



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ARI O

### Preliminary Issues

The Tenants submitted that the hearing documents, which were sent via registered mail, were not available for pick up until December 12, 2012, which made it difficult for them to compile their evidence prior to the hearing.

I offered the Tenants an opportunity to request an adjournment to allow more time to compile their response. The Tenants declined to request an adjournment and stated they felt they were prepared and wished to proceed with the hearing as scheduled.

### Introduction

This hearing convened for two hours and forty minutes on January 10, 2013 and reconvened for the present session on March 11, 2013, to deal with the Landlord's Application for an Additional Rent Increase filed on November 30, 2012. Hearing documents were prepared and sent to the Landlord for service on December 10, 2012.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process, however, each declined and acknowledged that they understood how the conference would proceed.

Each Tenant that was in attendance at the hearing was individually canvassed and asked if they wished to have the lead Tenant, W.D.M., speak on their behalf. All Tenants in attendance affirmed that they wished to have W.D.M. represent them and speak on their behalf. W.D.M. affirmed that the spreadsheet he submitted into evidence, listing Tenants' signatures, provided him the authority to represent and speak on behalf of those Tenants who were not in attendance at the hearing.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted an Order to allow an additional rent increase under the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the application for an additional rent increase; a written submission titled "Schedule"; and an e-mail from the owner of a manufactured home park being used as a comparable park.

The Tenants submitted documentary evidence which included, among other things, copies of: a written statement from Tenants W.F. and K.F.; a hydro bill; a spreadsheet with Tenants' signatures; letters issued by the owner of the Manufactured Home Park (MHP) dated April 26, 2009 and June 10, 2010; pictures; and a written submission from the Ad Hoc Committee of the MHP.

**The Landlord's Witness provided the following oral testimony on January 10, 2013 to compare the subject MHP (Whispering Spruce) with other MHPs in the municipality as follows:**

Kicking Horse MHP

- The Witness is the owner of the Kicking Horse MHP located in the same municipality as the subject MHP;
- He has not resided in the municipality for approximately three years however, he does frequent the community while conducting his MHP business and he is familiar with the subject MHP;
- Current rents charged in his MHP range from \$304.00 to \$355.00;
- He consistently implements an annual rent increase in accordance with the *Act*, and has never missed a year because he needs to spend money to maintain his park and provide services;
- New tenants are charged the highest rental rate;
- His MHP is fully maintained through services hired by contractors including snow removal; maintenance of all common area grass and park; and street lights are maintained through a hydro contract that was grandfathered in;
- His MHP provides sewer, water, and roadside pickup of garbage and recycling at each individual site.
- His MHP covers 13 acres and the subject MHP has about ¼ of number of sites or units as his MHP.
- He believes that his MHP is the best park "in town" and that if his park did not exist he would chose to live in the subject park. His park is quietly located in a cul-de-sac and is well run.

### The subject MHP (Whispering Spruce)

The subject MHP has similar size lots to the witness' park as they both accommodate double wide manufactured homes. The witness' lots are rectangle shape while the subject MHP has lots that are more pie shape or triangle shape.

The witness' was of the opinion that the subject MHP has an expansive view of the valley because it is located up on top of a hill. He imagines that it would be a pleasant place to live with very good air quality, less traffic noise and smoke or exhaust from the highway and trains. He stated he was of the opinion that it would be very quiet up there. He noted that he has knowledge that the subject MHP was previously operated as a seasonal campground, years ago.

### Husky MHP

The subject MHP lots are larger, nicer, better situated, and out of the flood plain. The Husky MHP is located beside a creek, near motels, gas station, and is just off the highway. It has a view of the creek, mountains, and the highway. Their entrance is nice however, when you drive in you see that there are several levels and the buildings are closer together.

### Pinewood MHP

The subject MHP has larger lots than this site. Pinewood is located in what the witness referred to as an industrial area near the mill, railway tracks, and motel buildings. He has not been there in over two years so he could not say much other than this park was not impressive. He noted that the air quality would be polluted at Pinewood due to the mill operating 24 hours per day seven days a week.

### Swiss Village MHP

The Swiss Village is located directly behind a motel, has smaller lots, has some other lots that can only accommodate rubber tire traffic or RV sites; and are not as large as the lots provided at the subject MHP.

**The Tenants were given the opportunity to question the Landlord's witness, during which, the witness advised the following:**

- The road maintenance costs in his MHP (Kicking Horse) are very high due to the presence of frost heaving which does not occur in the subject MHP.
- All street lights in his MHP are repaired quickly because of a contract they have with hydro.

- The witness has a contract to provide snow plowing after every snow fall or when they see fit.
- The witness' MHP has a professional contractor who cuts, sweeps, and maintains the lawns and playground area and equipment. Their playground equipment is substantial and is surrounded by a chain link fence that was properly installed.

**The Landlord provided the following oral testimony on January 10, 2013:**

- She has resided in the MHP for approximately 14 years and has been the on-site manager since approximately January 1, 2009 or 2010.
- The current owner purchased the MHP approximately five or six years ago.
- Her pad rent remained at \$160.00 per month from the onset of her tenancy until 2009 when she agreed to have it raised to \$230.00. There have been no other rent increases since 2009.
- The size of their lots were provided in their written submission and are on average 95 feet long and between 39 to 45 feet wide.
- She believes the lots in the other MHPs are smaller than their park.
- She submitted that the subject MHP has a contractor to do snow removal and they provide two large overhead garbage bins.
- She confirmed that it is her responsibility to care for and clean up around garbage bins which she does to the best of her ability.
- The subject MHP has four street lights. She confirms that a tenant reported to her around Christmas that one of the back street lights was not working and she has requested that it get fixed.
- She is responsible for cutting and maintaining the grass in the park, common areas and boulevard. She gains assistance from her husband and her grandson in maintaining the property.
- The Landlord confirmed that she travels two or three times a year for up to two weeks at a time. During her travels she arranges for other tenants to take over her maintenance duties. She has her cell phone with her and they can contact her with concerns.
- She states that the subject MHP paved the roads about two years ago. Prior to paving there were issues with dust and pot holes but those issues are now resolved. She advised that the roads are maintained to the best of her ability.
- The mailbox is approximately one block away because it was moved when the highway was under construction. She has been in contact with Canada Post to have it moved back beside the MHP, however, they have not responded to her requests as of yet.
- There is a well paved path that leads from the subject MHP down the hill and into town. She thinks the path is maintained by the municipality.
- Their playground area is enclosed by a fence that has two openings, one on either side, which enable access for their equipment to cut the grass. The playground equipment was removed three years ago because it was old and dangerous and has not been replaced. She stated she was of the opinion that

the area is safe and she cleans up the animal feces (dog, cat, wild big horn sheep) when she can.

- The subject MHP has a campground to the right and a motel to the left. The campground is owned and operated by the owner of the subject MHP.
- There is a playground with play equipment in the campground which is accessible to the MHP residents. This playground is only 500 ft from where the MHP playground used to be.
- Their view is what she would call a “million dollar view” as they have mountains on all sides; 95 % of the Tenants’ lots have a view of the Kicking Horse Mountain Resort; and they over look the valley and river. The other parks do not have as nice a view.
- The subject MHP is located 2 miles up the hill from the town.
- The air quality in their park is very clean compared to the other MHPs because the mill and railway tracks are closer to the other MHPs. Also, there are numerous semi trucks that sit and idle during times when the highway is closed or when they stop at the truck stops.
- The subject MHP does not experience trucks idling or noise from the highway now that the construction to move the highway is completed.
- Their park has a very nice curb appeal because all of the Tenants keep up their yards.
- The Landlord stated that overall their park is the best, it is fresh, located on top of a hill, with great scenery. The closest comparison would be the Kicking Horse MHP.
- She confirmed that if the additional rent increase is allowed her rent would also increase.

**The Tenants’ representative provided the following evidence through questions to the Landlord and during their oral testimony on January 10, 2013:**

- The Tenant pointed to the photos they provided into evidence and affirmed that they were taken on December 28, 2012. He noted that they were evidence that the guest parking area, near the garbage bins, was not plowed, and had not been this entire winter season. He noted that their winter season with snow fall usually starts around November 11<sup>th</sup> and leaves sometime in April.
- H.P. from unit # 21 is the Tenant who covers the on-site manager duties when she is away.
- Their roads were paved but only single lane. The road was also paved at a higher grade than the lots which is now causing water egress problems for some of the lots.
- They dispute that 95% of the lots have a great view; rather, they are of the opinion that only 10 to 15% have the good view.
- They dispute the Landlord’s statement that they do not have loud vehicle noises. In fact, the motel that is beside them has a snow mobile business. They rent snow mobiles which access trails all around their MHP. This business caters to

locals and tourists all winter long which creates loud noise and emissions from the snowmobiles.

- They argued that their air quality is not as good as the Landlord stated because they experience a temperature inversion which keeps the smoke and pollution in. In the summer they get daily campfire smoke from the camp ground and they too have to deal with the smoke from trains, and trucks idling on the highway, especially when the highway is closed down. That is because the service road leading to their park is where the trucks sit waiting for the highway to reopen.
- Their MHP has noise problems coming from the trucks which constantly use their jake brakes because of the hill and the heli pad which has flights three times a day which rattle their windows.
- They argue that they cannot be compared to Kicking Horse MHP because they do not have contractors doing the maintenance work. Their yard maintenance is sporadic if at all, maybe on average once per month. They do not see regular maintenance as it is dependent on when the Landlord's husband is in town or when her grandson can come over. Her husband works out of town and her grandson only comes to visit every so often.
- Their common area is not useable as there is no playground equipment nor is it maintained enough for regular use. Currently there is approximately 1 ½ feet of snow in the common play area.
- The Tenants noted that they had agreed to a rent increase in 2009 as per the offer letter issued by the Landlord and provided in their evidence. They argued that the road was not fixed with the use of their rent increase money, rather it was fixed by agreement between the highway department and the Landlord in relation to the construction of the new highway. Also, their playground was not repaired or maintained; rather, it was removed. Snow removal is irregular and not enough. The back street light has been burned out for over a year now and still not fixed.
- They pay their own hydro costs and they have never been told that they can use the campground's playground. They pay rent to have their own playground as provided for in their agreement of 2009.
- The Landlord does not have any extraordinary expenses.

**The Tenant, H. P., resides in unit # 21 and provided the following testimony on January 10, 2013:**

- He affirmed that there were no specific instructions left for him during the Landlord's absence.
- He was provided her cell phone and instructed to call her if anything came up.
- He did have a discussion with her about snow removal, prior to her leaving, and she indicated to him that she prefers that it melt on its own.
- When the Landlord left this last time there was already 12 inches of snow on the ground. She left no instructions about the snow removal so he called and arranged it himself.
- H.P.'s son has the contract for snow removal

**The Landlord refuted the Tenants' submissions on January 10, 2013, as follows:**

- She denies saying that she preferred to have the snow melt on its own and argued that she called H.P.'s son and requested snow removal as soon as she knew it was needed.
- She argued that two vehicles can fit on the road while acknowledging it was paved to be 1 ½ lanes wide.
- She admitted that there is one lot that is having problems with water egress since the road was paved.

**The Tenants argued that their subject MHP cannot be compared with other MHPs in the municipality for the following reasons:**

Kicking Horse

This MHP is located in the township proper within walking distance (800 meters) of all amenities. The subject MHP is located at the top of a 7% grade hill 2 kilometers away from the township. Kicking Horse has roadside garbage and recycling while they do not have recycling at all and have to walk to the garbage bins which have never been maintained. They are also located on the river with a view of the ski hill.

All of the work at Kicking Horse is done by contractors as opposed to the onsite manager or her family when in town. They have two playgrounds where the subject MHP has none.

They argued that the owner of Kicking Horse is not a reliable witness because he has not resided in this town for several years and he is not here that much.

Husky MHP

This MHP would be more of a comparison to the subject MHP because it has a hill on three sides. The subject MHP cannot handle double wide homes either and their lots are similar size to the Husky MHP.

Their rent would be comparable to the subject MHP rents if they had been issued annual rent increases.

Pinewood and Swiss Village MHP

The Tenants argued that overall it is comparing apples to oranges. They pointed to their written submission which disputes the items being compared by the Landlord with Pinewood MHP and Swiss Village MHP. They also submitted information pertaining to the Golden MHP.

At this point the hearing time was about to expire and I informed the parties that we would have to adjourn the hearing and reconvene at a future date. Various hearing dates were reviewed and March 11, 2013 at 9:00 a.m. was offered as the date to reconvene. Neither party objected to this date or time. I informed the parties how the reconvened hearing would proceed with the Landlord's response / cross examination of the Tenants' submissions and closing remarks. Each party was advised that no additional documentary evidence would be accepted.

### **Reconvened Hearing March 11, 2013 at 9:00 a.m.**

The Tenants were represented by their Tenant representative and eight tenant observers who appeared at the March 11, 2013 reconvened hearing. No one appeared on behalf of the Landlord despite the fact that this hearing was convened in response to the Landlord's application for an additional rent increase and despite the fact that the Landlord previously agreed to the date and time of the reconvened hearing.

### **Analysis**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing and was reconvened to an oral teleconference hearing to finish the submission of evidence and to provide closing remarks.

In the absence of the applicant Landlord, the telephone line remained open while the phone system was monitored for fifteen minutes and no one on behalf of the applicant Landlord called into the hearing during this time.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In this case the burden of proof of the market value rent lies with the Landlord who has to meet the high statutory requirement of proving that rent being charge for similar units in the same geographic area are significantly higher than the Tenant's rent. Section 37 of the *Policy Guideline # 37* stipulates that:

- An application must be based on the projected rent after the allowable rent increase is added; and
- Additional rent increases under this section will be granted only in **exceptional circumstances**; and



- “Similar units” means rental sites of comparable size, (including view), and sense of community; and
- The “same geographic area” means the area located within a reasonable kilometer radius of the subject manufactured home park with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject park, such as proximity to a prominent landscape feature (e.g., park, shopping mall, water body) or other representative point within an area.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After careful consideration of foregoing, in the absence of documentary evidence to the contrary and in the absence of the Landlord at the reconvened hearing, I find the disputed verbal to be insufficient evidence to meet the high statutory requirement for an additional rent increase. Accordingly, I dismiss the Landlord’s application, without leave to reapply.

#### Conclusion

**I HEREBY DISMISS** the Landlord’s application, without leave to reapply. As a result, the Landlord is hereby restricted to implementing the annual allowable rent increase for the 2013 rental period, in accordance with the *Manufactured Home Park Tenancy Act*.

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: March 11, 2013

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Residential Tenancy Branch

