



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 786656

In the matter of the *Manufactured Home Park Tenancy Act*, SBC 2002, c. 77., as amended

Between

Tradewinds Estates Ltd., Landlord(s),

Applicant(s)

And

Loretta Nicholls & John Nicholls, Thelma Barlow & Kenneth Barlow, Edna Fawcett & Rodney Fawcett, Carolyn Madge, Estate of Clarence Fordyce, Melvin Ducharme, Elizabeth & Wilford Hidlebaugh, Tenant(s),

Respondent(s)

Regarding sites at: **1, 2, 15, 16, 18, 20 & 21 - 6778 Tucelnuit Drive, Oliver, BC**

Date of Hearing: March 26, 2012, by conference call.

Date of Decision: April 18, 2012

Attending:

For the Landlord: William Kirsch
Lynne Kirsch

For the Tenant: Brian Wensley, Agent for the Tenants
Garth Fordyce, Agent for the Estate of Clarence Fordyce



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DECISION

Dispute Codes: RI

Introduction

This hearing was scheduled in response to the landlord's application for a rent increase above the limit set by the Manufactured Home Park Tenancy Regulation (the "Regulation.") Both parties participated and / or were represented in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to an additional rent increase after a rent increase permitted by the Regulation.

Background and Evidence

Two previous applications for an additional rent increase after a rent increase permitted by the Regulation have been made by the landlord with decisions issued, respectively, by date of July 6, 2009 (file #732029) and March 24, 2011 (file #767904).

In the application the landlord applies for an additional rent increase on the grounds that

After the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic area, as the rental unit or site.

For a manufactured home park tenancy, the allowable rent increase that takes effect in 2012 is 4.3% plus a "proportional amount." The "proportional amount" is 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 manufactured home park.

Tradewinds Estates Ltd. ("Tradewinds") comprises 53 manufactured home sites (the "sites"). This particular application concerns 7 of these sites, and related details are set out below.

#1: Current rent: \$411.52. Allowable increase: + \$17.69 = \$429.21.

Increase sought: \$172.28. Total monthly rent sought: \$583.80.

Tenant Occupancy Date: Prior to 2002.

#2: Current rent: \$411.52. Allowable increase: + \$17.69 = \$429.21.

Increase sought: \$172.28. Total monthly rent sought: \$583.80.

Tenant Occupancy Date: March 1, 1986.

#15: Current rent: \$411.52. Allowable increase: + \$17.69 = \$429.21.

Increase sought: \$172.28. Total monthly rent sought: \$583.80.

Tenant Occupancy Date: June 28, 2002.

#16: Current rent: \$411.52. Allowable increase: + \$17.69 = \$429.21.

Increase sought: \$172.28. Total monthly rent sought: \$583.80.

Tenant Occupancy Date: April 15, 2003.

#18: Current rent: \$411.52. Allowable increase: + \$17.69 = \$429.21.

Increase sought: \$172.28. Total monthly rent sought: \$583.80.

Tenant Occupancy Date: April 20, 1993.

#20: Current rent: \$411.52. Allowable increase: + \$17.69 = \$429.21.

Increase sought: \$172.28. Total monthly rent sought: \$583.80.

Tenant Occupancy Date: October 4, 2000.

#21: Current rent: \$435.90. Allowable increase: + \$18.74 = \$454.64.

Increase sought: \$147.90. Total monthly rent sought: \$583.80.

Tenant Occupancy Date: Prior to 2002.

The landlord has identified the following manufactured home parks as comparable to Tradewinds:

Figueiras Mobile Home Park
Burnaby Gardens Mobile Home Park
Desert Lake Resort

While the landlord has also made reference to Whitewater Mobile Home Park and Sherwood Park, their rents are not used for the purposes of comparison.

The tenants consider that Desert Lake Resort is not comparable because it is an RV Park, and that Figueiras Mobile Home Park and Burnaby Gardens Mobile Home Park are not comparable because of their geographic locations farther north from Oliver.

However, the tenants consider that the following manufactured home parks are comparable to Tradewinds:

Cherry Grove Estates
Tumbleweed Terrace
Green Acres
Country Pines Retirement Park
Gallagher Lake Village Park

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 36 of the Act addresses **Amount of rent increase**, and provides in part:

36(1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1)(a) by making an application for dispute resolution.

Section 33 of the Regulation addresses **Additional Rent Increase**, in part:

33(1) A landlord may apply under section 36(3) of the Act [*additional rent increase*] if one or more of the following apply:

- (a) after the rent increase allowed under section 32 [*annual rent increase*], the rent for the manufactured home site is 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 site;

Further, section 33(3) of the Regulation provides as follows:

33(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

- (a) the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect;
- (b) the rent history for the affected manufactured home site in the 3 years preceding the date of the application;
- (c) a change in a service or facility that the landlord has provided for the manufactured home park in which the site is located in the 12 months preceding the date of the application;

- (d) a change in operating expenses and capital expenditure in the 3 years preceding the date of the application that the director considers relevant and reasonable;
- (e) the relationship between the change described in paragraph (d) and the rent increase applied for;
- (f) a relevant submission from an affected tenant;
- (g) a finding by the director that the landlord has contravened section 26 of the Act [*obligation to repair and maintain*];
- (h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the manufactured home park results from inadequate repair or maintenance in a previous year;
- (i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;
- (j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
- (k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has
 - (i) submitted false or misleading evidence, or
 - (ii) failed to comply with an order of the director for the disclosure of documents.

Residential Tenancy Policy Guideline # 37 addresses "Rent Increases," and under the heading – **Significantly lower rent**, provides as follows:

The landlord has the burden and is responsible 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. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings,

but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

The rent for the rental unit may be considered "significantly lower" when (i) the rent for the rental unit is considerably below the current rent payable for similar units in the same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit. In the former, \$50 may not be considered a significantly lower rent for a unit renting at \$600 and a comparative unit renting at \$650. In the latter, \$50 may be considered a significantly lower rent for a unit renting at \$200 and a comparative unit renting at \$250.

"Similar units" means rental units of comparable size, age, (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

The "same geographic area" means the area located within a reasonable kilometre radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject unit, such as proximity to a prominent landscape feature (ie: park, shopping mall, water body) or other representative point within an area.

Additional rent increases under this section will be granted only in exceptional circumstances. 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 units in the residential property at a higher rate. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (ie: over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. To determine whether the circumstances are exceptional, the dispute resolution officer will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent

Increase and any additional separate charges for services or facilities (ie: parking, laundry) that are included in the rent of the comparable rental units in other properties. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographic area, it is not sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. 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.

The amount of a rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessary with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, a dispute resolution officer can approve an additional rent increase that brings the subject unit(s) into that range. For example, a dispute resolution officer may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

Deciding on an application for an additional rent increase is an imprecise undertaking. The circumstances pertaining to one manufactured home park are never identical to the circumstances of another manufactured home park, and the comparative variables are considerable. I have considered the particulars provided for all of the manufactured home parks identified by the parties for comparison. I have determined that there are sufficient attributes in the manufactured home parks identified by the landlord for comparison, as well as in those identified by the tenants for comparison, to qualify each of them for comparison with Tradewinds.

Unless otherwise noted, the "average" or "standard" rental rates are understood to be those that are currently in effect, and are also understood not to reflect the allowable increase for 2012 of 4.3%. As for the comparative rents within Tradewinds itself, I prefer the arithmetic average level of rent paid for all sites within the manufactured home park which is calculated in the tenants' submission. I find that the alternative consideration of higher levels of rent reflected in the 22 units identified in the landlord's submission, unfairly results in a disproportionately high level of "average" rent.

Both parties have made documentary and oral submissions. While I have turned my mind to all aspects of the information presented, not all details of the submissions or arguments are reproduced here.

OVERVIEW OF RENT WITHIN TRADEWINDS:

Highest rent: \$559.74. Lowest rent: \$386.66. Average rent: **\$433.87.**

OVERVIEW OF COMPARATIVE RENTS:

i) Figueiras Mobile Home Park

Standard rent: **\$481.00.**
(single wide)

ii) Burnaby Gardens Mobile Home Park (2010)

Highest rent: \$590.00. Lowest rent: \$460.00. Average rent: \$507.00.
+ 2.3% (2011): **\$518.66.**

iii) Desert Lake RV Park

Standard rent (4 park model mobile homes): **\$480.00.**

iv) Cherry Grove Estates Mobile Home Park

Average rent: **\$362.00.**

v) Tumbleweed Terrace Mobile Home Park

Highest rent: \$350.00. Lowest rent: \$320.00. Average rent: **\$340.00.**

vi) Green Acres Mobile Home Park

Highest rent: \$425.00. Lowest rent: \$340.00. Average rent: **\$385.00.**

vii) Country Pines Retirement Park:

Highest rent: \$525.00. Lowest rent: \$347.00. Average rent: **\$392.00.**

viii) Gallagher Lake Village Park

Standard rent: **\$400.00.**

<u>Total of all 8 Comparative Average and Standard rents combined</u>	\$3,358.66
<u>Average</u>	\$419.83
<u>Allowable Rent Increase of 4.3%</u>	\$18.05
<u>Average plus allowable increase of 4.3%</u>	\$437.88

In regard to the options available to the director in considering an application for an Additional Rent Increase, section 33(4) of the Regulation provides as follows:

- 33(4) In considering an application under subsection (1), the director may
- (a) grant the application, in full or in part,
 - (b) refuse the application,
 - (c) order that the increase granted under subsection (1) be phased in over a period of time, or
 - (d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the manufactured home park.

Pursuant to all of the above, I find that the landlord has failed to meet the burden of proving entitlement to an additional rent increase above the limit set by the Regulation. First, I note that rent for each of the subject sites was increased as recently as October 1, 2011. Further, I find that after a 4.3% rent increase permitted in 2012, the average rent for sites within Tradewinds is not significantly lower than the average rent calculated for comparable sites, and in the case of one site is actually higher. Specifically, after the allowable rent increase, the calculated average rent for comparable sites is **\$437.88**. This compares, after the allowable rent increase, to **\$429.21** in units # 1, 2, 15, 16, 18 & 20, in Tradewinds, and **\$454.64** in unit # 21 in Tradewinds. In the result, the landlord's application for an additional rent increase above the limit permitted by the Regulation is hereby dismissed, such that any rent increase introduced for the subject sites in 2012 is limited to 4.3%.

A rent increase cannot be introduced in advance of the required 3 months' notice and, thereafter, the new rent remains fixed for the next 12 months. In this regard, section 35 of the Act speaks to **Timing and notice of rent increases**, and provides as follows:

35(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

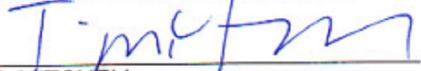
The **approved form** is RTB-11, which is produced by the Residential Tenancy Branch.

Conclusion

The landlord's application is hereby dismissed.

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: April 18, 2012.


T. MITCHELL
Residential Tenancy Branch