Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI

Introduction

This decision documents a hearing under the *Manufactured Home Park Tenancy Act* convened on the tenant's application of December 5, 2012 to contest a Notice of Rent Increase dated August 27, 2012 to take effect starting on December 1, 2012.

Issue(s) to be Decided

Is the Notice of Rent Increase lawful and enforceable?

Background and Evidence

The tenant's application stated that he was contesting the Notice of Rent Increase on three grounds:

The application stated that the notice of rent increase was defective because it was for 4.3 percent rather than 3.8 per percent, the allowable annual increases under the *Regulations* for 2012 and 2013 respectively. On noting that notice was delivered on August 27, 2012 to take effect on December 31, 2012 – in compliance with the three-month requirement and at the rate for the year in which the increase took effect – the tenant did not pursue that claimed defect.

The application further states that the notice was served on the wrong form. The application was made under the *Manufactured Home Park Tenancy Act* but notice was served under the *Residential Tenancy Act.* In any event, that discrepancy is addressed by the tenant's following claim.

By a loosely drafted agreement for "rent to own" made with a previous park owner beginning on October 1, 2003 submitted by the tenant, the tenant was to pay $500 per month to cover pad rent, mortgage, insurance and property tax.

The agreement states that it is for a term of 10 years ending with the final payment to be made on October 1, 2013.

It further states that increases in pad rent will apply and the only other increase will be those to cover increases in taxes and insurance. However, the agreement does not differentiate what portion of the $500 is pad rent and what portion might be for anything other.

The tenant submitted into evidence four notices of rent increase starting in 2009 when the present owner took possession of the park:

1. Notice given on July 31, 2009 under the *Residential Tenancy Act* states that the previous notice was given November 1, 2008. The 2009 notice imposed an increase from $530.01 to $541 per month starting November 1, 2009.

2. A 2010 notice given under the *Manufactured Home Park Tenancy Act* does not include the page stating the date of issuance but imposes an increase to $541 beginning December 1, 2010.

3. Notice dated October 19, 2011 given under the *Manufactured Home Park Tenancy Act* raised the rent to $557.59.

4. Finally, the notice which is the subject of the present application was served under the *Residential Tenancy Act* on August 27, 2012 and increased the rent to $580.95 beginning on December 1, 2012.

I note that the first and last notice were given under the *Residential Tenancy Act* and the two between were under the *Manufactured Home Park Tenancy Act.*

The landlord stated that the *Residential Tenancy Act* notices were correct because he had purchased the manufactured home with the park in 2009 for $12,700. He stated that the home is registered in his name and there is no interest in favour of the tenant registered against the title.

The tenant stated that his legal counsel has filed with the Supreme Court of British Columbia for proceedings to verify his imminent ownership of the manufactured home.

Analysis

While I had initially accepted the evidence of the landlord that he holds title to the manufactured home, and therefore would be entitled to issue a Notice for Rent Increase under the *Residential Tenancy Act*, I find, on reflection that I must reconsider that determination.

Section 58(2)(c) of the *Act* precludes the jurisdiction of the *Residential Tenancy Act* when "a dispute is linked substantially to a matter that is before the Supreme Court of British Columbia."

The proportion of the initial $500 monthly payment that is pad rent cannot be determined until the Supreme Court has determines the validity of the "rent to own" agreement of 2003. Until such determination is made, I must find that the Notice of Rent Increase of August 27, 2012 is void.

Conclusion

Jurisdiction is refused on the grounds that the agreement between the parties is before the Supreme Court of British Columbia and the Notice of Rent Increase is void.

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: January 10, 2013.

Residential Tenancy Branch