



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAR I

Introduction

This hearing dealt with a landlord's application for an additional rent increase under the *Manufactured Home Park Tenancy Act* (the Act) and *Manufactured Home Park Tenancy Regulations* (the Regulations). The landlord and the park manager appeared on behalf of the landlord. Several tenants appeared or were represented at the hearing.

I heard that the landlord served the hearing documents upon each tenant in one of three ways: by personal service; by leaving the documents at the front door of the tenant's manufactured home; and, by registered mail in three cases. The registered mail sent to the tenant for site #13 was returned; however, the landlord was able to obtain that tenant's current mailing address and re-sent the hearing package to that tenant. I found those tenants that were not present or represented at the hearing had been either sufficiently served or I deemed them to be sufficiently served pursuant to the authority afforded me under the Act.

Written submissions and evidence were received from some of the tenants and although some submissions were received after the time limits specified under the Rules of Procedure, the landlord was agreeable to inclusion of those submissions.

In light of the above, I proceeded with the hearing and have considered all submissions received from both parties in making this decision.

I have amended the application to exclude the former tenants of site #3 as they have moved and the tenancy has ended.

Issue(s) to be Decided

Has the landlord established a basis for an additional rent increase?

Background and Evidence

Since January 1, 2013 the tenants have been required to pay monthly rent of \$402.19. The landlord seeks authorization from the Director, as provided under the Act, to increase the monthly rent by 7.5% so that the monthly rent payments becomes \$432.35 for each site.

In filing this Application, the landlord indicated two grounds for the request for an additional rent increase:

(a) after the rent increase allowed under section 32 [*annual rent increase*], the rent for the manufactured home site is significantly lower than the rent payable for other manufactured home sites that are similar to, and in the same geographic area as, the manufactured home site; and,

(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;

Below, I have summarized the parties' positions with respect to each of the grounds indicated by the landlord.

a) Rent lower than comparable sites

The landlord submitted that there is a manufactured home park adjacent to the subject park and site rents at that park are \$432.00 per month according to the manager who manages both parks. Other than the manager's testimony, the landlord did not produce any other documentary or photographic evidence to establish the sites in both parks are similar. Rather, the landlord suggested that I ask the tenants to confirm that the sites and parks are similar.

Some of the tenants submitted that the adjacent manufactured home park is not similar because the neighbouring park is several years newer and it includes a beach house that is rented to tenants. The tenants also took the position that the landlord failed to include other manufactured home parks that are in the same area.

The parties were in dispute as to whether a property further down the road from the subject park is a manufactured home park or an RV park.

b) Significant repairs or renovations

The landlord indicated three significant repairs were made at the park:

Work done	Cost (as filed)	Cost (as amended)
Replacement of septic system	\$115,941.77	\$114,941.77
Upgraded water system	\$8,941.60	Same
Replacement of power pole	\$3,407.05	Same

The landlord testified that the septic system that was replaced was likely the original system installed in the mid-1980's. The landlord expects the new system to last at least another 20 years. The septic system that was replaced had failed and needed replacement; however, there are other septic systems that service other sites in the park that have not yet been replaced.

The landlord testified that he was required to upgrade the fresh water supply system to comply with current health and safety standards. I heard the water is obtained from the nearby lake and to meet current health requirements, the water must pass through a chlorine and UV treatment system. The former system was chlorine treatment only. In filing the Application the landlord indicated he is uncertain as to the life expectancy of the new water treatment system.

The landlord submitted that a power pole needed replacement as the old pole was rotten and leaning. I heard the power pole was likely installed when the park was constructed in the mid-1980's. The landlord anticipates the new pole will last at least another 20 years.

The tenants submitted the following positions:

- The landlord purchased the property with an aging infrastructure and that replacement of infrastructure would have been foreseen and should have been an anticipated expenditure.
- The tenants questioned whether the replacement of the septic system was required due to a lack of maintenance.
- Since the infrastructure stays with the land, the landlord benefits from an increased property value; whereas, if the tenants vacate the property they do not take the benefit of a new septic system with them.
- The tenants should not be required to pay for septic replacement costs for a system that is only used by a limited number of sites.
- Many tenants have limited income and have suffered decreased market values of their manufactured homes.
- The rent increases over the past several years have exceeded increases in the Consumer Price Index.

In addition, the tenants pointed to discrepancies between the invoice they were provided with this hearing package and an invoice provided to them under a previous Application by the landlord (that previous Application was dismissed with leave). I noted that the invoice included with the hearing package presented to me reflected additional charges for engineering costs. The landlord explained that the septic installer re-issued the invoice to include engineering costs which the landlord states he is responsible to pay.

The tenants also pointed to specific charges the septic installer charged for which they do not agree to be part of the septic replacement project. The landlord agreed that there is approximately \$7,600.00 in charges that he is disputing with the septic installer. As a result, the landlord has paid the funds into a lawyer's trust account until that dispute is resolved.

Some of the tenants raised issues with respect to inadequate or incomplete work with respect to returning the grounds to the condition they were in prior to the septic replacement. The landlord stated that is aware of the issues and indicated that some of the issues are part of the dispute he is having with the septic installer. Nevertheless, the landlord indicated the issues will be addressed in the near future when the weather improves.

Analysis

The Act permits a landlord to seek the Director's authorization to increase rent by an amount that is greater than the "annual rent increase" determined by the calculation provided in the Regulations. For 2014 the annual rent increase is the sum of: 2% + .2% for inflation + the "proportional amount", if any. There are four grounds under which a landlord may request an additional rent increase and the landlord bears the burden to provide sufficient evidence to support the ground(s) under which the landlord is seeking the additional rent increase.

I have considered all of the evidence and submissions presented to me and provide the following reasons and findings with respect to the two grounds identified by the landlord on the Application.

a) Rent lower than comparable sites

In order to succeed under this ground, the landlord must establish the rent for similar sites in the same geographic area and show that the rent for the subject sites is significantly below market rent even after the annual rent increase is applied. After applying the 2.2% annual rent increase, the rent for the subject sites would be \$411.04. Whether \$411.04 is "significantly below" \$432.00 I find to be arguable.

With respect to the landlord's submission that rent for comparable sites in the same geographic area is \$432.00 per month, I find the landlord did not meet his burden to substantiate his position. I was provided disputed verbal testimony that the sites in the neighbouring manufactured home park are similar to the subject sites. I also heard that there may be other manufactured home parks in the same geographical area and it appears the landlord did not consider the rents in any other parks. While the sites in the neighbouring park may be the most comparable I require sufficient information and evidence to conclude that is the case. Therefore, I find it reasonable that a landlord seeking an additional rent increase under this ground would have demonstrated that other parks in the area exist and provide reasons why those parks were not considered as comparable; and, provided evidence along with an analysis comparing sites in the subject park to sites in other parks, including: photographs, a description of common areas and amenities provided at each park, the number and size of sites, and the like.

In light of the above, I find the landlord did not sufficiently establish that the rent for the subject sites is "significantly below" rent of similar sites in the same area after applying

the regulated rent increase of 2.2%. Therefore, I deny the landlord's request for an additional rent increase under this ground.

b) Significant repairs or renovations

It is important to point out that the Application for Additional Rent Increase is a form that is utilized under both the *Residential Tenancy Act* (RTA) and the *Manufactured Home Park Tenancy Act* (MHPTA); however, the criteria for granting an additional rent increase for significant repairs are different under these two Acts. The most notable distinction is that under the RTA an eligible repair or renovation “could not have been foreseen”; whereas, that criterion is not applicable under the MHPTA. In hearing from the tenants that the replacement of aging infrastructure should have been foreseen, it would appear as though some of the tenants were reading the criteria applicable under the RTA. In reaching this decision, I have considered whether the criteria provided under the *Manufactured Home Park Tenancy Act* and its Regulations have been met.

Section 33(1) of the Regulations provides the following basis for authorizing an additional rent increase due to significant repairs or renovations:

(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;

In considering whether the three repairs identified by the landlord are “significant” I have considered the following factors: the amount of the expenditure, the effort involved in making the repair, and/or the impact that repair made to the use and enjoyment of the park. I am satisfied the septic system was a significant repair given its large expenditure and amount of work involved to make the repair. I am also satisfied that the water system upgrade is significant given all the tenants shall benefit from improved water purification and quality and the expenditure was considerable. I have not given further consideration to the replacement of the power pole as I am unsatisfied this is a significant expenditure when I compare it to the monthly rental income for this property.

I find it reasonable and necessary that the landlord replaced a failing septic system and inadequate water system given the former systems were failing and/or no longer adequate. Therefore, I am satisfied the landlord has satisfied part (i) of the criteria outlined above with respect to the septic and water systems.

Based upon the landlord's undisputed submission that the new septic system will last 20 or more years, I accept that replacement of that septic system will not be recur within a reasonable time period. As provided in Residential Tenancy Policy Guideline 40, the average useful life of a septic system is 20 years. Therefore, I am satisfied the repair of the septic system meets part (ii) of the criteria outlined above.

The landlord did not provide an estimate as to the life expectancy of the upgraded water system and this information is necessary in order for me to conclude the landlord has met part (ii) of the criteria set out above. In the absence of this information, I am unable to conclude the new water system will not need replacement within a reasonable time period, which is 20 years according to Policy Guideline 40. Therefore, I have excluded the new water system from further consideration and proceed to consider whether the landlord may increase the rent based upon the repair of the septic system only.

Below, I have considered the tenant's submissions and provide the following responses:

Components of infrastructure or a building have different life expectancies and it is common for some components to reach the end of their useful life while the property still serves its current purpose as a rental property. The Act and the Regulations contemplate this and permit a landlord a landlord to seek an additional rent increase where a significant repair or renovation has been made. The legislation does not prohibit the landlord from seeking an additional rent increase due to aging or obsolescence. Also, as mentioned previously, the MHPTA does not preclude a landlord from seeking an additional rent increase if the repair or renovation is foreseen as is the case under the RTA.

Although some tenants questioned whether lack of maintenance necessitated the replacement of the septic system, the fact that the septic system was over 25 years old satisfies me that it was in need of replacement due to it being at the end of its useful life and not because of lack of maintenance or negligence on part of the landlord.

I find the tenants' argument that infrastructure stays with the land for the landlord's benefit is not a basis to deny the landlord's request. All repairs or renovations made to a rental property by a landlord stay with the land. If this argument were a basis for denying an additional rent increase, then there would be no instance were a landlord

would be granted an additional rent increase for a significant repair or renovation. Therefore, I find this argument goes against the intent of the legislation which is to consider significant repairs and renovations in permitting an additional rent increase.

Although the septic system that was replaced specifically services certain sites, while other sites are serviced by other systems on the property, I find that having a properly functioning septic system benefits the park as a whole as a failing system results in noxious odours, contaminated soil and water that would affect all occupants. Further, the landlord may not apportion a significant repair to only certain sites as section 33(2) precludes the landlord from doing so. Section 33(2) states: "If the landlord applies for an increase under paragraph (1)(b), (c), or (d), the landlord must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage.

While I appreciate many tenants live with limited means, not only in this park but many other rental properties throughout the province, such circumstances are not a basis for denying the landlord's request. To factor a tenant's low income into an additional rent increase calculation would shift the tenants' financial situation to the landlord and that would result in the landlord subsidizing the tenant's rent. Since this is not a property operated under a subsidized rent program a tenant's income levels and value of personal property (which includes a manufactured home) are not considerations in setting rent levels.

Changes to the Consumer Price Index is one factor already taken into account in the calculation an annual rent increase, as evidenced by the allowance for inflation, and is not a factor for considering whether an additional rent increase should be authorized for a significant repair or renovation.

In addition to considering all of the tenants' specific concerns, I have considered the other considerations as set out in section 33(3) of the Regulations and I find no basis for denying an additional rent increase due to the septic system replacement.

Having been satisfied that an additional rent increase is warranted due to the septic system replacement, I proceed to consider the amount of the additional rent increase that is appropriate.

For purposes of determining the cost of the septic repair I accept that the landlord has paid \$15,000.00 as a deposit and been invoiced \$99,941.77 which has been paid to a lawyer's trust account pending resolution of a dispute over \$7,600.00 in charges. Since the tenants raised concerns over the appropriateness of certain charges and the

disputed charges may not be paid to the septic installer, I find appropriate to deduct the amount that is in dispute between the landlord and the septic installer. Therefore, I have used the amount of \$107,341.77 [calculated as (\$15,000.00 + \$99,941.77) – \$7,600.00] as the cost of the septic system for purposes of this decision.

I have used the following formula in determining the appropriate increase to the current rent:

$$[(\text{cost of repair} / \text{estimated useful life (in months)} / \# \text{ of sites}) + 2.2\% \text{ of current rent}]$$

Which I calculate to be: $\$107,341.77 / 240 \text{ months} / 22 \text{ sites} = \$20.33 + \$8.85 = \29.18

In light of all of the above, I authorize the landlord to increase the monthly rent by up to \$29.18 in 2014 to bring the total new rent up to \$431.37 effective no earlier than three full months after the landlord serves the tenants with a Notice of Rent Increase in the approved form.

As the landlord has been granted authorization for an additional rent increase, I also authorize the landlord to leave section D. of the Notice of Rent Increase blank as this decision shall serve as the authority for the amount of the rent increase.

Conclusion

The landlord has been authorized to increase the monthly rent by an amount up to \$29.18 in 2014 to bring the new rent up to \$431.37 effective three full months after the landlord serves Notices of Rent Increases upon the tenants.

This decision 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: March 19, 2014

Residential Tenancy Branch

