Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Additional Rent Increase

Introduction

This hearing was convened in response to an application by the landlord for an Additional Rent Increase pursuant to Section 36(3) of the *Manufactured Home Park Tenancy Act*.

Issue(s) to be Decided

The landlord applies for an additional rent increase under Sections 36(1)(b) of the *Manufactured Home Park Tenancy Act* and Section 33(1)(b) of the *Manufactured Home Park Tenancy Regulation.* The issue to be determined is therefore whether the landlord has proven that he has completed significant repairs or renovations to the manufactured home park in which the manufactured home site is located that

(i) are reasonable and necessary, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

Background and Evidence

The landlord testified that he purchased the park in 2005 and it is about 35 years old. The landlord submits that over the period 2010 to 2012 he has undertaken extensive repairs to the park as follows:

Work Performed	Cost
Repaired paving in common areas of the parking lot	3,248.00
Replaced one power pole, repaired/rebuilt power shed; replaced retaining wall with concrete and added new drainage	27,870.00
Total Costs	$105,825.91

The landlord submits that all of this work will last approximately 25 years. As a result of these additional expenses the landlord is seeking an additional rent increase of 6.4% over the permitted increase of 4.3% for a total increase of 10.7%. This will result in a

total rent increase of approximately $32.00 per unit per month for the majority of the 93 units and 15 units rising to a $35.00 to $39.00 per month increase.

In evidence the landlord submitted invoices and details regarding payments for the work performed.

With respect to the replacement of the poles the landlord says the poles had rotted and some of the poles had fallen down. The landlord estimates that given the age of the park it was time to replace the utilities which provide power, phone, internet and cable services to the park. Because of the layout of the park the landlord was unable to use underground services in all areas so he did replace one pole at a cost of $2,400.00 for the pole only. The landlord testified that installation costs were not included in the $2,400.00 cost of the pole. Given the expense of replacing the entire park with above-ground services at minimum $2,400.00 per pole for approximately 30 poles ($72,000.00) the landlord opted to install underground services at a cost of $74,707.91. The landlord testified that he consulted with contractors and was advised that the power company now required services to be replaced with underground services for the section leading from the road to the park. Once in the park the landlord was free to choose whether to install above-ground or underground services however the cost difference was minimal and above-ground services were not recommended. The landlord therefore opted to install underground services. The landlord says that if he could have found a less expensive way to replace the services he would have done so but this was the efficient and safe route to take.

With respect to the retaining wall and repaving the landlord says that there is an ongoing problem with water coming into the parking lot from the hillside during the spring thaw and rains. The retaining wall supporting the parking lot was previously constructed with railway ties which were in poor condition. The landlord opted to replace the railway tie retaining wall with a concrete retaining wall which is stronger and will last longer. As the parking area was in poor condition the landlord also had the parking lot repaved with asphalt.

The landlord says that he replaced the sheds on the property because they too were very old and in poor condition.

The tenants argue that these repairs could have been foreseen. The tenants submit that there has been no evidence to show that the landlord had the park inspected when he purchased it in 2005 and had he done so these repairs could have been foreseen. The tenants submit that had the landlord performed his due diligence he could have

anticipated these repairs and he could have saved monies from the rents collected over the past 7 years to pay for the repairs.

The tenants say there are no regulations requiring him to install underground services throughout the park and the landlord could have chosen a cheaper method to install new services.

The tenants say it was the landlord's choice to replace the retaining wall with expensive concrete instead of less expensive asphalt.

The tenants say the landlord has not properly maintained the park.

The tenants say that the landlord did these repairs to protect his own investment.

The Law

In regard to additional rent increases, Section 36 of the *Manufactured Home Park Tenancy Act* states in part:

> 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, or
>
> (c) agreed to by the tenant in writing.
>
> (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.

In regard to additional rent increases the relevant portions of the *Manufactured Home Park Tenancy Act Regulation* states 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:
>
> (b) the landlord has completed significant repairs or renovations to the manufactured home park in which the manufactured home site is located that
>
> (i) are reasonable and necessary, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

And,

(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.

Analysis

There is no dispute as to whether the landlord actually completed the repairs to the manufactured home park in which the manufactured home site is located.

While part of the tenants' argument is that there has been insufficient evidence to show that the landlord could not have foreseen these repairs, there is no requirement under the *Manufactured Home Park Tenancy Act* or *Regulation* requiring a landlord to foresee such repairs. My task is to determine whether there has been sufficient evidence to show that the repairs were reasonable and necessary, and whether they will not recur within a time period that is reasonable for the repair or renovation.

The tenants also argued that the landlord did these repairs to protect his own investment. The landlord is required to repair and maintain the park and if doing so allows for him to also protect his investment then it is of mutual benefit to the landlord and the tenants. There is certainly nothing in the Residential Tenancy Act that prevents a landlord from doing what he believes is necessary to protect his investment.

The tenants also argued that the landlord has not maintained the park properly however they failed to show what maintenance issues are not attended to or that they have made complaints to the landlord and/or filed an Application for Dispute Resolution with the Residential Tenancy Branch to compel the landlord to complete the maintenance they believe is necessary.

With respect to the specific repairs, the evidence is that the park is 35 years old and that the above-ground poles were rotting; some had even fallen down. Given this I find it

reasonable and probable to conclude that replacement of these services was necessary.

While the tenants argue that there may have been less expensive ways to make the repairs, they have supplied insufficient evidence to support that view. However, the landlord has been able to provide evidence that a single pole would cost $2,400.00 without installation costs and that replacing approximately 30 poles at a cost of a minimum of $72,000.00 would result in more expense than the $74,707.91 cost of installing underground services.

Based on the evidence I see nothing untoward in the landlord replacing railway tie retaining walls with concrete retaining walls. I also find nothing untoward in the landlord repaving the asphalt common areas and parking lot which must be periodically repaired and replacing the sheds n the property which may be up to 35 years old.

Overall I find that the landlord has supplied sufficient evidence to show (a) that the repairs were reasonable and (b) that they were necessary. The landlord's Application for an Additional Rent Increase is therefore allowed in the full amount requested.

Conclusion

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*.

Dated: December 6, 2012.

Residential Tenancy Branch