



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding VAN-KAM INVESTMENTS LTD.  
and [tenant name suppressed to protect priv

## **DECISION**

Dispute Codes      ARI

### Introduction

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

The Landlord's Agent said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 30, 2014. Based on the evidence of the Landlord's Agent, 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 18 of the Tenants present and the Tenants' agent. It should be noted that the Tenants' agent submitted 128 signed Appointment of Proxy forms, appointing the agent M.E. as the agent for the Tenants.

At the start of the conference call the Tenants' agent and some Tenants requested clarification why some of the tenants in the park were not served the Notice of Hearing and hearing package.

The Landlord explained that notices of rent increase were issued to some tenants prior to May 1, 2014 and those rent increases were completed and are in affect so the Landlord could not issue a second notice of rent increase within a 12 month period to those tenants. The Landlord said the Notice of Hearing and Hearing packages were issued to the Tenants that the Notice of Rent Increase was issued on or after May 1, 2014. The Landlord continued to say that these Notices of Rent Increase were rescinded. The Landlord continued to say only the Tenants with the rescinded Notices of Rent Increase received the Hearing package and this was in accordance to the Residential Tenancy Act and the regulations governing that Act.

The Tenants' agent and some Tenants said they understood the Landlord's reasoning but they do not think it is fair to have some tenants paying a rent increase and other tenants not.

The Landlord said he would prefer to have the rent increases apply to all the tenants but that is not how he was allowed to apply for the additional rent increase.

A second issue came up prior to the start of the hearing in which the Tenants agent indicated that she had submitted 255 pages of evidence and she wanted to confirm that Arbitrator and the Landlord had received it. The Landlord said he had just received the Tenants' evidence package and the Arbitrator said he did not have the evidence package. The Tenants' agent said she had sent it by courier to both the Landlord and the Residential Tenancy Branch in Burnaby and she understood the Branch received the package on September 3, 2014. The Arbitrator said that courier is not a listed method of serving documents so the hearing will proceed and the Arbitrator said he would obtain the Tenants' evidence package and he would review all the evidence in the package prior to writing the decision. It should be noted the Arbitrator received the Tenants' evidence package the next day September 16, 2014 and the Arbitrator read all the submissions in the package. The package contained a covering letter, a previous RTB decision and attachments, statements by 43 Tenants about the affect of an additional rent increase on fixed income Tenants, statements by 29 Tenants about the affect of an additional rent increase on pad rent and how it will affect the saleability of manufactured home in the park (please note 28 of the submissions were signed by Tenants, one was not signed and there was a letter from a realtor included), questions about what was included in the Landlord's cost calculation and if some costs should be allowed or not and the Appointment of Proxy forms appointing the Tenants' agent.

Both Parties agreed to continue with the hearing on the Tenants' condition that the Arbitrator would review the Tenants' written evidence prior to writing the decision.

#### Issue(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 agent said the Landlord is seeking an annual rent increase of 2.2% and is requesting an additional rent increase of 4.5% under section 36(3) of the Manufactured Home Park Act and in accordance with section 33 (b) of the Manufactured Home Park Regulations; where a landlord can make an application for an additional rent increase if the landlord has completed significant repairs or renovations to the Manufacture Home Park and these repairs or renovations are reasonable, necessary and will not recur in a reasonable period of time.

The Landlord's agent said the application is a result of the work done to complete an electrical upgrade in the Manufactured Home Park from 60 amp to 100 amp service. The upgrade started in 2006 through 2008 and then was paused because the Landlord made an application to the Safety Authority to suspend the upgrade due to financial

hardship on the Landlord. The Landlord was successful in the application and the electrical upgrade project was put on hold. Approximately 70 units were completed during the work done from 2006 to 2008. The cost of that part of the upgrade was \$192,760.66 and the Landlord received a decision awarding the Landlord an additional rent increase of 4% dated December 27, 2006.

The Landlord's agent continued to say that this application is for work done to upgrade the electrical services for the remaining 84 units and the work was completed in 2013. The Landlord's agent said the remaining electrical upgrade work cost \$375,456.75 and the costs are broken down as follows:

BC Hydro	\$ 10,945.20
Electrical company	\$ 340,725.00
Labour R. company	\$ 5,849.55
J. B.	\$ 144.00
M.D.	\$ 48.00
G. F.	\$ 735.00
J. G.	\$ 3,612.00
J. N.	\$ 48.00
P. S.	\$ 6,450.00
W. Z.	\$ <u>6,900.00</u>
 TOTAL	 \$ <u>375,456.75</u>

The Landlord's agent said the Landlord has included paid invoices and cheques for the expenses incurred for the electrical upgrade in the Landlord's evidence package. As well the Landlord's agent said the above costs were only for the work done that was completed in 2013 and none of the costs reflect work done from 2006 to 2008.

Further the Landlord's agent said the Landlord has calculated the additional rent increase is as follows:

Cost of Upgrading the Electrical Services	\$375,456.75
Proposed Annual cost for recovery over ten years (\$375,456.75/10)	\$ 37,545.67
Proposed Monthly cost recovery (\$37,545.67/12)	\$ 3,128.81

Percentage of April 2014 Rent Roll at \$68,059.67	4.5972%
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Requested Additional Rent Increase % (round down)	4.5%
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The Landlord's agent requested the Landlord's application for an additional rent increase of 4.5%.

The Tenants' agent said the Tenants are not disputing the annual rent increase of 2.2 % but they have concerns and are disputing the Landlord's application for an additional rent increase of 4.5%. The Tenants' agent said they are disputing the additional rent increase on a number of grounds. These grounds are in their written evidence package and she will go through the Tenants concerns referring to the written evidence package.

First the Tenants' agent said the previous decision dated December 27, 2006 says in paragraph 5 of the decision that the Landlord must make a single application to increase the rent for all sites. The Tenants' agent said the Landlord made an application for the electrical upgrade to the park and was awarded an additional rent increase of 4%. Consequently the Tenants' agent said the Landlord has made their application and this is a second application for the same electrical upgrade. Therefore this application is the second application for an additional rent increase on the electrical upgrade and should be disallowed.

The Landlord said the project was done at two times and the first application is for an upgrade to 70 sites and the second application is for 84 different sites in the same park.

The Tenants' agent continued to say they have reviewed the invoices and cheques in the Landlord's evidence package and they found some of the entries and items expensed confusing or that the items do not relate to the electrical upgrade. The Tenants' agent went through all the invoices and cheques in question, that the Tenants found confusing or that they believed were incorrect. The Tenants' agent said there was a total \$1,140.00 in expensed items that they found confusing or incorrect that should not be included in the calculation.

The Landlord's agent said some of the entries did appear confusing and some of the expenses may not have been directly related to the electrical upgrade. The Landlord's agent said he would agree to remove \$1,140.00 from the total of the costs claimed.

Further the Landlord's agent said that when they rounded down the percentage from 4.5972% to 4.5% this decrease would cover the items the Tenants had concerns over.

The Tenants' agent thanked the Landlord's agent for agreeing to remove these items.

The Tenants' agent continued to say that this application for an additional rent increase has not been received well by the Tenants and it has unified the Tenants in their resolve to dispute the application. The Tenants' agent said there are many fixed income seniors living in the park and they cannot afford the rent increase the Landlord is proposing. As evidence of this the Tenants' agent submitted 43 letters from the Tenants explaining their situation. Many of the letters stated that as seniors on a fixed income they have many rising costs including medical and day to day living costs so another rent increase is unaffordable for them. Many of the letters said they had no options and were very fearful of what will happen to them if the additional rent increase is allowed. Many wrote they cannot afford the rent and cannot sell their homes and have no idea what to do. A Tenant wrote they have used up their savings and may have to go bankrupt. Another wrote her health costs are high and so she has no money for the additional rent increase. Another Tenant wrote they were not told about the electrical upgrade when they moved in and they may have to walk away from their unit because they cannot afford an additional rent increase. Many of the Tenants wrote that they have increasing high medical costs that are not covered under medical insurance and are taking a bigger part of their fixed income. As a result there is nothing left over for a 6.5% rent increase. One other Tenant asked for an exception to the rules and not allow the Landlord's request for an additional rent increase. The Tenants' agent said these are very real situations and the Landlord and the Arbitrator should take these concerns into account for this situation.

Further the Tenants' agent said the pad rent in this park is high and may be the highest pad rent in the city. As a result the Tenants trying to sell their units are not able to because potential buyer are saying pad rent is too high and they will buy elsewhere. The Tenants' agent included 29 letters sighting the high pad rent as a deterrent to selling a home in this park. The Tenants' agent also included a letter from a local real estate firm and in that letter the realtor said "O.P.(Park) is currently one of the most expensive parks, if not the most expensive park in the entire city. This has been a significant hindrance in selling this unit as we have already had one offer cancelled because of the month fees....". The Tenants' agent said this is another reason that the Landlord should not increase the rent by an additional 4.5% and why the Landlord's application should not be successful.

Following the discussion of the pad rent on saleability of the homes in the Park many of the Tenants spoke to the poor level of services in the Park and that the electrical upgrade was not cleaned up by the Park or by the contractors. Many of the Tenants said they did the clean up themselves and paid for it. One Tenant said that this is the reason the Tenants are so unhappy with the Landlord and part of the reason for disputing this application for an additional rent increase.

The Landlord's agent said that he was sorry to hear the clean up was not satisfactory to many of the Tenants and if the Tenants had a valid claim for costs to clean up their yards they should direct those claims to him and he would present them to the Landlord. The Landlord's agent said he did not know there were complaints about the cleanup of the electrical upgrade.

The Tenants' agent continued to say that another reason the Landlord should not be successful in their application is that this park has poorer services and maintenance than other parks in the area and the pad rent is higher. The Tenants' agent sighted another park with a flat pad rent of \$375.00 which is less than the Landlord's park and it includes many social activities, other facilities and that park is very well maintained. One Tenant said that the management of the Landlord's park does not clear the roads as they should in the winter and there is no sanding. The Tenants' agent and the Tenants said the poor maintenance record of the Landlord does not support an additional rent increase.

In closing the Tenants' agent said the Tenants were united in opposing this application for the following reasons:

1. The additional rent increase of 4% was awarded in the first decision dated December 27, 2006.
2. Any additional rent increase will be a financial hardship on many fixed income seniors living in the Park.
3. Any additional rent increase will have a detrimental effect on the value of the homes in the Park and the ability of the Tenants to sell their homes as pad rent is considered when purchasing a manufactured home.
4. The calculation of the electrical upgrade expense has non upgrade items in it.
5. The Park is not competitive with other parks in the city and so the additional rent increase is not warranted.

The Landlord's agent said in closing that they have done the work to upgrade the electrical service which they were ordered to do and this application is just for the work

completed in 2013. Therefore it is not a second application, but an application for new repairs and renovations which will not occur in a reasonable period of time.

As well the Landlord's agent said the Landlord will reduce the cost calculation by \$1,140.00 and will review any valid claims for clean up that the Tenants incurred or paid.

### Analysis

#### **The Act says in section 36:**

**36** (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 (3), or**
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

**(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.**

(4) [Repealed 2006-35-11.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

#### **The regulations say in section 33:**

**33** (1) A landlord may apply under section 36 (3) of the Act [*additional rent increase*] if one or more of the following apply:

(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;

**(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;**

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the manufactured home park;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the manufactured home park, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same manufactured home site.

(2) 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.

(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

(a) the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect;



- (b) the rent history for the affected manufactured home site in the 3 years preceding the date of the application;
- (c) a change in a service or facility that the landlord has provided for the manufactured home park in which the site is located in the 12 months preceding the date of the application;
- (d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;
- (e) the relationship between the change described in paragraph (d) and the rent increase applied for;
- (f) a relevant submission from an affected tenant;
- (g) a finding by the director that the landlord has contravened section 26 of the Act [*obligation to repair and maintain*];
- (h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the manufactured home park results from inadequate repair or maintenance in a previous year;
- (i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;
- (j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
- (k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has
  - (i) submitted false or misleading evidence, or

- (ii) failed to comply with an order of the director for the disclosure of documents.
- (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.
- (5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

**Further Policy Guideline 37 says Additional Rent Increase under the Manufactured Home Park Tenancy Act**

The Manufactured Home Park Tenancy Act allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. The Manufactured Home Park Tenancy Regulations sets out the limited grounds for such an application. A landlord may apply for an 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;

**Significant repairs or renovations**

In conventional tenancies<sup>9</sup>, 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 could not have been foreseen under reasonable circumstances<sup>10</sup>; and (3) the repair or renovation will not reoccur within a time period that is reasonable for the repair or renovation.

<sup>9</sup> RT Reg, s. 23(1)(b).

<sup>10</sup> Refer also to Guideline 40.

<sup>11</sup> MHPT Reg, s. 33(1)(b).

In manufactured home park tenancies<sup>11</sup>, 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.

A repair or renovation may be considered "significant" when (i) the expected benefit of the repair or renovation can reasonably be expected to extend for at least one year, and (ii) the repair or renovation is notable or conspicuous in effect or scope, or the expenditure incurred on the repair or renovation is of a noticeably or measurably large amount.

In order for a capital expense for a significant repair or renovation to be allowed in an AARI for a conventional tenancy, the landlord must show that the repair or renovation could not have been foreseen under reasonable circumstances and will not reoccur within a time period that is reasonable for the repair or renovation. An example of work that could not have been foreseen under reasonable circumstances is repairs resulting from a ruptured water pipe or sewer backup even though adequate maintenance had been performed.

Another example is capital work undertaken by a municipality, local board or public utility for which a landlord is obligated to pay (e.g., sewer system upgrade, water main installation), unless the work is undertaken because of the landlord's failure to do the work. An example of work that could have been foreseen under reasonable circumstances, and for which a rent increase would not be allowed, is a new roof.

In order for a capital expense for a significant repair or renovation to be allowed in an AARI for a manufactured home park tenancy, the landlord must show that the repair or renovation was reasonable and necessary, and will not reoccur within a time period that is reasonable for the repair or renovation. A repair or renovation may be considered "reasonable" when (i) the repair or renovation, (ii) the work performed to complete the repair or renovation, and (iii) the associated cost of the repair or renovation, are suitable and fair under the circumstances of the repair or renovation. A repair or renovation may be considered "necessary" when the repair or renovation is required to (i) protect or restore the physical integrity of the manufactured home park, (ii) **comply with municipal or provincial health, safety or housing standards**, (iii) maintain water, sewage, electrical, lighting, roadway or other facilities, (iv) provide access for persons with disabilities, or (v) promote the efficient use of energy or water. RESIDENTIAL TENANCY POLICY GUIDELINE

Where an expenditure incurred on the repair or renovation has been, is anticipated to be, or will be reimbursed or otherwise recovered (e.g., by grant or other assistance from a government, by an insurance claim), a rent increase will not be ordered.

In considering a landlord's capital expense for a significant repair or renovation, the arbitrator will consider only those expenditures which have not been included in full or in part in a previous rent increase given to the tenant before the subject proposed rent increase. A landlord can apply for an additional rent increase on significant repairs that were done before the Legislation came into effect if the landlord hasn't previously had an opportunity to obtain an increase for those repairs. For example, if the rent increase the landlord gave (or could have given) to take effect in 2003 was for a fiscal year that ended in March 2002, and the repairs were done in September 2002, then the landlord could request an additional rent increase in 2004 for the cost of those repairs.

An application can be made at any time after the landlord has made the repairs or renovations and is able to provide proof of their cost. The landlord does not have to have completed paying for the repairs or renovations. **A landlord could complete a major renovation project in phases, and seek an additional rent increase at the completion of each phase.** However, the additional rent increase must apply equally to all rental units in the building.

The landlord must provide documentary evidence (e.g. invoices) of the costs of those repairs or renovations, and must also be prepared to show why those costs could not have been foreseen (conventional tenancy) or are reasonable and necessary (manufactured home park tenancy), and that they will not recur within a reasonable time period.

The Landlord has followed the Act, regulations and policy guidelines in making this application. The Landlord's application is for repairs and renovations that were ordered by a government agency to upgrade the electrical service from 60 amps to 100amps. The repairs were reasonable, necessary and completed in two phases which is in accordance with the policy guidelines. Further the Landlord has provided supporting evidence that the prove the cost of the electrical up grade and the Landlord has agreed to an adjustment those costs down by \$1,140.00 as the Tenants have proven there is some confusion with regard to \$1,140.00 of the costs. As well the Landlord has provided the calculations of how the percentage increase was completed. With the reduction of total costs by \$1,140.00 the following is the revised calculation of the percentage rent increase the Landlord is applying for:

TOTAL COST \$375,456.75 - \$1,140.00 =	\$374,316.75
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PROPOSED ANNUAL EXPENSE RECOVERY	
\$374,316.75 / 10 YEARS =	\$ 37,431.67

PROPOSED MONTHLY EXPENSE RECOVER	
\$37,431.67 / 12 MONTHS/YEAR =	\$ 3,119.31

PERCENTAGE OF RENT ROLL AT \$68,059.67

$\$ 3,119.31 / \$68,059.67 \times 100 =$  4.5832 %

REQUESTED ADDITIONAL RENT INCREASE

(ROUND DOWN) 4.5 %

I accept the application is for new repairs and renovations that the Landlord had no option but to complete. The repairs and renovation (the electrical upgrade) were reasonable and necessary. It is true the electrical upgrade happened at two different times, but **no costs from the first application for an additional rent increase were included in the second application.** I find the applications are separate repairs and renovations and the costs are independent from each other. Therefore the Tenants claim that the Landlord's application should be dismissed because of the one application per repair and renovation provision is not valid. The decision of December 27, 2006 is for the first phase of the electrical upgrade of \$192,760.66 and this application is for the upgrade completed in 2013 for a cost of \$374,316.75.

Secondly the information submitted by the Tenants agent that explain the situation that the Tenants on fixed income and who are trying to sell their home is very concerning, but it does not establish grounds to change the fact that the Landlord incurred costs of \$374,316.75 to upgrade the electrical services from 60 amp. to 100 amp. I have read all the Tenants submissions and find many of the Tenants' situations unfortunate and disturbing and I would encourage the Landlord to address the concerns of the Tenants to improve tenant/landlord relations. The Tenants' personal finances situations are not included in the criteria to evaluate an application for an Additional Rent Increase for substantial repairs and renovations that are reasonable, necessary and that the Landlord is ordered to do. Consequently I find the Tenants request to reduce or disallow the Landlord's application on the grounds of financial hardship for the Tenants is not in a criteria to evaluate the Landlord's application. Therefore; I find the Tenants have not established grounds to have the Landlord's application dismissed based on any financial hardship that the additional rent increase would cause the Tenants.

Further the Tenants have presented testimony and evidence that the Landlord's pad rent is not competitive with other parks in the city as the pad rent is considered high and this park does not have as many services and facilities as some other parks. Again this is a disappointing situation for the Tenants of the Park, but competitiveness of the Landlord's Park with other parks is not a criterion in evaluating an additional rent increase application for a capital expenditure for infrastructure. The Tenants request to

dismiss the Landlord's application based on competitiveness of the Park with other parks is not ground to dismiss or adjust the Landlord's application.

It is apparent from the testimony and the evidence submitted by the Tenants that the majority of the Tenants in this Manufactured Home Park are dissatisfied with portions of the Parks operations and the majority of the Tenants are opposed to the Landlord's application for an additional rent increase of 4.5%. The Tenants have the right to oppose the Landlord's application. On reviewing the Landlord's application and evidence and reviewing the Tenants' evidenced and testimony I find for the Landlord and I permit the Landlord's request for an additional rent increase of 4.5%.

I find this as the Landlord's request is for completion of the electrical upgrade ordered by the Safety Authority and electrical upgrade is reasonable and necessary. As well the Landlord proved his costs associated with the work completed and the Landlord has requested to recover the capital cost for the electrical upgrade over a reasonable period of 10 years. Pursuant to sections 36 and 62 of the Manufactured Home Park Act, I permit the Landlord an **additional rent increase of up to but not exceeding 4.5% for a total maximum allowable rent increase of no more that 6.7% of all the manufactured home sites within the Park.** The rent increase consists of the annual allowable rent increase of 2.2% and the approved 4.5% additional rent increase in this application. This increase must be in accordance with the notice and timing provision under section 35 of the Act.

In addition the Parties agreed during the hearing that the Tenants could make submissions to the Landlord's agent for loss or damage that incurred because of the electrical upgrade and about Park operations. I encourage the Tenants to contact the Landlord's agent with their concerns but if the Tenants concerns are not satisfied the Tenants are at leave to make applications with the Residential Tenancy Branch for dispute resolution on items covered by the Act.

#### Conclusion

The Landlord application for an addition rent increase due to substantial repairs and renovation in the amount of 4.5% is permitted.

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: September 24, 2014

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Residential Tenancy Branch

