



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K & M VENTURES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AARI

Introduction

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

The Landlord said his agent served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 6, 2015. Based on the evidence of 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 9 of the Tenants present.

At the start of the hearing Tenant T.G. said that claims above \$20,000.00 are not heard by the Residential Tenancy Branch and because this claim is for \$55,000.00 plus the claim should not be heard. The Arbitrator explained the Residential Tenancy Act hears claims for monetary compensation for loss or damage up to \$25,000.00, but this claim is for an additional rent increase which is different than a claim for loss or damage therefore the \$25,000.00 limit does not apply. The Tenant T.G. said he understood the difference but he did not think the Landlord should be allowed to pass these expenses off to the Park tenants.

Issue to be Decided

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

Background and Evidence

The Landlord said he made this application for an additional rent increase of 30% under section 36(3) of the Manufactured Home Park Act and in accordance with section 33 (b) of the Manufactured Home Park Regulations. The Act says 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 said the application is a result of the work done to repair the water well in the Park, to repair the septic systems in the park and to recover collection costs for water sample testing and monitoring for the Health Authority.

The Landlord said the well on the property went dry on January 12, 2015 and the Landlord hired three companies involved in water well systems to repair the well and bring the water system back to full operations. The Landlord said the original well was dismantled, re-drilled/cleaned out and then rebuilt. The Landlord continued to say a new pump system was installed and one of the companies was hired to find a leak in the Park after the well was repaired. The Landlord said it is his understanding that the broken pipe and leak in site 16 occurred after the well and system went dry. The Landlord said he was told by the company that found and repaired the broken pipe that the break probably occurred as a result of the pipes being emptied during cold weather. The Landlord said that is what he was told but there is no definitive answer as to when the leak in site 16 occurred. The Landlord said the cost to repair the well was \$33,993.58.

Further the Landlord said the septic systems in the Park also required repairs as the systems were not operating correctly. The Landlord said the problems may have originated from the system or how the septic systems were being used. The Landlord said the septic systems repair costs were \$19,273.48.

The Landlord said that he has included all the paid receipts for the work done and the General Service Agreement with the contractor who collects the water samples for the Health Authority to support and verify the Landlord's claims.

The Landlord said his request for an additional rent increase is calculated as below:

Well repair costs	\$33,993.58	
Septic Systems Repair	\$19,273.48	
Total		\$53,267.06

The Landlord then divided \$53,267.06 by 60 months (the amortization period the Landlord chose to recover his costs) which equals \$887.78 per month. This amount then was divided equally between the 16 manufactured home sites in the Park. $\$887.78 / 16 = \55.49 . The Landlord said he is requesting a monthly rent increase of \$55.49 for repairs and upgrades to the water system and septic systems.

In addition the Landlord said he is also requesting the cost to collect water samples for the Health Authority water monitoring program. The contractor the Landlord hired collects the water samples and delivers the samples to the Health Authority. The contractor bills the Landlord \$3,600.00 per year for water sampling. The Landlord said he is requesting to recover the costs of the water sampling contract in the amount of $\$3,600.00 / 12 \text{ months} / 16 \text{ pad rentals} = \18.75 per month rent increase per site.

The Landlord said he is requesting a total rent increase of $\$55.49 + \$18.75 = \$74.24$, rounded to \$74.00 per month on each of the 16 sites in the Park. The Landlord said he has done the repairs and upgrades and he has incurred costs that are significant, reasonable, necessary and will not occur in a reasonable time period. The Landlord said he is requesting a \$74.00 rent increase from the existing monthly rent of \$246.00 per month to \$320.00 per month rent on all 16 sites in the Park. The Landlord said this represents a 30% rent increase to the Park. As well the Landlord said the new rental is in keeping with other park rental amounts which range from \$300.00 to \$450.00.

Following the Landlords explanation of his application the Tenants were given the opportunity to respond to the Landlord's application in the order of the site numbers beginning with the lowest number.

Tenant M.U. said there was a water leak in site 16 that drained the well and that was the problem with the well. The Tenant M.U. said the Landlord did not take time to find the problem with the well and if the Landlord would have found the leak the water problem could have been fixed by just repairing a pipe which would not have been very expensive. Tenant M.U. said the maintenance in the park is a problem and so the Landlord did not know the pipe was leaking and causing damage to the well system.

The Landlord said it is his understanding from the water well service companies that the broken pipe most likely happened when the water was off and then started leaking when the water was restored.

Tenant J.M. agreed that maintenance in the Park was an issue and that the Landlord did not investigate the well problem well enough prior to fixing it. Tenant J.M. said this made the repair much more costly and the Tenants should not have to pay for the Landlord's mistakes.

The Landlord said he was not a water systems expert so he was following the water well drilling and water pump companies recommendations as they are in the business of water systems. The Landlord continued to say the well went dry on January 12, 2015 and was repaired January 17, 2015 and the leak was found and repaired on January 29, 2015. The Landlord said he tried to fix the problems as quickly as he could.

Tenant J.M. continued to say that the Park is 11 km. out of town and has less facilities and services than the Parks in town so the rental should stay lower than the town Parks. Tenant J.M. said the lowest rate in town is \$295.00.

The Landlord said he understands the Park rates in the area to range from \$300.00 to \$450.00 per month per site.

Tenant W.K. said the Park is mismanaged and he has had to pump out his septic system himself. Tenant W.K. said the septic systems were not working correctly.

The Landlord agreed the septic systems were not working correctly and that is why he repaired the systems. The Landlord said he purchased the Park in 2011 and the Park was built in the mid-1990, so the well and the septic systems are 20 plus years old and were in need of repair.

The Landlord continued to say the Park is not mismanaged. He has a professional property manager and the Landlord is available for issues as well. The Landlord said he has not received any complaints about the Property Manager T.F. and he has not had direct complaints about the Park.

Tenant J. M. said the mismanagement of the Park shows that the Landlord does not handle issues well and so the well problem probably could have been fixed for a lot less cost.

Tenant N.R. said the Landlord was incorrect when he said the well had gone dry as they had some water during the time the well was not working correctly. As a result the Tenant N.R. said it was most likely a water leak issue that drained the well not the well drying up. Tenant N.R. said this is a maintenance issue not a capital investment issue. The Tenant N.R. said the Landlord did not do his due diligence on the well problem.

The Landlord said again he brought in people who he believed were experts or in the business of water systems to fix the problem. The Landlord said he thought he acted appropriately.

Tenant Y.V.H. said that the well was not re-drilled it was just cleaned out by the well drilling company. Tenant Y.V.H. agreed with the other tenants that there were management issues in the Park especial with trying to contact the property manager T. F.

The Landlord said his property manager had told him some tenants were abusive on the phone to the property manager so the Landlord was not surprised that the property manager did not answer his phone to some tenants.

Tenant E.L. said that she wondered why so much work and expense was done to the well system. She said a new building was put up over the well and she thought that may have been an excessive expense. As well Tenant E.L said if the Landlord or property manager had a regular maintenance program with the well this problem may not have happened and the tenants would not be asked to pay for the repairs.

The Landlord said they do regular maintenance and when the well problem arose they did investigate the potential problems and causes and the well service company said the well was dry and needed to be repaired.

Tenant E.L. said the proposed rent increase is too much because the Park has limited services and is 11 km. out of town. She said that site rentals in town Parks range between \$295.00 to \$450.00.

The Landlord said the Park provides snow removal, common area maintenance, septic systems, roads and road maintenance, water and garbage collection. The Landlord agreed Park rentals range from \$300.00 to \$450.00 in the area.

Tenant Y.V.H. said the maintenance man does a poor job. The sanding is done with a bucket and scoop and the roads are dangerously icy in the winter. The Tenant Y.V.H. also said there is no internet at the Park.

The Landlord said there is a method of getting internet in the area, but that would be up to the tenants themselves to arrange those services. The Landlord continued to say that he awarded a maintenance contract and he has not received any complaints so he is unaware that there is a problem with the maintenance at the Park.

Tenant J.L. said there was little to no trouble shooting done when the well problem happened. He believes that the water leak in site 16 drained the well and there was no need to re-drill and rebuild the well. The Tenant J.L. said he thought if the Landlord would have found the leak none of this expense would have happened. Tenant J.L. said more testing like flow metering and pump checks should be done as well as the weekly bacterial monitoring.

The Landlord said he does do testing but he does not tell the tenants every time he does something as they do not require notice on every test done.

Tenant T.G. said the increase in rent of 30% the Landlord is requesting is too high. The people living in the Park do not have the money to absorb that high a rent increase. The Tenant T.G. said there are young families and pensioners that own there manufactured home and therefore are responsible to maintain the homes. Tenant T.G. said he does not agree with the Landlord's application for a 30% rent increase as well as the annual rent increase of 2.9% that will take effect in January 2016.

The Tenant T.G. continued to say he agreed the maintenance in the Park was poor and that may be why the well was drained. Tenant T.G. said he believes that the leak in site 16 drained the well and if the leak would have been repaired in a timely manner the well would not have had to be rebuilt. Tenant T.G said he does not want to pay for the well rebuild as it was a poor maintenance issue therefore it is the responsibility of the Landlord not the tenants.

The Landlord said that the well experts he hired said the well went dry and the well required rebuilding, which is what the Landlord did. The Landlord said he did this in a timely manner to get water back in the Park as quickly as possible.

Tenants N.R. and J.M. both said there were no professional investigation or opinions given about the water system when it failed and they thought this was not right.

The Landlord said he thought the well drilling company and the well pump company were knowledgeable about water systems and he followed their advice.

In closing the Landlord said he has followed the guidelines for an additional rent increase, the reason for the additional rent increase is necessary, reasonable and will not occur for some time. The Landlord also said the tenants have not provided any evidence to corroborate their statements and opinions. The Landlord said he has submitted evidence to support his claims. The Landlord said his request is justified.

The tenants were asked for any closing remarks and the consensus was that the leak in the pipe at unit 16 drained the well, the Landlord did not do his due diligence in handling the water system issue; therefore the tenants believe they should not be responsible for the cost of the well rebuild.

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 Regulation 33 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, 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; 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.**

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
- (iv) promote the efficient use of energy or water.

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 resulted from the water system in the manufactured Home Park failing on January 12, 2015, to repair the septic systems in the Park and to recover a water collection fee. Are the repairs to the well and septic systems reasonable, necessary and completed in a timely manner?

The tenants have testified that they believe the maintenance in the Park was substandard and as a result a water leak in one of the home sites caused the well to drain and become inoperable. The tenants believe that if the Landlord had found the water leak the well system would not have had to be rebuilt and the expense of repairing the well would have been much less. The tenants gave testimony about the water leak in site 16 but there was no evidence submitted that the leak happened prior to the well-draining or going dry and there was no expert evidence provided by the tenants that a leak of this nature would cause a well to go dry. As well the tenants did not provide any corroborative evidence that the maintenance in the Park was substandard. The tenants relied on their opinions and what they had witnessed.

The Landlord gave testimony that he consulted person in the water well drilling and water well pump business as soon as he was told of the well issue. The Landlord said he followed the advice of these people in the water well industry as he had no expertise in water systems. The Landlord gave testimony that he wanted to repair the well and return water to the Park as soon as possible because he believed this was an emergency situation. The Landlord continued to say the leak in site 16 was discovered after the well was repaired and it is not possible to determine how and when the leak happened.

I have reviewed the testimony of the tenants and the testimony and evidence of the Landlord and I find that it is unclear if the water leak in site 16 contributed to the well issues or not. There is no evidence to prove the water leak in site 16 caused the well to go dry. The Landlord said he was told by persons in the business of wells and water systems that the well was dry and that it was not possible to prove what happened to the well. This situation is not so much how the well system broke down but that the well system stopped working. I find the well system failing is an emergency situation for the Park, the Landlord and the tenants. The Landlord had to address this problem immediately. I find the Landlord acted responsibly in the situation as the well was repaired within 5 days of failing. Further the discovery of the broken pipe in site 16 was discovered on January 25, 2015, 8 days after the well repair and there is no information or evidence to prove it happened before the well failing. I find there is no substantive evidence to show the leak in site 16 contributed to the issues with the well.

Consequently I find the Landlord has established grounds for an additional rent increase for the repair of the well in the amount of \$33,993.58. The repair was significant, reasonable, necessary and should not happen again for a substantial period of time.

With regard to the repairs of the septic systems the Landlord said the septic systems were over 20 years old and there were issues in how the systems worked. The Landlord said the tanks had to be pumped out on occasion and the Landlord was not sure if the reason was that the septic systems were old or if material being put in the system caused the septic system to fail. The Landlord said he believed the best course of action was to repair the septic systems as they were 20 plus years old.

Only a few tenants spoke to the septic system issue and what was said was that the systems were not working well and needed to be pumped out on occasions. One Tenant said he had paid to pump out the septic system he used.

It appeared that there was agreement that the septic systems needed repair work to have the systems function as they should. Consequently I find the Landlord has established grounds for an additional rent increase for the repair of the septic system in the amount of \$19,273.48. The repairs were significant, reasonable, necessary and should not happen again for a substantial period of time.

With regard to the Landlord's request for an additional rent increase of \$18.75 per site per month for the water sample collection contract; I find this cost is not a capital expense nor is it an extraordinary operating expense as water testing is part of operating a manufactured home park that has water provide from a well operated by the Park. In addition this expense is a paid to a contractor employed by the Landlord so it is considered a normal operating cost. I find the Landlord has not established grounds for an additional rent increase for the collection of water samples for testing. I dismiss the Landlord request for an additional rent increase of \$18.75/month/site for water sampling.

Further the Landlord has requested to recover his costs over a 5 year amortization period. This time period would make the additional rent increase based on the well repair and septic repair in the amount of $\$53,267.06 / 60 \text{ months} / 16 \text{ sites} = \55.49 per site per month. Total new rent for each site would be $\$246.00$ plus $\$55.49 = \301.49 . I have reviewed the testimony from both the Landlord and the tenants with respect to pad/site rentals in the area. Both parties agreeing pad rentals in the town 11 km away range from $\$295.00/\300.00 to $\$450.00$. The tenants said the town Manufactured Home Sites provide more services and the sites are closer to amenities therefore the site rental for town sites should be more than the site rental at this Park. The Landlord explained the Park provides the site, snow removal, septic, water, roads and road maintenance, maintenance of common areas and garbage collection. These services are the basic services provided by any manufactured home park therefore; I find the geography of being 11 km out of town does restrict access to amenities and results in a downward pressure on the site rental price at this Park. One Tenant T.G. said the reason many of the tenants live here is because they cannot afford anywhere else.

In addition I have reviewed the cost recovery amortization period request by the Landlord of 5 years for the capital expenditures for the well and septic systems. I understand the Landlord wants to recover his costs as soon as possible but I believe there is merit to balance the cost recovery period of these expenditures with the life expectancy of the assets. Wells and septic systems may have a life expectancy of up to 10 years before major maintenance or replacement is needed. I also believe that would be unfair to the Landlord to extend the repayment period to 10 years as this is an older Park and there will be other capital expenditures to update the park in the future. Consequently I find that 7 years is a reasonable amortization period to recover the expense for the capital expenditures of the well repair and septic system upgrades.

To reflect the inconvenience of being 11 km from services and amenities and to balance the cost recovery time of capital expenditures to the type of capital expenditure, I order the calculation of the additional rent increase to be over 7 years in the amount of $\$53,267.06 / 84 \text{ months} / 16 \text{ sites} = \$39.63 \text{ per site per months}$. I order the additional rent increase to be \$39.63 and the resulting new rental per pad/site per month to be $\$246.00 + \$39.63 = \$285.63$. This additional rent increase of \$39.63 is a rent increase of 16.1% and is in addition to the annual rent increase of 2.9% which the tenants were notified of in September, 2015 and will take effect in January, 2016.

Conclusion

The Landlord application for an addition rent increase due to substantial repairs and renovation in the amount of 30% is dismissed without leave to reapply.

The additional rent increase above the annual rent increase of 2.9% is order at 16.1% or \$39.63 per site/pad in the Park. The Landlord is ordered to issue the additional rent increase in accordance to the Act and regulations.

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: October 09, 2015

Residential Tenancy Branch

