



DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the Act) for:

- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 34 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 55 of the Act

The initial hearing scheduled for December 6, 2024 was adjourned as the hearing did not complete within the scheduled time. Tenant J.J., Tenant's advocate G.H.B., and the Landlord's agent G.M. attended the hearing on December 6, 2024. The Landlord did not attend the hearing on January 10, 2025.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord was served on November 13, 2024, by registered mail in accordance with section 82(1) of the Act, the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post receipt containing the tracking number to confirm this service.

Service of Evidence

Based on the submissions of the parties, I find the Landlord was sufficiently served in accordance with the Tenant's evidence under section 71(2) of the Act.

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Preliminary Matters

The Landlord did not attend the hearing on January 10, 2025. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party pursuant to rule of procedure 7.3.

I conducted the dispute resolution hearing in the absence of the Landlord.

Issues to be Decided

1. Is the Tenant entitled to an order regarding the Tenant(s) dispute of an additional rent increase by the Landlord?
2. Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy agreement submitted into evidence by the Landlord states that this tenancy began on March 1, 2019, with a monthly rent of \$459.95, due on the first day of the month.

The Tenant testified that she has lived in the Manufactured Home Park since March 2015. The Tenant owns the manufactured home and rents only the site on which the manufactured home is located.

The Landlord issued a Notice of Rent Increase on September 28, 2024. The Notice of Rent Increase states that the Tenant's current monthly pad rent is \$514.40, and that the rent will increase to \$519.16, effective January 1, 2025.

The Tenant said the Notice of Rent Increase is invalid because the base rent of \$514.40 used in the Notice of Rent Increase is incorrect as the rent remained at \$478.99, and to use a higher base rent would result in an incorrect calculation of the increase.

In a Residential Tenancy Branch decision dated April 9, 2024 (dispute file number noted on the cover page of this decision), the arbitrator cancelled a notice of rent increase dated October 10, 2023 ("October 2023 Notice of Rent Increase") that the Landlord had issued to increase the Tenant's monthly pad rent to \$538.83 effective January 1, 2024. The arbitrator found that:

- The Landlord incorrectly calculated the 2024 increases because they calculated it based on \$504.40 instead of the monthly pad rent of \$478.99 that continues to be paid by the Tenant and has not been legally changed by the Landlord.
- Because the Landlord used \$504.40 as the current monthly rent instead of \$478.99, the actual proposed rent increase is higher than what would otherwise be expected or permitted under the Act.
- The Landlord's argument that the January 2023 decision only cancelled the proportionate rent increase and not the annual rent increase, is incorrect because the January 2023 Decision cancelled the entire Notice and ordered a refund to Tenant of the entire rent increase amount, not just the proportionate amount Page 4 of 6

In the April 9, 2024 RTB decision, the arbitrator order that the Tenant's monthly pad rent is \$478.99 until it is increased in accordance with the Act and Regulations.

In March of 2024, the Landlord again served a notice of rent increase ("March 2024 Notice of Rent Increase") to the Tenant. The date on the March 2024 Notice of Rent Increase was erroneously dated March 12 of 2023 instead of 2024. The base rent used to calculate the increase on the notice was \$504.40.

In a Residential Tenancy Branch decision dated January 9, 2025 (dispute file number noted on the cover page of this decision), the arbitrator found the March 2024 Notice of Rent Increase to be invalid. The arbitrator found that:

- The Notice of Rent Increase served to the Tenant in March 2024 was not valid.
- The Landlord incorrectly calculated the increase that was to come into effect on July 1, 2024 because they calculated the increased based on \$504.40 instead of the monthly pad rent of \$478.99 that continued to be paid by the Tenant when the Notice of Rent Increase was served and that had not been legally changed.
- Because the Landlord used \$504.40 as the current monthly rent instead of \$478.99 in the March 2024 Notice of Rent Increase, the actual proposed rent increase was higher than what would otherwise be expected or permitted under the Act.

In the January 9, 2025 RTB decision, the arbitrator found that the Tenant was permitted to continue to pay \$478.00 as the monthly pad rent under section 36(5) of the Act.

Analysis

Is the Tenant entitled to an order regarding the Tenant(s) dispute of an additional rent increase by the Landlord?

Part 3, section 34 of the Act, states that a landlord must not increase rent except in accordance with sections 35 and 36 of the Act, which only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenants under section 14 of the Act.

I find the Notice of Rent Increase of September 28, 2024 to be invalid. The Landlord did not use a correct amount of base rent (\$478.99) in the Notice of Rent Increase form. As a result, I find that the Landlord incorrectly calculated the increase that was to come into effect on January 1, 2025 because they calculated the increased based on \$514.40 instead of the monthly pad rent of \$478.99 that had not been legally increased.

Therefore, I find that the Landlord's notice to increase the rent, dated September 28, 2024, to increase the monthly rent from \$514.40 to \$519.16 effective as of January 1, 2025, does not comply with the Act or the tenancy agreement.

I order that the Tenant's monthly pad rent is \$478.88 until it is increased in accordance with the Act and Regulations.

The Notice of Rent Increase dated September 28, 2024 is cancelled and of no force or effect.

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Section 55 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Based on the all the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has repeatedly served notices of rent increase on the Tenant that did not used the correct base rent in calculating its increase resulting in a proposed rent increase that is higher than what would otherwise be expected or permitted under the Act. Therefore, I find that the Tenant has established their claim for the Landlord to comply with the Act.

Landlords can only increase rent if they provide tenants with a notice, in the approved form, at least 3 months before the effective date as per sections 35 and 36 of the Act. Furthermore, rent can only be increased once every 12 months and must be within the yearly rent increase limit set out in the regulations or an amount agreed to by the tenants in writing.

Therefore, I order that any rent increase imposed by the Landlord must be in accordance to Part 3 of the Act.

Conclusion

The Notice of Rent Increase dated September 28, 2024, is cancelled and of no force or effect.

The Tenant's application is granted for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 55 of the 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 Act.

Dated: January 24, 2025