Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crystal River Court Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, AS, FF, O

Introduction
This hearing dealt with an application by the tenant for orders setting aside rent increases and allowing a tenant to assign or sublet because the landlord's permission had been unreasonable withheld. Both parties appeared and had an opportunity to be heard.

In its' written submission the landlord asked for an order of possession based upon a 1 Month Notice to End Tenancy for Cause. The landlord was advised that it must file a separate application for dispute resolution on that issue.

In material filed just three days before the hearing and not received by my until after the hearing the tenant asked for a repair order for the driveway. He also made this request verbally during the hearing. He was advised that since this request was not included on the application for dispute resolution he would to file another application on that issue.

Issue(s) to be Decided
- Is clause "I" of the tenancy agreement enforceable by the landlord?
- Were the rent increases imposed in 2012, 2013 and 2014 valid?

Background and Evidence
On August 31, 2006, the parties entered into a tenancy agreement for a manufactured home park site. The tenant had bought the manufactured home that was already parked on the site. The monthly rent, which is due on the first day of the month, was $325.00. Part of the tenancy agreement is the park rules and regulations.

The relevant portions of the rules and regulations are as follows:

> "A. MOVING INTO THE PARK
> 4. Tenant shall enter into a contract with a contractor acceptable to management to build the foundation, to set up the home and to provide the tie downs, to build the steps and the railing, to pave the driveway and parking, to grade the pad site, to landscape the front yard and to provide a hook-up for the services. Tenant

shall obtain management approval of such contract before proceeding with any work.
6. All porches, decks, tool sheds, workshop, steps, fences, additions, etc. to be built on the premises, must first be approved by management in writing. A properly dimensioned plan must be drawn up by the Tenant, and signed by management, before a Building Permit application is submitted to the [local municipality] for approval. The exterior and roof of any addition must be finished with a material similar to that of the Home.
7. Skirting. . (b) porches, and decks, addition must be skirted with the same material as the house . . .

B. MAINTENANCE OF PAD SITE AND HOME
1. The rules and the standards that apply for moving into the park shall apply to the maintenance of pad site and home.

C. ADDITIONS AND ALTERATIONS TO PAD SITE AND HOME
1. All the rules of MOVING INTO THE PARK shall apply here.
2. Any and all additions and alterations to the Home or attachments thereto, including decking or patios, must be first approved in writing by the management before submitting same to the [local municipality] for approval. Any and all additions must be in compliance with the Bylaws of the [local municipality].

I.SELLING OR RENTING THE MOBILE HOME
A tenant may rent out the mobile home or sublet the lease ONLY under the following conditions: . . .
If the tenant wishes to sell the mobile home, the tenant must:

a.) Obtain written approval from management for the Home to remain in the park. Management may prepare a list of deficiencies relating to the mobile home, including but not limited to issues relating to the yard, fencing, additions, improvements, steps, skirting, parking area, landscaping etc. If the Tenant makes the proper corrections to the unit, additions, etc., and the unit meets current safety codes, management may allow the unit to remain within [the park]. However, such approval is not guaranteed and is up to management in its sole discretion.
b.) If approval is granted by management in writing the current owner must submit an APPLICATION TO LEASE, completed by the potential purchaser and the new Tenant for approval, along with an application fee of $50.00. Please note that such approval may be arbitrarily withheld."

On November 30, 2013 the park rules and regulations were amended. The only significant changes relevant to these proceedings were:

- A three month time limit to complete the work was added to clause A.4.
- The sentence: “Note: plywood and OSB strand board are not acceptable siding, skirting or railing materials” was added to A.6.
- A requirement that the landlord’s approval to the sale be in writing was added to I.a.

It is acknowledged by both parties that this manufactured home was in very poor condition when the tenant bought it and that he has made significant improvements to it such as replacing the windows, the roof and the doors. He never applied for approval for these repairs nor did he receiving anything from the landlord objecting to the work.

The landlord testified that they want their tenants to improve and upgrade their properties and so long as the tenants are making improvements they do not interfere. However, they do want their tenants to complete their improvements and the point at which they apply pressure is when the tenant wants to sell their home to someone else and leave it in the park. It is at that time they enumerate the repairs that are required.

The tenant testified that the deck at the entry was in place when he bought the manufactured home. He replaced the particleboard half walls with treated plywood painted to match the home, replaced the steps, and painted the balance of the existing structure.

The landlord testified that he did not recall the deck being attached to the home when the tenant bought it.

The tenant testified that when he bought the home there was a gravel driveway on the site. He said that before he signed the tenancy agreement he asked the then park manager about clause A.4. He was told it only applied to homes being moved into the park. It is acknowledged by both parties that no improvements were made to the driveway during this tenancy.

In the spring of 2014 the tenant put a “For Sale” sign in his window.

The landlord sent the tenant a letter dated May 7m, 2014, advising the tenant that they were prepared to allow the home to stay in the park if he met certain conditions. The only conditions that are relevant to these proceedings are:

3. Replace the plywood or particle board railing/pickets around the deck at the entry to your home with proper wood pickets, per Rule A.6 of the Rules. Please, note, Particle Board or OSB Strand Board and lattice are not allowed to be used for fencing, pickets or railings. Then paint or stain the pickets in a natural colour or colour to match the trim around your home;
8. Re-gravel or pave driveway and repair walkway to front door.
Please note that whether you sell this home or not, the above work must be completed by July 31, 2014."

The tenant's position is that these requirements are contrary to the legislation.

The second issue between the parties relates to the rent increases that were imposed effective June 1, 2012; June 1, 2013; and June 1, 2014. Prior to June 1, 2012 the rent was $355.00 per month. It was increased to $375.00 in 2012; to $395.00 in 2013; and to $405.00 in 2014. A portion of the rent increase is the amount allowed each year by regulation and a portion is the increased cost of local government levies and public utility fees and charges which the landlord is "flowing through" to the tenant.

More than three months prior to the effective date of each increase the landlord served the tenant with a Notice of Rent Increase. The form served on the tenant was the first four pages of the seven page approved form. These are the pages that set out the calculation of the increase and give the tenant information about their rights under the legislation. The last three pages are the instructions to the landlord on how to complete the form.

The tenant argues that the landlord's failure to serve all seven pages of the form is a breach of the legislation and that therefore the rent increases are invalid.

The instructions under Section D.(1) "Detailed Calculation – Local Government Levies" include "Attach a copy of the appropriate tax notices and invoices for other local government levies." This instruction is repeated on page 6 of the form under "(2) Public Utility Fees and Charges": "Copies of bills and assessment notices must be attached to this Notice of Rent Increase."

It is acknowledged that the landlord did not attach any assessment notices or invoices to the Notices of Rent Increase. The landlord explained that there are eight hydro meters on the property and they receive a separate bill every two months for each meter. The hydro bills, assessment notices and other invoices amount to fifty plus pages of paper. As the park had 75 to 77 sites during the relevant period the volume of paper was just too onerous. However, the landlord was prepared to arrange an

appointment with any tenant who wished to look over the relevant invoices, provided the tenant submitted a written request to do so.

The tenant argued that the landlord's failure to attach the notices and invoices was a breach of the legislation and that therefore the rent increases were invalid.

It is acknowledged that the landlord rounded out the amount of the rent increase. The landlord testified that this was done in response to requests from many tenant to have the rent be a round number. He testified that in 2012 and 2013 the rent increase was rounded up by $2.00 and $1.00 respectively; in 2014 it was rounded down by $1.27.

Analysis

Is clause "I" of the tenancy agreement enforceable by the landlord?

Section 28(s) of the *Manufactured Home Park Tenancy Act* provides that a landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulation. Section 48 of the *Manufactured Home Park Regulation* lists the specific circumstances in which a landlord's consent may be withheld.

The only ground that may be applicable to this situation is subsection 48(i): "the manufactured home does not comply with housing, health and safety standards required by law." The park rules and regulations say that any additions to the manufactured home must be approved by the local municipality and be in compliance with the bylaws of that municipality. Approvals are only required when a structure is added. There is no evidence that the deck was added or expanded after this tenant bought this manufactured home.

Section 6 of the *Act* states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the *Act* or *Regulation.* The portions of Clause I of the tenancy agreement which state that approval of any sale is conditional on a tenant remedying a list of deficiencies prepared by the landlord is contrary to the *Regulation* and therefore is unenforceable; as is the portion of the tenancy agreement that says approval is at the sole discretion of management.

If a tenant fails to comply with the terms of the tenancy agreement or the sections of the Act relating to a tenant's duty to repair, the landlord may take action pursuant to section 40 of the Act; not by withholding consent to a subletting or assignment of the tenancy agreement.

In the hearing the parties were informed about section 28(3) of the *Manufactured Home Park Tenancy Act* which provides that "a landlord must not charge a tenant for considering, investigating or consenting to an assignment or sublease."

The tenant has not received an offer for his home so no order allowing him to sublet or assign his interest is required.

Were the rent increases imposed in 2012, 2013 and 2014 valid?
A detailed explanation of the B.C. legislation regarding rent increases is set out in *Residential Tenancy Policy Guideline 37: Rent Increases.*

One of the points explained in the *Guideline* is that as the legislation specifies that a rent increase cannot exceed the calculated amount of the increase, a landlord should not round up any cents left in calculating the allowable increase. A landlord who desires to increase a tenant's rent by more than the allowed annual rent increase can ask the tenant to agree to an increase that is greater than the allowed amount. If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to an arbitrator for approval of the rent increase. Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount. The result is that the rent increases in 2012 and 2013 were greater – albeit by a very small amount – than the allowable rent increases for that year.

The real problem for the landlord is that while it did comply with subsections 35(1) and (2) it did not comply with subsection (3) because is did not give notice of rent increase in the prescribed form. An essential part of the prescribed form is the obligation to attach the documents in support of the charges which the landlord wished to "flow through" to the tenant. Allowing a tenant to look at the invoices in particular circumstances is not complying the legal requirements as clearly set out in the instructions to the landlord on the form itself.

A notice of rent increase that is not in the prescribed form is invalid. Accordingly, the rent increases that came into effect in 2012, 2013 and 2014 are invalid. The rent remains at $355.00 per month.

I find that the tenant has overpaid rent in the amount of $870.00 calculated as follows:

June 1, 2012 to May 31, 2013	$20.00 X 12 =	$240.00
June 1, 2013 to May 31, 2014	$40.00 X 12 =	$480.00
June 1, 2014 to August 1, 2014	$50.00 X 3 =	$150.00
TOTAL		$870.00

Section 36(3) of the *Act* provides that if a landlord collects a rent increase that does not comply with the legislation the tenant may deduct the increase from rent or otherwise recover the increase.

Further as the tenant has been successful in his application I hold that he is entitled to reimbursement from the landlord of the $50.00 fee he paid to file it. Pursuant to section 65(2) that amount may also be deducted from any rent due to the landlord.

I order that the tenant is not required to pay any rent for the next two months and is only required to pay $145.00 for the third month's rent. After that the tenant is required to pay rent in the amount of $355.00 per month until the rent is increased in accordance with the legislation.

Conclusion

a.) Portions of the tenancy agreement have been found to be contrary to the legislation.
b.) Rent increases have been set aside and a repayment order in favour of the tenant has been made.

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: August 07, 2014

Residential Tenancy Branch