



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEACE ARCH RV PARK and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPC, OPR, FFL

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on November 16, 2018, wherein the Tenants sought the following relief:

- to cancel a 1 Month Notice to End Tenancy for Cause issued on October 16, 2018;
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 16, 2018;
- an Order directing the landlord to comply with the *Manufactured Home Park Tenancy Act*, the *Residential Tenancy Regulation* and/or the tenancy agreement;
- monetary compensation for illegal rent increases since the beginning of the tenancy; and,
- recovery of the filing fee.

The hearing convened by teleconference at 11:00 a.m. on January 4, 2019. Only the Tenants called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 12:00. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenants' hearing package.

The Tenant, G.B., testified that they personally served their application and evidence on the Landlord's office worker, A., on December 1, 2018. I accept the Tenants' undisputed testimony in this regard and proceeded with the hearing in the absence of the Landlord.

Preliminary Matter—Issues to be Decided

At the outset of the hearing the Tenants confirmed that they attended a prior hearing on November 27, 2018. A review of the Decision from that hearing confirms that the two notices issued on October 16, 2018 were cancelled and the Landlord was directed to comply with the *Act* in terms of entering the manufactured home park site. The Tenants were also credited \$100.00 for the filing fee for their application. The file number for that matter is included on the unpublished cover page of this my Decision.

As a result of the November 27, 2018 hearing, the only matters left to be decided by me are the Tenants' request for monetary compensation based on an alleged illegal rent increases and recovery of the filing fee paid for the November 16, 2018 Application.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation for illegal rent increases?
2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenants submit that they have received rent increases which do not comply with the *Act* and the *Regulations* as they were neither issued on the proper form, nor were they given the proper notice. They seek reimbursement of the amounts paid pursuant to those alleged illegal increases.

K.D. testified that they moved into the manufactured home park on June 11, 2011. She confirmed the Tenants did not keep records of their rent payments until 2013 when they began entering those payments into a computer accounting program. K.D. confirmed that those records indicated that as of 2013 their monthly rent was \$515.00 per month. She was not able to advise as to when the rent was first increased, although she guessed it was in March of 2012 because she believes they have received a rent increase in March of every year.

The Tenant G.D. also testified and stated that the rent increases were as follows.

- In 2013, the monthly rent was \$515.00.
- On July 9, 2014 the rent was increased to \$535.00.
- On July 10, 2015 the rent was increased to \$550.00
- On June 22, 2017 the rent went to \$570.00

On March 2018 the rent was increased to \$590.00 by letter dated March 2018; notably, the date was omitted on the letter and only the month and year were included.

Both Tenants confirmed that at no time during their tenancy did they receive a Notice of Rent Increase on the proper form, nor were they given the three months' notice as required by the *Manufactured Home Park Tenancy Act*. Rather, they testify that they simply received a letter from the Landlord informing them of the increase and demanding that they pay. They also noted that the amounts requested by the Landlord were not consistent with the amounts allowed under the *Residential Tenancy Regulation*.

A copy of the March 2018 letter was provided in evidence and reads as follows:

"Recently, we have visited other RV Parks to compare with ours. After looking at each one, checking the sites and the area (they did not have permanent complimentary Wi-Fi and cable). We can confirm that [name of subject manufactured home park] is the best one.

At the same time, while doing our inquiry, we were told we are the RV Park charging the lowest monthly rent and it gives us a reputation of being considered a shanty place.

We seriously studied the situation and we have decided to increase the monthly rent.

From May 01st, 2018 there will be an increase of **\$20.00**. The monthly rent will be **\$590.00.**"

[Reproduced as written; emphasis in original.]

Analysis

After consideration of the Tenants' undisputed evidence, testimony and submissions and on a balance of probabilities I find as follows.

Rent may only be increased in accordance with part 4 of the *Manufactured Home Park Tenancy Act* and Part 5 of the *Manufactured Home Park Tenancy Regulation*.

The Tenants seek return of the rent paid pursuant to the illegal rent increases. While they were not able to advise as to the rent initially paid when the tenancy began, they were able to confirm that as of 2015³ their rent was \$515.00. I accept the Tenants' evidence that at no time did the Landlord issue a Notice of Rent Increase on the approved form, nor did the Landlord give the Tenants the proper notice, or increase rent in accordance with the *Regulations*.

I therefore find that the rent increases over and above \$515.00 are of no force and effect.

Pursuant to section 36(5) of the *Act*, the Tenants are entitled to recovery of the amounts paid over and above the allowable amount. I accept their evidence that the Landlord raised their rent as follows:

Date	Original rent	Amount of Increase over <u>\$515.00</u> allowable amount	Amount paid pursuant to rent increase	Months paid	Total overpayment
July 9, 2014	\$515.00	\$20.00	\$535.00	12	\$240.00
July 10, 2015	\$535.00 <u>\$515.00</u>	\$15.00 <u>\$35.00</u>	\$550.00	11 <u>23</u>	\$165.00 <u>\$805.00</u>
June 22, 2017	\$550.00 <u>\$515.00</u>	\$20.00 <u>\$55.00</u>	\$570.00	11	\$220.00 <u>\$605.00</u>
May 1, 2018	\$570.00 <u>\$515.00</u>	\$20.00 <u>\$75.00</u>	\$590.00	9	\$180.00 <u>\$675.00</u>

TOTAL	\$805.00 <u>\$2,325.00</u>
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Although the Tenants only claimed the sum of \$300.00 on their Application, I find that the Landlord could reasonably have anticipated that the Tenants would seek more than \$300.00 based on the information contained in the Details of Dispute Section on their application which reads as follows:

"OLC-We have never had 3 months' notice for rent increases. It has always been 1 – 2 months.

In the 7.5 years that we have lived here, there has never been a time that the rent increases were on a Residential Tenancy Branch government form, (RTB11) or (RTB45). Instead these rent increases have either been hand delivered or given to us when we pick up our mail and are on a short note/letter..."

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* allows me to amend an Application in circumstances that can reasonably be anticipated. I therefore amend the Tenants' Application to claim the full amount of overpayment pursuant to the historic illegal rent increases.

As the Tenants have been successful in their Application I also award them recovery of the \$100.00 filing fee for a total monetary award of ~~**\$905.00**~~ **\$2,425.00**.

Conclusion

I decline to consider the Tenants' Application for an Order canceling two notices to end tenancy issued on October 16, 2018 as well as an Order that the Landlord comply with the *Manufactured Home Park Tenancy Act* as those matters were already decided by Arbitrator Lee on November 27, 2018.

The Tenants' Application for monetary compensation pursuant to an illegal rent increase is granted. The Tenants are entitled to recover the sum of ~~**\$805.00**~~ **\$2,325.00** representing the amounts paid over and above the allowable amount since July 9, 2014. The Tenants are also entitled to recover the \$100.00 filing fee.

I find the Tenants rent is \$515.00. The Landlord may not raise the rent unless done in accordance with the *Manufactured Home Park Tenancy Act* and the *Manufactured Home Park Tenancy Regulation*.

Pursuant to section 65(2) of the *Manufactured Home Park Tenancy Act* I authorize the Tenants to withhold the sum of ~~**\$905.00**~~ **\$2,425.00** from their future rent payments until

they are repaid the ~~\$905.00~~ \$2,425.00 awarded. For greater clarity I reproduce section 65 as follows:

65 (1) The director may order payment or repayment of a fee under section 52 (2) (c) [*starting proceedings*] or 72 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a landlord to pay an amount to a tenant, including an amount under subsection (1), the amount may be deducted from any rent due to the landlord.

~~As I have set the Tenants rent at \$515.00, they shall not be obligated to pay the February 2019 rent and will only be required to pay \$125.00 for their March 2019 rent.~~

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: January 9, 2019

Corrected: February 19, 2019

Residential Tenancy Branch