Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RI

Introduction

This matter is considered on the basis of written submissions from both parties, and concerns the landlord's application for a rent increase above the limit set by the Manufactured Home Park Tenancy Regulation (the "Regulation").

Issue(s) to be Decided

Whether the landlord is entitled to an additional rent increase after a rent increase permitted by the Regulation.

Background and Evidence

The application pertains to the manufactured home park (the "park") known as Summerland Beach R. V. & Campground Ltd. ("SBRVC"). The park was formerly known as Illahie Beach R.V. Park Inc. ("Illahie"), and it is understood to have been in existence since at least the early 1980s. It is further understood that after the current landlord took over from the former landlord in October 2010, the park became known as SBRVC.

Illahie had been managed by the previous landlord for approximately 24 years, and prior to his departure he entered into written manufactured home site tenancy agreements (the "agreements") with the tenants who are the subject of this application. Of the 20 sites at issue, the number of sites corresponding with the various start dates of tenancy reflected in the separate agreements before me in evidence is as follows:

Start Date	Number of Sites
January 1, 2009	16
June 1, 2009	1
September 1, 2009	1
April 1, 2010	1
January 1, 2011	1

The agreements describe the subject tenancies as “Seasonal (Apr to Oct only),” and are in contrast to other tenancies in the park which provide for year-round occupancy. The template agreement describes year-round occupancy as “Full Time (12 months of the year).”

In the Judgment issued by Mr. Justice Groves by date of October 26, 2011, the proportional composition of the park in terms of seasonal and year-round sites, as well as “traditional campsites” is described as follows:

> ...I am advised that there are 30 full-time residents of the park and a slightly larger number, 37, seasonal residents...In addition to these 30 full-time residents and 37 seasonal residents...and by seasonal residents, I mean people who occupy their space over the course of the spring, summer, and fall months, there are 90 traditional campsites.

The agreements identify rent in terms of an annual amount which is payable “to the landlord on the first day of each year.” In the landlord’s application these annual rents have been calculated to reflect the pro-rated monthly rent. There does not appear to be any dispute arising from the accuracy of the landlord’s calculations in this regard.

Rent for each of 20 sites at issue was increased most recently on January 1, 2010, and current monthly rents range from a low of $196.67 to a high of $285.00. The landlord seeks rent increases in varying amounts from a low of $150.00 to a high of $228.33, in order to achieve an across-the-board level of monthly rent of $425.00 for all of the subject sites.

For a manufactured home park tenancy, the allowable rent increase that takes effect in 2012 is 4.3% plus a “proportional amount.” The range in percentage increases sought by the landlord is from 45% to 111%. The landlord’s application (RTB-16) reflects application for an additional rent increase on grounds that

> After the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic area, as the rental unit or site.

By way of letter dated February 9, 2012, the landlord speaks to the application in relation to the “seasonal” tenants, in part as follows:

> For purposes of this Additional Rent Increase we have assumed that the ACT applies to the “Seasonal” occupants and that they are considered tenants and

are now requesting the Additional Rent to bring these sites closer to market rent. We reserve our rights to seek a future determination concerning the nature of the legal arrangement existing as between ourselves and the “Seasonal” occupants if so required.

The “Seasonal” restriction contained in the written agreements that the occupants rely upon, specifies that they may occupy the RV unit and site for approximately six months of the year. The balance of the year the RV is permitted to remain on the site but no sewer or water services are provided to it and the RV cannot be occupied. The application of the ACT to these sites requires that we must now provide all services year round and permit the RV’s to be occupied in the winter months. It is this change in use period and service period which requires the Additional Rent Adjustment.

The “Seasonal” rental sites have in the past enjoyed a reduced rental amount due to the reduced availability of use restriction. In a nutshell, these occupants paid a lower rent per year due to the fact they were previously only allowed to occupy the site for six months. Now that the pad must be serviced and available for occupancy year round in order to comply with the Act it is appropriate to adjust the rentals to market value as contemplated and specified in section 33(1) of the Regulation to the ACT.

The best evidence of market rent comes from the recent site rental rates agreed between ourselves and the full time tenants. This is the same land in the same manufactured home park and all the sites are comparable. Currently, the park has 22 tenants who have arrived in the past year or so who pay $425.00 per month. These 22 tenants are at arms-length and constitute the best estimate of market rents.

Subsequently, by letter dated March 22, 2012 the landlord expanded on the information set out in his previous letter, and attached a “colour coded” site plan for the park.

Following this, by letter dated April 10, 2012, the landlord provided information further to that included in his two earlier letters, and in support of the application he submitted “rate sheets from several other South Okanagan RV Parks which could be considered somewhat comparable.” The 4 parks identified are as follows:

Waterworld RV Park (Penticton / year-round)

Sunnybeach RV Park (Oliver / year-round)
Riverside RV Park (Penticton / year-round)
Wright's Beach RV Park (Skaha Lake / "regular" & "off" season 2012)

Written submissions have been made by tenants from 11 of the 20 sites at issue. In general, tenants who have made submissions object to the landlord's application. The sorts of objections raised include, but are not necessarily limited to, claims that sites within the park are not sufficiently similar to justify the assessment of identical levels of rent; there is no justification for raising what are currently disparate levels of rent by varying amounts which immediately bring all rents to the same level; the park and sites are not sufficiently similar to other parks and sites identified by the landlord as comparable; and the landlord has not undertaken to provide any additional services or facilities to tenants since taking over as landlord in October 2010, and so on.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

While the matter before me concerns an application for an additional rent increase, a broad range of related issues is raised in the submissions. As a result, I consider it useful to make passing reference to legislation pertinent to some of these issues.

Arising from the distinction made between "seasonal" tenants and tenants who occupy their site all year-round, attention is drawn to related definitions provided in the Act:

> **"periodic tenancy"** means
>
> (a) a tenancy on a monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with this Act, and
>
> (b) in relation to a fixed term tenancy agreement that does not provide that the tenant will vacate the manufactured home site at the end of the fixed term, a tenancy that arises under section 37(3) *[how a tenancy ends]*;
>
> **"fixed term tenancy"** means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends;

As to how the subject tenancies may end, the agreement provides that a tenant may end tenancy "by giving the landlord at least one month's written notice." In this regard, Part 5 of the Act speaks to **How to End a Tenancy**, and includes **Division 1 – Ending a Tenancy**. While section 37 of the Act addresses **How a tenancy ends**, and speaks broadly to both landlords and tenants, section 38 of the Act speaks more specifically to **Tenant's notice,** and sets out the notice requirements in the case of both a periodic tenancy and a fixed term tenancy.

Reference in the agreement to how the landlord may end a tenancy is limited to the matter of late payment of rent. Part 5 of the Act more broadly addresses the ways in which a landlord may end a tenancy and, as mentioned immediately above, section 37 of the Act provides an overview for both parties in regard to the proper manner for ending of a tenancy.

The agreement also provides that "any change or addition...must be agreed to in writing and initialled by both the landlord and the tenant." Pertinent to this provision section 14 of the Act speaks to **Changes to tenancy agreement**, and provides in part:

> 14(1) A tenancy agreement may not be amended to change or remove a standard term.
>
> (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

As to consideration of partnerships which might be established between landlords and tenants within parks in general, the following sections of the Act seem relevant:

Section 31: **Establishment of park committee**
Section 32: **Park rules**
Section 33: **Park committee role in dispute resolution**

Further to the above, Part 3 of the Regulation (sections 13 to 28) speaks to **Park Committees**, while Part 4 (sections 29 to 31) addresses **Park Rules.**

Turning now more particularly to the matter of an additional rent increase, section 36 of the Act speaks to the **Amount of rent increase**, and provides in part:

> 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.

Section 33 of the Regulation addresses **Additional Rent Increase**, in part:

33(1) A landlord may apply under section 36(3) of the Act *[additional rent increase]* if one or more of the following apply:

(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;

Further, section 33(3) of the Regulation provides as follows:

33(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 expenditure 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.

Residential Tenancy Policy Guideline # 37 addresses "Rent Increases," and under the heading – **Significantly lower rent**, reads as follows:

> The landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings,

but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

The rent for the rental unit may be considered “significantly lower” when (i) the rent for the rental unit is considerably below the current rent payable for similar units in the same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit. In the former, $50 may not be considered a significantly lower rent for a unit renting at $600 and a comparative unit renting at $650. In the latter, $50 may be considered a significantly lower rent for a unit renting at $200 and a comparative unit renting at $250.

“Similar units” means rental units of comparable size, age, (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

The “same geographic area” means the area located within a reasonable kilometre radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject unit, such as proximity to a prominent landscape feature (ie: park, shopping mall, water body) or other representative point within an area.

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 at 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 (ie: 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.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and any additional separate charges for services or facilities (ie:

parking, laundry) that are included in the rent of the comparable rental units in other properties. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographic area, it is not sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. 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.

The amount of a rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessary with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, a dispute resolution officer can approve an additional rent increase that brings the subject unit(s) into that range. For example, a dispute resolution officer may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

In regard to the options available to the director in considering an application for an additional rent increase, section 33(4) of the Regulation provides as follows:

33(4) In considering an application under subsection (1), the director may

(a) grant the application, in full or in part,

(b) refuse the application,

(c) order that the increase granted under subsection (1) be phased in over a period of time, or

(d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the manufactured home park.

While I have turned my mind to all aspects of the documentary submissions made by the parties, not all details in the submissions are reproduced or referenced here.

Out of what is understood to be a combined total of 67 sites in the park (30 full time & 37 seasonal) in the landlord's original application, the number of sites paying $425.00 per month is identified as 22. A later submission appears to identify, by way of colour coding of sites on a park plan, a total of 31 sites currently paying that rate.

I note that colour coding of "turquoise" for the sites which are the subject of this application appears to have mistakenly excluded "E01" and instead, has included it within the sites coloured "yellow" for those paying $425.00. If I correct this, the breakdown of numbers of sites and corresponding monthly rents shown in the colour coded submission is as follows:

$800.00: 2 sites (purple)
$580.00: 2 sites (orange)
$450.00: 2 sites (green)
$425.00: 30 sites (yellow)
Miscellaneous subject rents: 20 sites (turquoise)

Total sites identified: 56

The advertised or current rates being paid for the balance of 11 sites (67 – 56 = 11) do not appear to be included in the application, while I note that the legend on the park plan identifies certain sites as "empty." As well, and seemingly by mistake, the legend identifies that C03 & C06 are included amongst sites designated as "empty," when in fact these two sites are included with the "turquoise" colour coded units which are the subject of this application. In short, I am unable to find that I have before me a record of rents paid by tenants on all of the sites contained in the park, following from which it is difficult to make a conclusive determination around the nature of what may be a relationship between similar rents for similar sites.

In reference to section 33 of the Regulation, as above, while I note that a number of sites within the park are currently paying $425.00 per month, Guideline # 37 provides that it is not sufficient to claim that a site has a significantly lower rent that results from the landlord's recent success at renting out similar units at a higher rate. Further to this, I find there is insufficient detail to confirm the similarity between sites within the park in relation to such things, for example, as square footage and specific services provided.

As to the rent history of the subject sites, there is no evidence that increases have not regularly been implemented during the several years in some cases, while sites have been occupied by the same tenants. Evidently, as earlier noted, the last rent increase

introduced was effective January 1, 2010. The landlord has not subsequently introduced an increase permitted by the Regulation of 2.3% for 2011, or 4.3% for 2012.

It is not clear what "change in a service or facility" may have been provided by the landlord in the 12 month period preceding the date of the application which might lend support to the application. On the contrary, claims have been made in submissions by tenants related to either removal or proposed removal of certain services or facilities which include, but are not necessarily limited to, shower facilities and a store.

Any changes in operating expenses and / or capital expenditure that may have occurred in the 3 years preceding the application are not articulated in the application. Nor is it apparent that there have been particular costs incurred for repairs or maintenance that contribute to the case to be made in an application for an additional rent increase.

I note that while the rate sheets submitted for Wright's Beach RV Park are current for 2012, there is no detailed information provided concerning what might be "similar" about the parks or the sites as referenced in Guideline # 37.

I also note that information provided for the other 3 parks identified in the application is limited to rates, and does not include a description of factors which might contribute to a finding that the parks and / or the sites are sufficiently similar to support an application for an additional rent increase. Further, there is no specific indication of the calendar year to which the rates apply.

Following from all of the above, based on consideration of the documentary submissions from both parties, some of the details from which are set out here, I find on a balance of probabilities that the landlord has provided insufficient evidence to support the application for an additional rent increase above the limit set by the Regulation.

Finally, the parties are informed that a rent increase cannot be introduced in advance of the required 3 months' notice and, thereafter, the new rent remains fixed for the next 12 months. In this regard, section 35 of the Act speaks to **Timing and notice of rent increases**, and provides as follows:

> 35(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
>
> (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

The **approved form** is RTB-11, which is produced by the Residential Tenancy Branch.

Conclusion

The landlord's application for an additional rent increase is hereby dismissed.

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 11, 2012.

Residential Tenancy Branch