



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI, O

Introduction

This hearing dealt with the landlord's Application for an Additional Rent Increase, pursuant to section 35 of the *Manufactured Home Park Tenancy Act* (the "Act").

This hearing was conducted through written submissions from the parties. I have reviewed all the written submissions before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter

Written submissions were provided by both parties. I have considered all of the submissions received before November 5, 2012 in the interests of fairness to both parties.

In addition to the submissions from the landlord, submissions were received by tenants S.H. and E.H., who were also representing tenants O.O., E.S., and R.S. The only tenant who did not provide a submission was W.D.

Issue to be Decided

Is the landlord entitled to an additional rent increase by proving significant repairs have been completed which were reasonable and necessary, and will not recur within a time period which is reasonable for those repairs?

Background and Evidence

The manufactured home park is made up of 41 sites. There is no dispute that the landlord was required to have the 41 sites hooked up to the local city sewer system by March 2014.

Landlord's submissions

The landlord is applying to receive a rent increase of 26.22%, comprised of the allowed increase of 4.3% for 2012, plus 21.92%, to apply against 4 of the rental sites in the manufactured home park. The landlord's evidence is that, of the 41 sites in the park, 37 sites have already agreed to a \$34.00 rent increase in writing.

The landlord has put forward one reason for their request for an additional rent increase. The landlord has indicated that significant repairs or renovations to the manufactured home park, specifically the sewer project are reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation.

The sewer system services all 41 sites in the manufactured home park. The life expectancy of the sewer repair/renovation project (the "sewer project") is 50 years. The landlord submitted that the total cost of the sewer project is \$434,415.84, including the cost of financing over 20 years. The landlord writes in their application that they decided to have the work done in 2012 as the construction industry was slow and they were able to obtain a reasonable quote. Prior to the doing the necessary work the manufactured home park was on a septic system.

Of the 41 sites, the landlord submitted that 37 sites have provided written consent agreeing to a \$34.00 additional rent increase due to the cost of the sewer project. The landlord has included the four remaining sites that are disputing the additional rent increase in this application. The landlord is seeking an increase of the 4.3% permitted increase, plus an additional increase of 21.92% for a total increase of 26.22% for the 4 units which have not consented to the additional rent increase as follows:

Site Number	Current Rent	Requested Increase of 26.22%	Total after increase
8	\$279.17	\$73.19	\$352.36
16	\$279.17	\$73.19	\$352.36
20	\$280.48	\$73.54	\$354.02
38	\$305.97	\$80.22	\$386.19

The landlord submitted that the sewer project was a "must do" project and as a result, they should have the ability to pass the costs on to the tenants. The landlord responded to tenants' submission by disputing some aspects of their submissions and alleging that other aspects were not relevant to the application for additional rent increase under the *Act*.

The landlord submitted that using an average rent of \$292.00 results in a requested increase of 21.92%. The landlord asserts that they are not trying to take a disproportionately higher amount from 4 tenants, just their pro-rata share. The landlords write "... If the other tenants had agreed to pay an increase of \$100.00 a month, the application would still be at 21.92% for the "select four"." The landlord also writes that the tenants seem to be suggesting that the application should have been for \$34.00 a month increase and alleges that "...no tenant would ever agree to an increase if they knew the landlord had to go through the application process and in doing so would be limited to the offered increase."

In support of the costs of the work completed the landlord submitted in evidence over 60 pages of invoices, receipts and other documents. This evidence was also made available to the tenants.

Tenants' submissions

The tenants object to the level of rent increase being proposed and contend that a 6.5% increase, in addition to the annual allowable rent increase, is a more appropriate "levy" on the tenants for the sewer project.

The tenants wanted to be clear that in terms of their relationship with the applicant, although they are disagreeing with the landlord, they do appreciate their attentiveness to the needs of the park by stating that "they have readily taken on needed improvements and upgrades even though this has meant spending to redress earlier neglect."

The tenants write that the manufactured home park has been in existence for at least 50 years. It began as a vacation campground and grew over the years into the current 41 manufactured home sites presently on site.

The tenants write that four different amounts have been proposed to be recovered through an additional rent increase. The tenants allege that "work has not yet been completed" and write that determination must be reached as to what is to be recovered from tenants and what is actually the responsibility of the landlord for upkeep of the manufactured home park. The tenants allege that certain invoices provided by the landlord are not conducive to this sort of detailed breakdown.

The tenants write that within the landlord's expenditure of \$434,415.84, the following has been included:

- Sewer installation

- New water line installation
- Provision for seven new home sites
- Correcting drainage problems
- Paving of roads throughout the Park, and
- Paving of parking lot

The tenants submit that some of the items described above were essential due to the neglect they suffered for several years. The tenants write that it is hard to see that the failure of past owners to put money into maintenance should now be imposed on tenants. The tenants write that had there not been a change in owner, reserve funds might have been available to at least partially support the upgrades.

The tenants argue that the cost of the sewer project is a cost that the landlord should have been preparing for over the past years. The tenants used the analogy of how a strata and other “joint ownership” arrangements are required to have a contingency reserve fund for major repairs. The tenants argue that such a fund would deal with unforeseen maintenance items and major infrastructure projects such as the sewer project.

The tenants submit that the landlord's application focuses on recovering “costs” and that fundamental to this contention is deciding what component of monies spent on the upgrade are costs rather than investment which gain increased property value for the landlords.

The tenants also submit arguments relating to alleged reduced maintenance costs, establishing average rent and gaining tenant agreement to the additional rent increase, the latter of which, the tenants allege that the landlords will gain them more than is needed to recover the costs associated with the sewer project.

The tenants provide information in support of their position that a 21.92% rent increase is excessive and claim that the landlords have selectively applied for a rent increase by leaving out the other 37 tenants who have already agreed to a \$34.00 additional rent increase.

The tenants allege that there is an inflation advantage for the landlords, value gained through depreciation for tax purposes and question the amortization timeframe, the latter of which the tenants proposed a 35 year amortization and state that if a 50 year amortization was selected and an additional rent increase of 6.5% was set, with incrementing, the landlords would clearly still profit from the increase beyond

repayments costs at year 34. The tenants requested to see financing documentation to validate financing and to have the landlord substantiate their financing arrangements and costs.

The tenants submit that there are other opportunities for cost recovery through rent for new tenants and that any new tenants, brings an opportunity for higher rent. The tenants provide rent comparisons with other parks in the area of the manufactured home park. The tenants also argue that the amortization period should match the life expectancy of the work completed which is 50 years.

The tenants provided over 80 pages of evidence including correspondence, repayment schedules, summary of meetings, inflation and interest information, sewer cost information, payment amortization information, residential tenancy information and other documents as evidence for this proceeding.

Analysis

Based on the foregoing, the written submissions, and on a balance of probabilities, I find the following.

I find that neither party disputes that the sewer project was required by the local city authorities. By their own submissions, the tenants praise the landlord for attending to the park and readily taking on needed improvements and upgrades.

The tenants write that the sewer work has not been completed; however, they do not substantiate their statement with corroborating evidence. Therefore, I do not accept the tenants' submission that the work has not been completed. Based on the written submissions and the invoices reviewed which support that the work has been completed during or since July 2012, I find that on the balance of probabilities, the sewer project has been completed or has been substantially completed.

The landlord writes that they are applying for an additional rent increase due to the significant repairs or renovations to the manufactured home park, specifically the sewer project, in which the manufactured home sites is located that are reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation.

I find the landlord has provided sufficient evidence to prove that the sewer system work was significant. Based on the large expenditure incurred by the landlord, and the scope of the sewer project, I find the landlord has completed or substantially completed

significant repairs to the manufactured home park. I do not find that the significant repairs required could have been foreseen under reasonable circumstances as the city has required that the manufactured home park be hooked up to the city sewer system by 2014. There is also no provision in the *Act* requiring the landlord to establish a contingency fee for such repairs, as this would amount to something similar to requiring tenants to pay rent in advance. I further find the repairs made were reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation.

Section 26 of the *Act* states:

Landlord and tenant obligations to repair and maintain

26 (1) A landlord must

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and**
- (b) comply with housing, health and safety standards required by law.**

[emphasis added]

Given the above, and based on the requirement of the city to have the manufactured home park hooked up to the city sewer system by 2014, and the landlord proceeding with the project after receiving several quotes and proceeding with the quote that would ultimately result in a lower cost to the tenants, **I find** the landlord has complied with the *Act* by maintaining the park in a reasonable state of repair.

I reject the tenants' submissions that the landlord may have been able to finance the project over a longer period of time, resulting in a lower cost to the tenants. I accept that the landlord's proposal made to the other 37 units at \$34.00 per month to recover \$317,500.00 with the landlord absorbing approximately \$100,000 of the cost was fair when compared with the total cost of the project listed as \$434,415.84 in the application which is supported by invoices and other documentary evidence.

The landlord wrote that the tenants seem to be suggesting that the application should have been for \$34.00 a month increase and alleges that, "...no tenant would ever agree to an increase if they knew the landlord had to go through the application process and in doing so would be limited to the offered increase." I find that the tenants should not be penalized for applying for dispute resolution to dispute the additional rent increase. I find that for the landlord to request anything more than the other 37 tenants

were offered and agreed to, ultimately results in the 4 tenants being penalized for applying for dispute resolution, which is not in keeping with the *Act*.

Residential Tenancy Policy Guidelines #37 Rent Increases states that if the landlord makes an application for significant repairs that are reasonable and necessary and will not recur within a time frame that is reasonable for the repair, the landlord **must** make a single application to increase the rent for **all sites** in the manufactured home park by an equal percentage. If one or more tenants of sites in the home park agree in writing to the proposed increase, the landlord must include those sites in calculating the portion of rent increase that will apply. Guideline #37 also states that the additional rent increase **must apply equally to all rental sites**.

I find that the landlord has received the written consent of 37 of the 41 sites who have agreed to an additional rent increase of \$34.00 per month due to the cost of the sewer project. To convert the \$34.00 per month additional rent increase into a percentage I have multiplied \$34.00 by 41 sites for a total of \$1,394.00.

I have then taken the total rent for 41 sites for one month using the amount provided by the landlord for September 2012 as \$11,976.24 (the breakdown of site rent paid for each site was provided by the landlord to the Arbitrator and reviewed, however, was not provided to all parties to protect the privacy of the other tenants of the manufactured home park) and added \$1,394.00 to that amount for a new total of \$13,370.24. An additional increase of 11.64% from the current monthly rent for 41 sites of \$11,976.24 would total \$13,370.27.

I find the closest equal percentage for the equivalent of a \$34.00 increase to the 37 sites that have already agreed, would be an increase of **15.44%** comprised of 11.64% additional rent increase plus the annual allowable rent increase under the *Act* for 2013 of 3.8%. Therefore, **I allow** an additional rent increase of **15.44%** for sites 8, 16, 20 and 38. This amount is comprised of the annual allowable increase of 3.8% for 2013, as a three month notice is required under the *Act* and it is November of 2012, plus an additional rent increase in the amount of 11.64%.

The landlord must serve each of the respondent tenants with a copy of this entire Decision along with a copy of the Notice of Rent Increase. The landlord must provide the Notice of Rent Increase in accordance with the *Act*, which, for example, requires three months notice in advance of the increase taking place.

The additional rent increase of 15.44% results in the following increases to the 4 respondent tenant sites:

Site Number	Current Rent	Additional rent increase of 15.44%	Total after increase
8	\$279.17	\$43.10	\$322.27
16	\$279.17	\$43.10	\$322.27
20	\$280.48	\$43.31	\$323.79
38	\$305.97	\$47.24	\$353.21

Conclusion

I find the landlord incurred significant, reasonable and necessary expenses in connecting the manufactured home park to the city sewer systems.

I allow the landlord an additional rent increase in the amount of 15.44% per month for the four respondent rental sites comprised of an additional 11.64% plus the annual allowable rent increase for 2013 at 3.8%.

The landlord must serve the tenants with a Notice of Rent Increase in accordance with the *Act*, along with a copy of this entire Decision, granting the additional rent increase.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: November 21, 2012

Residential Tenancy Branch