

DECISION

Dispute Codes RI

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order for an Additional Rent Increase, as the Landlords claim that the rent for the manufactured home sites in question are significantly lower than the rent payable for other manufactured home sites that are similar to, and in the same geographic area as the manufactured home sites.

Service of the hearing documents, by the Landlords to the Tenants, was done in accordance with section 82 of the Act, sent via registered mail to each Tenant.

The Landlords and the Tenant's Representative appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the Landlords entitled to an Order to allow them to increase the rent for 37 of the 53 manufactured home sites located in their park, by an amount higher than provided for in the Manufactured Home Park Regulations, under Section 36 of the Manufactured Home Park Act?

Background and Evidence

The Dispute Resolution Hearing convened on June 5, 2009 at 11:00 a.m. where all parties took an affirmation and the Landlords began to present their evidence as follows:

The Landlords are requesting a rent increase for 37 sites located in their Manufactured Home Park. The Landlords claim that the Government has made the Landlords deal with many years of rent caps and only recently allowed flow through expenses.

The Male Landlord testified that the Manufactured Mobile Home Park is 36 years old and the Landlord feels that they will eventually need a new water system and that it would be cheaper for him to close the park down than it would be to replace the water system.

The Male Landlord stated that he needs to be able to operate his business his way and not be controlled by the Government. The Landlord stated that there have been many years of increased property values and that the Landlord does not care at this time if his application for a rent increase is approved or not because "the Tenants will suffer if the rent increase is not approved because I will just change the use of my land and evict all of the Tenants".

The Male Landlord drew attention to the Tenant's evidence on page T3 stating that there is a fraudulent statement about the Landlord not supplying snow removal. The Landlord argued that he has always provided snow removal and in fact last winter they paid over \$1,100.00 for snow removal for the park.

The Landlords stated that their evidence on page L8 displayed 15 lots out of a total of 109 in a Park that is located outside of the City limits, is not lake front but that has paved roads.

The Landlords testified that their evidence on L7 is for a park that is located on the same lake as their park, that the park is a Seasonal RV park but that there are four Park Model trailers there year round.

The Landlords advised that there are approximately 12 Manufactured Mobile Home Parks within a 100 km radius of their park.

The Hearing was adjourned at 11:50 am and scheduled to reconvene on Tuesday June 30, 2009 at 9:00 a.m.

The hearing reconvened on June 30, 2009 at 9:00 a.m. and I reminded all of the participants that they were still under their affirmation from June 5, 2009.

I reviewed the testimony as listed above and the hearing proceeded with the Landlords' testimony.

The Landlords confirmed that they have owned the Manufactured Mobile Home Park since August 2002, that they increased all of the pad rentals as soon as they took possession of the park and that they have implemented the maximum allowable rent increases every year since.

The Landlords testified that they do not allow assignment of existing leases to prospective purchasers and that it is their policy to have all purchasers sign a new tenancy lease with an increased pad rent amount.

The Landlords testified that they have not made any changes to the park since owning it in 2002 and that they have not incurred any major expenses to repair or maintain the park. The Landlords advised that they replaced the roof on the maintenance storage shed, repaired minor water leaks, and provided for regular minor maintenance as required.

The Landlords have requested that their application be considered with only the comparisons they provided in their evidence L6 and L11, which represent pad rental amounts from 17 trailers which are located in their own park, all of which have had new lease agreements, at higher pad rents, because of sales which occurred between 2007 and 2009. A discussion followed where I noted that L11 included two sales that are

scheduled to close in June and July 2009 and have occurred after the Landlords' application for a rent increase so will not be included in the comparison.

The Male Landlord testified that he is requesting the rent increase so that he can receive more return on his investment; because property values have increased he feels he should realize an increase now in his return on this investment.

The Tenant's representative presented her evidence and confirmed that their park has sewer, not septic, that they do not have a club house, and that they have garbage and water included.

The Tenant's representative noted that their evidence on page T3 represents what is listed in their written contract and that snow removal is not listed in their contract and that is why she listed it as not being included on her spreadsheet. The Tenant's representative stated that it was not listed to be fraudulent, but rather an account of what is listed in the written agreement.

The Tenant's representative presented her documentary evidence and stated that she was surprised to learn that the Tenants in her park are already paying higher than the average pad rentals for comparable units.

The Tenant's representative drew attention to her summary on page 4 of her evidence and a discussion followed with respect to the Residential Tenancy Guideline # 37 where it states that it is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from a landlord's recent success at renting out similar units in the residential property at a higher rate.

The Landlords argued that their comparison did not consist of "recent" higher rents as defined by the Webster's Dictionary as their comparisons are drawn from rents that were increased in 2007 and 2008 after the sale of the noted trailers.

The Landlords also drew attention to a copy of a letter they had received from the Director of Corporate Policy and Program Integration at the Residential Tenancy Branch whereby she advises that "if the landlord believes the current rent charged is lower than charges for similar units, either in the park or other nearby parks, the landlord may apply to the Residential Tenancy Branch for dispute resolution." The Landlord argued that this letter gave him permission to request that his application for a rent increase be based solely on the comparable units in his own park and requested that the Dispute Resolution Officer consider only those comparables which the Landlords have provided in their evidence on page L6, listing 15 monthly pad rentals averaging \$412.72.

Analysis

In applying for an additional rent increase because the current rent is lower than comparable units or sites the Landlord has the burden and responsibility for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. Section 37 of the *Residential Tenancy Policy Guideline* stipulate that additional rent increases under this section will be granted only in **exceptional circumstances** and that it is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar unit in the residential property at a higher rate.

In this application the Landlords have requested that their application be considered with the use of comparable rents from only 15 of their 53 rental sites which represents only 28% of the rents currently charged in their own park. The current average rent for the 15 units selected is \$412.72 while the average rent for the remaining 38 units is \$348.94. The Landlords' comparison included 10 single wide units which average \$414.60 each and 5 double wide units which average \$408.85 each.

The Landlords did not use lake front units in their 15 comparables and yet they are seeking the rent for these 9 units to be increased to \$450.00 when the current average rent for the lake front units is \$369.49.

The current monthly rent for the seven double wide units not used in the Landlords' comparison is \$365.00. The Landlords included 5 double wide units in their comparison which have an average rent of \$408.85 and the Landlords are seeking an increased rent of \$422.00 for double wide units.

The current monthly rent for the 22 single wide units not used in the Landlords' comparison is \$323.20. The Landlords used 10 single wide units in their comparison with an average rent of \$414.60 and the Landlords are seeking an increased rent of \$412.00 for single wide units.

In my considerations I am guided by section 33(3) of the *Manufactured Home Park Tenancy Regulation* and I find the following

- The Landlords' rental increase request is for amounts that are higher than the comparables he has submitted and that the comparables do not represent "all" of the units in the Landlords' park.
- The rent has been increased by the maximum allowable amounts consistently since the Landlords have owned the park.
- The Landlords have not provided a change in service or facility since owning the park in 2002.
- The Landlords have testified that there have not been a change in their operating expenses and capital expenditures in the last 3 years.
- The Landlords claim that they have not suffered an increase in costs with respect to repairs or maintenance in the park, but that they simply want to increase their income because the property value has increased.
- The Tenants have provided comparisons from other parks in the same geographic area with similar services with rents ranging from \$291.00 to \$500.00 with a median rent in the range of \$326.00 to \$350.00.

Section 37 of the *Residential Tenancy Policy Guideline* states that specific and detailed information, such as rents for **all** the comparable units in the residential property **and** similar residential properties in the immediate geographical area with similar amenities

should be part of the evidence provided by the Landlord. I find that if we were to allow Landlords to use only a sampling of rents that they themselves have increased, either recently or over the past year or two, would constitute a situation to create a monopoly.

Based on the above, I find that the Landlords have failed to prove the rent for the 37 rental units are significantly lower than the current rent payable for similar units in the same geographic area and I hereby dismiss the Landlords' application without leave to reapply.

Conclusion

I HEREBY DISMISS the Landlords' application for additional rent increase, without leave to reapply.

I HEREBY ORDER that the landlords are restricted to implementing the 3.7% allowable rent increase plus proportional flow through expenses for 2009 in accordance with Sections 34, 35, and 36 of 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 *Residential Tenancy Act*.

Dated: July 06, 2009.



L. Bell
Dispute Resolution Officer