

## **DECISION**

Dispute Codes      O ARI

### Introduction

This matter dealt with an application by the Landlord for an Additional Rent Increase.

The Landlord submitted Confirmation of Service forms completed for each of the Tenants. The Landlord indicated on each of the Confirmation of Service form the Landlord's service information, the Tenants' service information, how the Tenants were served and each form was signed by the Landlord's representative. The Landlord served the Hearing Packages on January 19, 2012, which is three days after the Landlord picked up the completed application from the Residential Tenancy Branch on January 16, 2012, in accordance with the Act. Based on the written evidence submission by the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with written submissions from both the Landlord and the Tenants.

### Issues(s) to be Decided

1. Is the Landlord entitled to an additional rent increase and if so how much?

### Background and Evidence

The Landlord's submission indicates that the Landlord is applying for an additional rent increase as the Landlord has supplied a new water system to the Manufactured Home Park. The Landlord says the new water system is to comply with the Regional District's requirements and directives. The Landlord's written submission says the new water system is to meet current government standards for potable water. As well, the Landlord has indicated the new water system allows for fire hydrants in the area. The Landlord says this is a significant capital expense that is reasonable and necessary and it will not reoccur for a number of years. Consequently the Landlord has applied for an additional rent increase to cover the portion of the costs of the new water system for the Manufactured Home Park. The Landlord indicates in his written submission that the Manufactured Home Park is responsible for \$140,543.00 of the project. The project also supplies a water system to a housing development that the Landlord is doing in the same geographic area as the Manufactured Home Park.

The Landlord calculated the **annual rent increase** in accordance to the regulations at 4.3%. The **additional rent increase** the Landlord is requesting is calculated by dividing the annual financing costs of the Manufacture Home Park's portion of the project by the total rent paid; annual financing costs for the water system is \$11,254.92 / total rent of \$182,007.36 = .0618377 X 100 = 6.184%(rounded). The Landlord indicates that he believes calculating a percentage amount is a fair way of determining the increase in rent as the rents are different for many of the pads in the Park. The Landlord continued to indicate each rent then would be multiplied by the sum of the annual rent of 4.3% and the additional rent increase of 6.184% for a total of 10.484%. Therefore a tenant whose rent is \$400.00 would have a rent increase of \$400.00 X 10.484%= \$41.94. The Tenants new rent would be \$441.94.

The Landlord says in his submission that the Regional District determined that the area that the Manufactured Home Park and the Housing Development is in required a new water system to provide potable water that meets government standards. The Landlord has not provided corroborating written evidence from the Regional District that states the Regional District required a new water system for the Manufactured Home Park. Further the Landlord has not provided other evidence like water samples from the previous water system to indicate there were deficiencies in the water quality or quantity that would necessitate upgrading the water system for the Manufactured Home Park.

The Landlord also submitted two signed agreements with two Tenants, who have agreed to the additional rent increase. The agreement provide a financial incentive of a rent reduction of \$5.00 per month if the Tenants agree to the annual rent increase of 4.3% and the additional rent increase of 6.184%.

There are 22 written submission from the Tenants that are not in agreement with the Landlord's proposed additional rent increase of 6.184%. There is no designated lead tenant, but many of the submission concur with the points made by the Tenants with the larger submissions. The points that all the Tenants appear to agree on are as follows:

1. The Tenants are not in agreement with the additional rent increase as they believe the new water system was not necessary for the Manufactured Home Park, but to gain a development permit for the housing development the Landlord was working on. Therefore the Tenants do not believe it is reasonable for them to pay for it.
2. The old water system was upgraded in 1994/1995 and the water quality and quantity was acceptable to the Tenants.
3. The new water system has not appreciably changed the water quality or quantity as perceived by the Tenants.
4. The Tenants believe the new water system was put in mainly to service the new housing development that the Landlord is involved with.
5. Supplying water to the Tenants is a material term of their tenancy agreements and the Landlord is obligated to comply with it.

Further individual Tenants and smaller groups of Tenants wrote in the following points to support their claims that the Additional Rent Increase requested by the Landlord is not reasonable or necessary.

1. The Landlord said there was referendum on the water system, but the Tenants wrote that they did not know about the meeting and therefore did not attend it.
2. The Tenants claim the pipes from the previous water system are being used for the new water system. The Tenants claim is that the new system is only for connections/hook-ups/and lateral connections; therefore the Tenants claim the cost attributed to the Manufacture Home Park are incorrect. The Tenants contend that the lateral pipes used in the system are from the previous system.
3. One Tenant indicated the Landlord may have made incorrect accounting assumptions that moved more of the cost of the new water system to the Manufacture Home Park. The Tenant indicates this assumption affects the way the project was financed and may have broken the agreement with the Regional District.
4. Some Tenants indicated that the amount of \$140,543.30 is not explained or substantiated well enough in the Landlord's information package.
5. The Tenants indicate the water in the old system was tested and was shown to be acceptable (No water tests were submitted).
6. A number of Tenants said they have not had trouble acquiring home insurance because of the lack of water hydrants in the Park.
7. Some of the Tenants indicated that there was no need to replace the water system to the Manufactured Home Park as the existing system was only 12 years old when it was upgraded. The Tenants said water systems do not deteriorate in 12 years so the upgrades to the Park's water system were uncalled for.
8. Most of the Tenants wrote in their submissions that the Landlord had previously tried to split the pad rent and water usage costs and they indicated this is not correct as water is included in the tenancy agreement.
9. One of the Tenants wrote in his submission that the new water system which is a hook up to an existing district water systems was a requirement of the Regional District only for the Landlord to get approval for the housing subdivision in the campground area of the community. The Tenant said the new water system had nothing to do with the needs of the Manufactured Home Park.
10. In addition to these concerns by the Tenants there were a number of other concerns that the Tenants wrote about in their submissions. Many of these other concerns were not directly related to the Additional Rent Increase application; therefore I am not including those concerns in this decision.

The Landlord submitted an evidence package to address the concerns that he thought were irrelevant or not concerning the application for an Additional Rent Increase. As well in this evidence package the Landlord listed the following fundamentals of his application and they are:

1. The Landlord indicated the old water system did not meet the New Federal standards for water quality.
2. The Regional District forbade the Landlord to use the existing water system for the new subdivision.
3. The Landlord said there were issues with homeowners obtaining home insurance due to lack of water hydrants in the area.
4. Regional District engineers explained to the Landlord that the Manufactured Home Park was using the new water source therefore the Manufactured Home Park must pay their share of the costs of the water system upgrade project.
5. The Landlord indicated in the submission that the Tenants are confusing payment for usage of water which is covered in the tenancy agreements with a capital cost item, which is what the Additional Rent Increase application is for.
6. The Landlord also says the number of units used to determine the cost sharing, which is 44, is confusing. This is a calculation done by the Regional District Engineering Department based on water usage of a mobile home compared to a full sized house. The Landlord indicated the calculations of the Manufactured Home Park's share of the project \$140,543.00 and the annual financing cost of \$11,254.92 were both calculated by the Regional District not by him.

There was a considerable amount of written evidence submitted. I reviewed all of the submissions and I am satisfied that I reviewed all the pertinent information.

### Analysis

Policy guideline 37 ( rent increases) under the section pertaining to additional rent increases that are a result of a significant repairs or renovations says that in manufactured home park tenancies, a landlord's completion of a repair or renovation is a circumstance under which he or she can apply for an additional rent increase if: (1) the repair or renovation is significant; (2) the repair or renovation is reasonable and necessary; and (3) the repair or renovation will not reoccur within a time period that is reasonable for the repair or renovation.

The Landlord has submitted in his written evidence that the water system upgrade for the Manufactured Home Park is significant as it changed the supply source of the water system for the Manufactured Home Park. The Landlord provided documented evidence that the Manufactured Home Park's portion of the water system upgrade is calculated by the Regional District as \$140,543.00 for the Park's share of the project and the annual financing costs are \$11,254.92. The Landlord submitted written documentation of the financing agreement with the municipality and verification of the annual costs which are the basis for the Landlord's application for an additional rent increase. The Landlord has provide a copy of the Regional District Security Issuing Bylaw and a copy of a letter from the municipal office showing the "Schedule of Calculations" on how the Regional District arrived at the amount of \$140,543.00 which is allocated to 1375 Green Bay Rd. Lot B Plan KAP76165. I accept the Landlord has established grounds to support his application that a significant repair or renovation has been done to the water system at the Manufactured Home Park at 1375 Green Bay Rd.

There was much contradictory written evidence submitted from the parties with respect to whether the water system upgrade was reasonable and necessary. The Landlord wrote in his submission that the upgrade was both **reasonable and necessary** as the Regional District "forbade" the use of the existing water system when he made his application to develop the campsite area. The Landlord has not provided any corroborating documentation from the Regional Districts outlining the terms and requirements of this decision or why the Regional District forbade the use of the existing water system for the Manufactured Home Park. As well the Landlord has not documented that the Regional District required him to upgrade the water system of the Manufactured Home Park if the campsite development did not take place. Consequently the Landlord is relying on just his own statements to prove the water system upgrade was a requirement of the Regional District for the Manufactured Home Park.

The vast majority of the Tenants made written submissions that the water system upgrade to the Manufacture Home Park was a result of the Landlord's application to develop the campsite for residential purposes. The Tenants wrote that there is no evidence that the Regional District required the Manufacture Home Park to upgrade the water system independently of any other land development in the area. As well the Tenants submitted that the existing water system was installed in 1994/95 so it still had economic life and it did not need to be replaced as the system was adequately meeting the requirements of the Tenants. In addition both parties agreed that the lateral piping of the old water system has not been replaced and the new water system is really about the source of the water and connecting the old system to the new water source. The Tenants did not submit any documentation corroborating that the Regional District did not require the Manufacturing Home Park to independently upgrade the water system nor is there any other documented evidence that the water quality and quantity was adequate and met government standards. The Tenants are relying on their written testimony that the Landlord upgraded the water system in the Manufactured Home Park only because it was a requirement of the Regional District in order to obtain development permits for the campsite area next to the Manufactured Home Park. Consequently the Tenants believe the cost of the upgrade was **not necessary** for the

Manufactured Home Park and as a result the Landlord's request for an additional rent increase to pay for the capital cost for the project is **unreasonable**.

This dispute is whether an additional rent increase is justified because a capital expenditure for the upgraded water system to the Manufactured Home Park. To justify the additional rent increase the Landlord must prove the capital cost, in this case the water system upgrade, was **reasonable and necessary for the Manufactured Home Park**. There were considerable amounts of written testimony, but a limited amount of corroborating evidence that proved the Landlord's position or the Tenant's position. The Landlord has said that the water system upgrade was required by the Regional District, but the Landlord has not provided documented evidence that proves the Manufacture Home Park was required by the Regional District to upgrade the water system independently of any other development. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently I find the Landlord has not met the burden of proof required to prove the upgrade to the water system was **reasonable and necessary** for the Manufacture Home Park independently of any other development. Therefore the Landlord's application for an additional rent increase based on significant repairs or renovations is dismissed without leave to reapply.

As the Landlord was unsuccessful in this matter I order the Landlord to bear the cost of the application and filing fee which he has already paid.

### Conclusion

The Landlord's application for an additional rent increase is dismissed without leave to reapply.

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*.

---

Residential Tenancy Branch