it had overflowed in a tenant's yard and had to be rectified.

The Landlord affirmed that maintaining the sewer system, fire hydrants and repair water leaks is a requirement under the city's bylaws, smaller cities do not provide services that bigger cities do and it is reasonable for the Landlord to consider these fees as part of the proportional amount.

The Tenant stated that section 32(1) of the Regulation strictly defines utility fees and local government levies and it is not fair to consider the penalty for late payment and the combined fees in the proportional amount. The Tenant testified the Landlord could submit an application for an additional rent increase per section 33 of the Regulation for the combined fees.

The Tenant also said that if tenants damage the park the Landlord can submit an application for monetary compensation against the tenants responsible for damaging the park and the combined fees are regular cost of business for the Landlord.

Both parties confirmed they had enough time to make all their submissions.



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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.

Rent Increase

Section 34 of the Act states that a landlord must increase rent in accordance with sections 35, 36 and 36.1 of the Act, which only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form at least 3 months before the effective date of the increase by an amount calculated in accordance with the Regulation, ordered by the RTB or agreed to by the tenant in writing.

Section 32 of the Regulation defines:

- "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;
- "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;



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- "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.

Penalty for late payment

I accept the undisputed testimony the property taxes paid by the Landlord in 2023 included a penalty for late payment.

Part 7 (municipal revenue), division 1 (general), section 194(2)(d) of the Community Charter Act clearly allows municipal governments to establish terms and conditions for payment of a fee, including discounts, interest and penalties:

- (1) A council may, by bylaw, impose a fee payable in respect of
 - (a) all or part of a service of the municipality,
 - (b) the use of municipal property, or
 - (c) the exercise of authority to regulate, prohibit or impose requirements.
- (2) Without limiting subsection (1), a bylaw under this section may do one or more of the following:
 - (a) apply outside the municipality, if the bylaw is in relation to an authority that may be exercised outside the municipality;
 - (b) base the fee on any factor specified in the bylaw and, in addition to the authority under section 12 (1) [variation authority], establish different rates or levels of fees in relation to different factors;
 - (c) establish fees for obtaining copies of records that are available for public inspection;
 - (d) establish terms and conditions for payment of a fee, including discounts, interest and penalties;

(e) provide for the refund of a fee.

Part 7, division 10 (property tax due dates and tax notices), section 235 of the same Act allows municipal governments to establish terms and conditions for the payment of property taxes:

(1) A council may, by bylaw, establish one or more dates on which all or part of the property taxes under this Part are due.

[...]

(3) A bylaw under subsection (1) may do one or more of the following:

(a) establish procedures for determining the amount of taxes due on each of the due dates;

(b) provide for

(i) estimating, before the adoption of the annual property tax bylaw, the amount of taxes payable in the year, and

(ii) making adjustments to payments due after the adoption of that bylaw in order to take into account variations between the estimated and actual taxes payable;

(c) establish discounts to be applied in relation to payments made before a tax due date established by the bylaw;

(d) establish penalties and interest to be applied in relation to payments made after a tax due date established by the bylaw;

(e) set terms, conditions and procedures in relation to payments, which may be different for different classes of owners as established by the bylaw.

Section 194 of that Act has general regulations about payment of fees, and section 235 has specific regulations about the late payment of property taxes. I find the penalty for late payment of property taxes is a penalty established by the municipal government under section 235 of the Community Charter Act, as that section deals specifically with late payments of property taxes.

Thus, the penalty for late payment of property taxes incurred by the Landlord is not in accordance with section 32 of the Regulation. The Landlord is not allowed to include the penalty for late payment in the proportional amount.

Combined fees

I accept the undisputed testimony the Landlord paid:

- the garbage collection fee for a private company because the city does not provide household waste collection service to the park.
- the sewage collection fee to jet plugged sewer lines as part of annual maintenance of the sewage collection system in the park [paras 32 and 34 of the Landlord's submissions].

- The water connection fee to repair two water leaks [paras 38 and 40 of the Landlord's submissions].
- The other fees to maintain the fire hydrants and sewers in the park and to repair smaller water leaks [paras 42 and 43 of the Landlord's submissions].

Section 1 of the Utilities Commission Act states:

"public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

(a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or

(b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

but does not include

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,

(d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,

(e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances,

(f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the Geothermal Resources Act, or

(g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9) of the Hydro and Power Authority Act, in respect of anything done, owned or operated under or in relation to that agreement;

Section 1 of the Gas Utility Act states:

"gas utility" means a person that owns or operates in British Columbia equipment or facilities for the production, generation, storage, transmission, sale, delivery or furnishing of gas for the production of light, heat, cold or power to or for the public or a corporation for compensation, but does not include a company within the meaning of that word as defined in the National Energy Board Act (Canada)

Section 1 of the Water Utility Gas states:

"water utility" means

- (a) a person who owns or operates in British Columbia equipment or facilities for the diverting, developing, pumping, impounding, distributing or furnishing of water, for compensation,
 - (i) to or for more than the prescribed number of persons or, if no number is prescribed, 5 or more persons, or
 - (ii) to a corporation, and
- (b) the lessee, trustee, receiver or liquidator of a person referred to in paragraph (a), but does not include
- (c) a municipality in respect of services furnished by the municipality,
- (d) a person who furnishes services or commodity only to the person, the person's employees or tenants, if the service or commodity is not resold to or used by others,
- (e) the Greater Vancouver Water District under the Greater Vancouver Water District Act,
- (f) an improvement district as defined in section 1 (1) of the Water Sustainability Act,
- (f.1) a water users' community as defined in section 1 (1) of the Water Users' Communities Act,
- (g) a regional district under the Local Government Act in respect of the service of the supply of water
 - (i) in bulk to a municipality or electoral area participating in that service, or
 - (ii) to consumers in a municipality participating in that service,
- (h) a person who supplies water by tanker truck,
- (i) a person who sells bottled water, or
- (j) a strata corporation, if the comptroller is satisfied that the owner developers within the meaning of the Strata Property Act have ceased to own a majority of the strata lots in the strata plan.

The garbage and sewage collection fees do not meet the definitions of Sections 1 of the Utilities Commission, Gas Utility and Water Utility Acts. These acts do not regulate garbage and sewage collection services.

The water connection fee and the other fees also do not meet the definitions of Sections 1 of the Utilities Commission, Gas Utility and Water Utility Acts. These acts do not regulate expenses related to water leak repairs, the maintenance of fire hydrants and sewer systems.

Thus, combined fees incurred by the Landlord are not in accordance with section 32 of the Regulation. The Landlord is not allowed to include the combined fees in the proportional amount.

Order for the Landlord to Comply with the Act

The Tenants did not submit testimony about a claim for an order for the Landlord to comply with the Act.

Thus, I dismiss the Tenants' claim for an order for the Landlord to comply with the Act.

Summary

The proportional amount, excluding the penalty for late payment and the combined fees, and considering the number of sites in the park is 76, equals \$23.69.

Per section 36(1)(a) of the Act, the Notices are not valid, as the Landlord did not calculate the proportional amount in accordance with the Regulations.

The Landlord is authorized to serve new notices of rent increase with the correct proportional amount, in accordance with section 34 of the Act.

As the Tenants were successful in this joiner application, I authorize each applicant Tenant to recover the \$100.00 filing fee, per section 65(1) of the Act.

Conclusion

The proportional amount for 2023 is \$23.69.

Pursuant to section 65(2), I authorized each applicant Tenant to deduct \$100.00 from the next rent payment to recover their filing fee.

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 2, 2024

Residential Tenancy Branch