

Site Rent Increase — Market Review

Information for home owners in a manufactured home park who have been given a notice of site rent increase by way of 'market review'.

WHAT IS A MARKET REVIEW OF SITE RENT?

The *Manufactured Homes (Residential Parks) Act 2003* (Qld) (MHRP Act) defines 'market review of site rent' as '... a review of site rent, the outcome of which is decided by comparing the site rent with one or both of the following:

- the site rent payable for a site in one or more residential parks
- the rent payable for other residential accommodation.

A market rent review considers an assessment of many different things and should not apply a strict mathematical formula.

WHEN IS A MARKET RENT REVIEW ALLOWED?

The MHRP Act limits the ways that site rent can be increased in a manufactured home park. A market review of site rent can only happen if your site agreement has a clause in it that allows the park owner to do market rent reviews.

A PARK OWNER'S OBLIGATIONS WHEN GIVING NOTICE OF A MARKET RENT REVIEW

The MHRP Act states that if a park owner wants to increase site rent in accordance with your site agreement, they need to give you a written notice that says:

- how much the increased site rent will be
- how the increased site rent has been calculated (it is enough to say 'market rent review' or similar words)
- the day the increased site rent is first payable

- that, if a home owner thinks the increase is excessive, they can make an application to QCAT for a review of the increase.

The park owner must give at least 28 days notice of a market rent review.

OBJECTING TO A SITE RENT INCREASE BASED ON A MARKET RENT REVIEW

If you have been given a notice that your site rent will be increased and you think the increase is excessive, you can make an application to QCAT for orders about the increase. You only have 28 days from when you receive the notice to make the application. If you make the application after the 28 days have ended, QCAT may not accept the application and this would mean you have to pay the increased amount.

CHALLENGING A RENT INCREASE IN THE TRIBUNAL

When QCAT receives an application from a home owner about a site rent increase, they can make any of the following orders:

- an order reducing the increase by an amount
- an order that sets aside the increase
- an order that confirms the increase. The tribunal may impose conditions on the increase if it is appropriate
- any other order that QCAT considers appropriate.

WHAT DOES THE TRIBUNAL CONSIDER WHEN THEY MAKE THEIR DECISION?

The MHRP Act states that QCAT can consider the following things when making a decision about a site rent increase:

- the range of site rent usually charged for comparable sites in comparable parks in the locality of the park
- if it is impractical to obtain the above data, consideration is given to the range of site rent usually charged for comparable sites in comparable parks in comparable localities
- if it is impractical to obtain both of the above types of data, consideration is given to general trends in rent for residential accommodation in the locality the park is in
- the increase in site rent when compared to the previous site rent
- the frequency and amount of past increases in site rent
- any increase in the CPI number during the previous site rent period
- the amenity or standard of common areas and communal facilities
- withdrawal of a communal facility or service at the park
- addition of communal facility or service at the park
- increase in the park owner's operating costs during the previous site rent period
- whether the increase is fair and equitable in all the circumstances
- anything else the tribunal considers relevant.

HOW DO I MAKE AN APPLICATION TO THE TRIBUNAL?

If you want to dispute a site rent increase because you think it is excessive, you will need to complete the QCAT application form, pay the filing fee (or request a fee waiver) and file the form with QCAT.

The current application form is the Form 30 Application – *Manufactured Homes (Residential Parks) Act 2003*. You will need to file the form within 28 days of the date you received the notice of site rent increase.

There is currently a filing fee of \$305 to lodge a manufactured homes application in QCAT. If you are experiencing financial hardship, you can apply for a fee waiver using a Form 49 Application for Waiver of Fees by Reason of Financial Hardship and lodge this along with your Form 30 Application.

All applications need to include details of the orders that are being sought and the reasons that you are asking for these orders.

CAN I MAKE AN APPLICATION TO THE TRIBUNAL AS PART OF A GROUP OF HOMEOWNERS?

The MHRP Act allows a group of homeowners in a park to make a joint application to QCAT if their application arises out of the same or similar facts or circumstances.

CAN A LAWYER REPRESENT ME IN THE TRIBUNAL?

The tribunal generally requires people to represent themselves. If you think that you need to be represented, you can make an application to QCAT asking that they allow you to be represented. This could be by a lawyer or by someone else who has agreed to help you.

WHAT HAPPENS AFTER I MAKE THE APPLICATION?

The tribunal will tell you what happens after you make your application.

Common steps in a QCAT matter may include a directions hearing (to set out the steps the parties need to follow and to set out key dates), a compulsory conference (where the parties meet to try and work out a way to resolve the dispute) and a hearing.

As part of the QCAT process you may need to write a statement to tell your story about why you think the increase is excessive. You might need to lodge written arguments (called submissions) that aim to show the tribunal why the increase is excessive, and why you should be successful. If the matter goes to a hearing, you may need to give evidence or ask the park owner questions about their evidence.

IS THERE RISK THAT I WILL HAVE TO PAY THE PARK OWNER'S COSTS IN THE TRIBUNAL?

In QCAT, the parties to a matter generally have to pay their own costs, however, in some cases, QCAT can order that one party pay costs of the application.

WHAT HAPPENS IF MY APPLICATION IS UNSUCCESSFUL?

You will need to continue to pay the increased site rent. If you think that QCAT has made the wrong decision you can consider lodging an appeal. There are strict time limits for making an appeal. You will usually need to get permission from QCAT to appeal a decision about a site rent increase. You should get further advice about appeals before taking any action.

DO I NEED TO PAY THE INCREASED RENT IF I DISPUTE IT?

Yes. The MHRP Act says that a site rent increase carried out in accordance with the terms of a site agreement is payable from the day stated in the notice (as long as that day is at least 28 days after you received the notice).

If you dispute the increase and QCAT makes a decision reducing the amount of the increase, then the park owner will need to refund any overpayment of site rent that has been paid since the increase day.

USEFUL CONTACTS AND LINKS

PARK AND VILLAGE INFORMATION LINK

Caxton Legal Centre Inc.
1 Manning Street
South Brisbane Qld 4101
Tel.: (07) 3214 6333
www.caxton.org.au

Manufactured Homes (Residential Parks) Act 2003 (Qld)

www.legislation.qld.gov.au/LEGISLTN/CURRENT/M/ManufHomeA03.pdf

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

www.qcat.qld.gov.au/

Form 30 Application – Manufactured Homes (Residential Parks) Act 2003

www.qcat.qld.gov.au/_data/assets/pdf_file/0006/101022/form-30-app-manufactured-homes.pdf

Form 49 Application for Waiver of Fees by Reason of Financial Hardship

www.qcat.qld.gov.au/_data/assets/pdf_file/0014/101093/form-49-app-for-waiver-of-fees.pdf

Park and Village Information Link
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This information is current at June 2016.

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