



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes O

Introduction

This hearing dealt with an application by the landlord for approval of a rent increase in excess of the amount allowed by the Regulations to the *Manufactured Home Park Tenancy Act*. All parties were represented in the conference call hearing.

Issue to be Decided

Should the landlord be granted an above guideline rent increase?

Background and Evidence

The manufactured home sites are located in a manufactured home park (the "Park") which houses a total of 53 sites. The north side of the Park abuts a lake and the Park also boasts easy access to a golf course immediately to the east. The Park is a retirement community with streetlights and paved roads and curbs. Sewer, water and garbage are included in the monthly rent. The Park does not have a clubhouse or a resident manager. It is located 1.5 km from the town centre.

All of the respondent tenants pay \$356.17 each month in rent and evidence was presented showing that for at least the past 3 years, rent has been raised by the percentage permitted under the Regulations on October 1 of each year.

The landlord testified that the monthly rents in the Park range from \$356.17 to \$546.00 and testified that the Park charges more for lakefront sites, regardless of the size, and less for those sites which are not lakefront. None of the subject sites are lakefront sites. The landlord seeks to raise the rent for the subject sites by \$95.83 per month, which represents the permitted 2.3% increase of \$8.19 plus an additional \$87.64 for a total of \$452.00 payable each month.

The landlord provided rental information on 20 other sites in the Park to which he compared the subject sites. Of those 20 comparables, 7 had tenancies which appear to have begun at

least 4 years ago, 8 had tenancies which appear to have begun at approximately 3 years ago, 4 had tenancies which appear to have begun at least 2 years ago and 1 had a tenancy which appears to have begun in 2010. The landlord's evidence showed that the average rent payable for 19 of those sites (the landlord omitted from his calculations a lakefront site which paid considerably higher rent than the others) is \$452.10.

The landlord also provided information about two other manufactured home parks which he argued were comparable to the Park. The other parks are located in a nearby city (the "City Sites") which has roughly 10 times the population of the town in which the Park is located. The City Sites do not appear to have access to a lake or golf course.

The tenants argued that the City Sites are not comparable as they are located in a much larger centre which provides unique advantages. The tenants provided their own comparables located in the same town (the "Town Sites"). One of the Town Sites is located on a bluff and is said to offer a beautiful view of the Okanagan Valley but is not next to a lake or golf course. The second of the Town Sites is close to the same golf course as the Park but is much further from the lake.

The tenants further argued that in order for the landlord's application to succeed, he must prove that he is extraordinarily disadvantaged and they alleged that the application for an above guideline rent increase indicates the landlord's desire to maximize his return on his investment, a desire which the landlord freely admitted.

Analysis

First addressing the tenants' argument that the landlord must be extraordinarily disadvantaged and their suggestion that the landlord's motivation is somehow improper, I note that there is no requirement under the Act or Regulation which requires an extraordinary disadvantage to be proven nor is there any prohibition against a landlord seeking to maximize profits. Absent such a provision in the law, I find that the landlord's motivation is irrelevant and that the landlord need not prove an extraordinary disadvantage in order to establish his claim.

Section 33 of the Regulations provides that a landlord may apply for an above guideline rent increase if "(a) after the rent increase allowed under section 32 [*annual rent increase*], the rent for the manufactured home site is significantly lower than the rent payable for other manufactured home sites that are similar to, and in the same geographic area as, the manufactured home site." The respondent tenants all currently pay \$356.17 per month in rent. After applying the 2.3% increase permitted for 2011, the rent would increase by \$8.19 per month to \$364.36 per month. I must determine whether \$364.36 per month in rent is significantly lower than other comparable sites.

In my view, neither the Town Sites nor the City Sites are truly comparable. The Park is unique in that it abuts a lake and is just a few metres from a golf course, both of which are extremely attractive amenities.

Residential Tenancy Policy Guideline #37 provides as follows:

Additional rent increases under this section will be granted only in exceptional circumstances. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success in renting out similar units in the residential property at a higher rate. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. To determine whether the circumstances are exceptional, the dispute resolution officer will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

Under ordinary circumstances, a landlord applying for an above guideline rent increase would be required to provide not only information about other sites within the residential property, but also information about comparable sites in other manufactured home parks. In this case, it would appear that there are no other parks in the same geographic region which can offer easy access to both a lake and a golf course. I find that both of those features must be present in order to characterize another manufactured home park as truly comparable. Although the portion of the Policy Guideline quoted directly above states that it is not sufficient for a landlord to claim that lower rent results from his *recent* success in renting out similar units at a higher rate, I find that in this case the higher rates are not all recently obtained and that as the Park is unique, the landlord is limited by his circumstances to comparing the subject sites to other sites within the Park.

As noted above, the landlord provided the recent rent history for 20 other sites in the Park. Of those 20 tenancies, over half began prior to 2009. I find that the establishment of these tenancies at significantly higher rates cannot be characterized as recent.

Policy Guideline 37 provides in part that "Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord." Although the landlord did not provide information as to the rental rate of all of the sites in the Park, the tenants provided that information and I find that the landlord's failure to provide information about all sites in the Park cannot operate as a bar to his claim, particularly as that information was entered into evidence by the tenants.

Section 33(3) of the Regulations directs me to consider the following:

(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

(a) the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect;

(b) the rent history for the affected manufactured home site in the 3 years preceding the date of the application;

(c) a change in a service or facility that the landlord has provided for the manufactured home park in which the site is located in the 12 months preceding the date of the application;

(d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;

(e) the relationship between the change described in paragraph (d) and the rent increase applied for;

(f) a relevant submission from an affected tenant;

(g) a finding by the director that the landlord has contravened section 26 of the Act [*obligation to repair and maintain*];

(h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the manufactured home park results from inadequate repair or maintenance in a previous year;

(i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;

(j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;

(k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has

(i) submitted false or misleading evidence, or

(ii) failed to comply with an order of the director for the disclosure of documents.

The tenants provided a table of the rents currently paid by each site in the Park and from that data I calculated \$418.46 as the current average monthly rent for all sites in the Park except for the lakefront and subject sites.

I have considered the 3 year rent history for the subject sites and I find that despite having raised the rent each year by the amount permitted by the Regulation, the rent payable for the subject sites has remained significantly lower than those paid for other similar sites in the Park. I have compared the 3 year rent history for the subject sites with the rent history for the 20 other sites referred to by the landlord and I find that the rent has consistently remained significantly lower than those comparable sites.

The parties have not alleged that there has been a change in services, facilities, operating expenses or capital expenditures. I have considered the submissions of the affected tenants and I find that subsections (g) – (k) inclusive have not been raised as issues.

The Policy Guideline specifically states that the landlord's application for an above guideline rent increase will only be granted in exceptional circumstances and directs me to consider the relevant circumstances of the tenancy, the duration of the tenancy, the frequency and amount of rent increases given during the tenancy and the length of time over which the significantly lower rent or rents was paid. The parties did not provide direct testimony regarding the durations of the tenancies but referred to the affected tenants as long term tenants. Clearly each has lived in the Park for more than 3 years as a rent history extending 3 years was provided.

I find that in at least the last 3 years significantly lower rents have been paid and I find that if the landlord were limited to the 2.3% increase permitted under the Regulations, he would be unable to close the gap between the rent payable for the subject sites and the average rent paid for other sites in the Park. I find these circumstances to be exceptional.

I find that when comparing the \$364.36 per month which would be payable after applying the 2.3% increase, the rent payable for the subject sites is significantly lower than the \$418.46 average price of the other non-lakefront sites.

I find that the landlord is entitled to a rent increase above that provided for in the Regulations. The landlord may issue notices of rent increase to the respondents which raise the rent to no more than \$418.46 per month. The notices must comply with section 35 of the Act.

Conclusion

The landlord's application is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 24, 2011

Residential Tenancy Branch