Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI

Introduction

The Tenant seeks an order pursuant to ss. 36 and 55 of the *Manufactured Home Park Tenancy Act* (the "*Act*") disputing a rent increase.

J.J. appeared as the Tenant. The Tenant was joined by G.B. as her advocate. G.M. appeared as the Landlord's agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, I enquired with the Tenant whether the application and evidence was served on the Landlord. The agent acknowledges receipt of the Tenant's application and evidence, indicating it had been received on December 26, 2022. The agent raised objection to service as the application had been served outside the three-day window imposed by the Rules of Procedure.

I note that Rule 3.1 of the Rules of Procedure requires an applicant to serve the Notice of Dispute Resolution on the respondent three days after it has been provided by the Residential Tenancy Branch. In this case, the Notice of Dispute Resolution was provided by the Residential Tenancy Branch on December 16, 2022. I further note that Rule 3.14 of the Rules of Procedure permits an applicant to serve additional evidence up to 14 days prior to the hearing.

Despite the technical breach of the Rules, I enquired with the Landlord's agent whether he had sufficient time to review and prepare for the application. I was advised that he

had and that he served the Landlord's response evidence on the Tenant on January 6, 2022. The Tenant acknowledged receipt on January 6, 2022. Rule 3.15 of the Rules of Procedure requires a respondent to serve their evidence on the applicant at least 7 days prior to the hearing. Technically, the Landlord's evidence was served in breach of Rule 3.15 of the Rules of Procedure.

In this instance, the Tenant breached Rule 3.1 of the Rules of Procedure with respect to the application, though technically served evidence in compliance with Rule 3.14. The Landlord's agent acknowledges having sufficient time to respond, though did serve the evidence a day late. Given the overlapping breaches of the service timelines within the Rules of Procedure, I find that I should not apply the Rules rigidly under the circumstances. It is important to consider that the Rules, particularly the service timelines, are intended to ensure a procedurally fair process. In this case, I am satisfied that the parties have been served and that they have had time to prepare for the hearing. Pursuant to s. 64(2) of the *Act*, I find that each party was sufficiently served with the other's application materials.

Curiously, the Tenant's advocate says he was not served with the Landlord's evidence. It should be clear that the advocate is not a tenant, only acting on the Tenant's behalf. Reference to the Rules and the *Act*, it is clear that service is to be effected on the relevant parties, not their advocates. In the application, the Tenant's address for service is the subject rental unit, not the advocate's address. I place no weight in the advocate's objection and it is incumbent upon the Tenant to ensure the documents that had been served were provided to her advocate. It is not the Landlord's responsibility to do so.

This raises a secondary issue as the application lists G.B. as a tenant. However, at the outset of the hearing G.B. identified himself as the Tenant's advocate, not the tenant. Review of the tenancy agreement and the relevant notice of rent increase shows that J.J. is the sole tenant for the manufactured home site, a point that was made abundantly clear by the Tenant, the Landlord's agent, and the advocate himself. I find that G.B. was improperly named as a tenant in the application. Accordingly, I amend the style of cause to remove him as a party to the dispute.

There was further issue with the application as the wrong rental unit site was listed by the Tenant or her advocate in the application. The parties confirmed the correct site and I have also amended the application to correct this oversight.

Issues to be Decided

1) Was the rent increase imposed by the Landlord properly issued?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed that the Tenant began to occupy the subject site in March 2015. I am further advised by the parties that prior to the rent increase, rent for the site was $478.91 due on the first of each month. The parties further confirm that as of January 1, 2023 rent was increased to $546.13.

Both parties provide a copy of the subject notice of rent increase, which is signed by the Landlord on September 27, 2022. The Landlord's agent advised that it was provided to the Tenant on September 29, 2022, which the Tenant acknowledges receiving on that date. The Landlord's agent further advises that the notice of rent increase was served with a letter explaining it to the tenants. A copy of the letter has been put into evidence by the Landlord.

The Tenant's advocate raises issue with respect to the method the increase was calculated, saying that the subject property has 9 manufactured home sites and 35 RV sites that are held by their occupants as a licence to occupy. The Landlord's agent acknowledged that the property does have RV sites, though argued that the advocate's objection would result in a higher rent increase based on the proportional amount permitted under the *Act* and the Regulations.

Review of the notice of rent increase shows that the Landlord has sought to increase rent for the proportional amount based on increases in property taxes and solid and liquid waste disposal. This amount is divided between 44 sites and the Tenant was assigned 4 sites. According to the Landlord's agent, the Tenant only occupies one site, though as explained in the letter, RV sites were used a base unit of 1 site, large RV sites were a base unit of 3, larger RV sites were a base unit of 4, single-wide mobile home sites were a unit of 4, and double-wide mobile home sites were a unit of 5. I am told the Tenant has a single-wide site, hence the 4-unit apportionment.

I enquired whether the Landlord has provided copies of the relevant statements. The Landlord's agent says that it can be provided to the Tenant but that it was not served in evidence out of his concern that G.B. would receive copies of the documents.

The parties confirmed that the Tenant paid the increased amount on January 1, 2023.

Analysis

The Tenant files to dispute a rent increase.

Section 35 of the *Act* sets out the timing for notice rent increases and s. 36(1) a rent increase may not be imposed that is not calculated in accordance with the Regulations. As per s. 32.1(3) of the Regulations, rent increases effective on January 1, 2023 are limited to increases no greater than 2% plus the proportional amount. "Proportional Amount" is defined under s. 32 of the Regulations as "the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park".

In this instance, it is undisputed that the subject property has some RV sites and some manufactured home sites. As per the notice of rent increase, the total is 44 sites and with reference to the Landlord's letter explaining the increase, there are 11 manufactured home sites (5 single-wide and 6 double-wide). The issue with the imposition of the rent increase is that the Tenant only occupies one site. Despite this, the Tenant's rent increase was for 4 sites based on the apportionment determined by the Landlord. This is not how the proportional amount for the rent increase is to be calculated as per the definition as set out under s. 32 of the Regulations.

Further, the Landlord's methodology of assigning various unit weights to each site type is entirely arbitrary and leads to manifestly unfair results. Keeping in mind that including the RV sites there are 44 sites in total, the Landlord's apportionment would result in 50 sites being assigned to the 11 manufacture home sites ((4 units x 5 single-side sites) + (5 units x 6 double-wide sites)). In other words, the Landlord increased rent for the manufactured sites in an amount that exceeds the total increase costs asserted in the notice of rent increase.

I find that the rent increase is in contravention of the *Act* and is of no force or effect. The overpayment of rent for January 2023 shall be deducted from the Tenant's rent obligation to the Landlord.

Conclusion

The notice of rent increase signed on September 27, 2022 is of no force or effect. Pursuant to s. 36(5) of the *Act*, I direct that the Tenant withhold $67.14 from rent owed to the Landlord on **one occasion** in full satisfaction of the rent increase paid by the Tenant for January 2023.

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 13, 2023

Residential Tenancy Branch