Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARPER GREY LLP PER MICHAEL DROUILLARD, LEGAL COUNSEL and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with an application by the landlord pursuant to section 36(3) of the *Manufactured Home Park Act* ("the *Act*") for authorization to implement an additional rent increase to all current tenants of the manufactured home park ("the Park").

When a landlord applies for an additional rent increase, the *Act* and Policy Guideline No. 37 provides the standard for service of the Application and evidence,

> Each tenant named on the application must be served with a copy of the Application and hearing package. The landlord is required to provide affected tenants with copies of the evidence used in support of the Application for an Additional Rent Increase, including relevant invoices, financing records, and financial statements if applicable.

To ensure that the tenants will have an opportunity to appear at the hearing of the application, question the landlord's evidence, and submit their own evidence, each tenant must be sufficiently served with a landlord's Application for an Additional Rent Increase. Prior to this hearing, the landlord was provided with the requirements of service in accordance with the *Act.* The landlord's counsel provided documentary evidence to confirm each tenant named in this application had been served with the application and materials for this hearing. The landlord submitted Canada Post mailing and receipt information for the mailings to each tenant. Based on the evidence submitted by the landlord, I find that all respondents were sufficiently served with the landlord's Application for Dispute Resolution and materials in binder form.

Ten tenants attended this hearing held by teleconference including one tenant who acts as park manager. He also testified as a witness for the landlord (Witness DW). The landlord's counsel made submissions on behalf of the landlord. Two witnesses testified with respect to the landlord's application. Each tenant in attendance was given an

opportunity to make submissions and to question the landlord's witnesses. I note that twenty-one other tenants provided written submissions with respect to the landlord's application.

Issue to be Decided

Is the landlord entitled to increase the rent by 7.3%, an amount 4.4% above the current allowable rental increase amount allowable for a Manufactured Home Park by the Residential Tenancy Branch?

Background and Evidence

The landlord made an application to increase the rent for all sites at the Park. The landlord's witnesses provided evidence that the sewage treatment facility that serves the entire Park required repair and that repair cost the landlord $124, 359.79 in total. The landlord relies on section 36(3) of the *Manufactured Home Park Act* to request an additional rent increase, beyond the allowable annual amount determined by the Residential Tenancy Branch.

Through documentary submissions and witness testimony, the landlord indicated that the Park has been owned by the current landlords since 2003. The landlords provided the following documentation with respect to their application for an additional rent increase;

- Ownership and property development documents ;
- Water service agreements for the Park;
- An aerial photograph and other photographs of the Park;
- Invoices for ongoing maintenance and repairs to the sewage system;
- Copies of email correspondence regarding the sewage system by from the landlord's two witnesses;
- Quotation and invoice for work required/repair to sewage system;
- Landlord's general accounting ledger, landlord's line of credit agreement and other financial documents;
- Case law and Residential Tenancy Branch materials including Policy Guidelines.

The landlord also submitted the sewage system schematics, photographs of parts of the system in need of repair and particularly information regarding a type of rotor within the system – a Rotating Biological Contractor ("the RBC") that is the subject of the repair. To explain the nature of these repairs, the landlord called two witnesses to testify.

Witness SH, a certified wastewater operator, testified regarding the part within the sewage system that required repair; the RBC. Witness SH testified that the RBC assists in the secondary treatment of sewage. The witness testified that there is a shaft that runs through the centre of the RBC and has a design life of approximately 20 years. Each of the landlord's witnesses testified that the RBC in their sewage system was 19 years old at the time it was replaced. The landlord provided documentary evidence with respect to the age of the sewage system. The witness testified that he personally inspected the Park's sewage system in October 2014. He testified that he prepared a report after his attendance in October 2014. That report was submitted by the landlord for evidence at this hearing. In his report, the witness stated that the internal components of the sewage system, particularly the RBC was "not in good shape: the hole was threaded and the bolts were undone". The landlord submitted photographs to illustrate the deterioration of the part. The witness testified that he offered a temporary solution (putting in bushing) but that, because of the part's life expectancy, the part would ultimately require replacement. He testified that replacement of the RBC was the best financial choice for the owners of the Park.

Over the course of April 2015, witness SH supplied and assisted in installing a new RBC for the Park's sewage system. He testified that the repair was appropriate to provide further life to the sewage system without replacing the entire system. He testified that, to replace the entire system would be an exponentially larger cost than the one incurred by the landlord. He confirmed, in cross examination by three of the tenants, that the replacement of the RBC was warrantied with a life expectancy of 20 years from the date of installation. Witness SH testified that the landlord has paid his company in full for the replacement of the RBC and that this repair was required and necessary in the circumstances.

Witness CI, an executive manager under contract with the landlord since 2014, testified regarding maintenance of the sewage system at the Park. He testified that he worked in conjunction with the park manager to address tenancy issues and park maintenance. He testified that there are 47 homes within the Manufactured Home Park. He testified that the RBC within the sewage system was installed in 1996, according to the Park records. He testified that he contracted a trained, qualified wastewater operator to regularly attend to the Park and inspect, maintain the sewage system for the park. He testified that this operator attended the site approximately every 4 days and on a regular basis. He testified that, in 2014, he was warned by this operator and by the park manager that adjustments were being made to ensure the correct balance of chemicals within the water. He testified that a warning by the park manager, and the wastewater operator as well as the report provided by Witness SH indicating damage to the RBC prompted him to act in investigating repair of the sewage system. He testified that, with

consultation of Witness SH, he researched a variety of options for repair. He described the various options in his testimony. He testified that he ultimately relied on the advice of Witness SH who suggested that replacing the RBC (and not replacing the entire tank) was the most reasonable and effective option in the circumstances. He further testified that it was necessary to ensure that the pump for the sewer system was working and cleaning properly, in compliance with all health and safety requirements.

Three of the tenants who attended this hearing questioned Witness CI about the use of the operating line of credit. Witness CI confirmed that the operating account for the Park was used to pay for repairs. Witness CI was asked why the landlord had no contingency fund for this type of work. He testified that this type of hearing allowed for oversight by the tenants of the park, providing the tenants with a role in decision making.

Witness DW testified regarding his role as park manager. He also appeared at this hearing as one of the tenants. He testified that he is responsible for the majority of park maintenance and that he worked in conjunction with the wastewater operator to ensure the sewage system was functional and in compliance with environmental and health standards. He confirmed the testimony of Witness CI that this operator attended on a regular basis to ensure the proper functioning of the sewer system. He testified that he and the operator were advised to conduct additional maintenance in December 2014 when issues arose with the state of repair of the sewage system, particularly the RBC.

The tenants who attended this hearing referred to their written submissions with respect to this application by the landlord for an additional rent increase. Tenant AR testified that he hopes the landlord will establish a contingency fund for the Manufactured Home Park in the future. This sentiment was echoed by Tenant NL, Tenants V/MB, Tenant TS, and Tenant JK. Tenant FZ provided further submissions regarding the landlord's lack of preparedness for this type of situation. He noted that all of the witnesses testified that the sewage system was near the end of its useful life when these repairs were required. He noted that Witness CI confirmed that the landlord had used their operating expenses to pay for this repair. He argued that this repair should not have been unexpected by the landlord and that sewage is included in each tenant's agreement. Therefore, he argued, this cost should be borne entirely by the landlord.

The landlord, through counsel, submitted that whether the landlord had a contingency or reserve fund is irrelevant. He submitted that the landlord made the decision to repair the RBC in an effort to minimize the costs and to meet the requisite standards for the sewage system. He submitted that the landlord's decision, repairs and costs were reasonable in all of the circumstances but that those costs are significant and require an increase in the rent of each tenant.

All tenants present at the hearing testified that all of the tenants of the Manufactured Home Park are seniors on fixed incomes and they simply cannot afford the rent increase.

Analysis

Residential Tenancy Policy Guideline No. 37 provides a practical framework for Part 4 of the *Manufactured Home Park Tenancy Act*. Section 36(3) of the *Act* allows a landlord to apply to the Residential Tenancy Branch for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase (an "additional rent increase"). The basic annual rent increase under the MHPTA and set by the Residential Tenancy Branch. The *Manufactured Home Park Tenancy Regulation* (section 33) sets out the grounds for making an application for an additional rent increase;

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

In this application, the landlord has applied on the ground that 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. When seeking an additional rent increase, the landlord must complete the application identifying the total proposed rent increase, which is the sum of the annual rent increase + the additional rent increase: "Proposed rent increase = annual rent increase + additional rent increase". In this case, the landlord sought a 7.3% increase (2.9 annual + 4.4 additional = 7.3 proposed).

Residential Tenancy Policy Guideline No. 37 provides that the landlord bears the burden of proving any claim for a rent increase of an amount that is greater than the allowable amount. In examining the evidence submitted on an additional rent increase application, an arbitrator will consider a variety of factors including;

- the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;
- the rent history for the affected unit for the preceding 3 years;
- any change in a service or facility provided in the preceding 12 months;
- whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;
- whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;
- whether an arbitrator has set aside a notice to end a tenancy within the preceding 6 months; and
- whether an arbitrator has found, in a previous application for an additional rent increase that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.

The landlord has made no prior applications for a rent increase that would affect my consideration of this application. I note that each tenant in attendance had a substantial opportunity to make submissions as well as to hear and examine the landlord's witnesses. As well, many of the tenants who did not attend provided written submissions with respect to this application. I have considered all of the tenant's submissions carefully. I will address some of those submissions below however I find that there was no evidence to support a claim that the Park has not been maintained in accordance with the legislation. To the contrary, the landlord provided witness testimony and documentary evidence of regular maintenance and attendance to the need for repairs when they arose. Therefore, I find that the costs of repair do not relate to inadequate repairs or lack of maintenance at the park.

The landlord provided sworn undisputed testimony that the mean rent payable for all of the sites at the Park is $389.00 per month. The tenants provided sworn undisputed testimony that there has been regular annual rent increases for all sites at the Park but no increases in a recent period that would affect my consideration of this application. Both parties agreed that there have been no significant changes to services or facilities. There was no evidence provided that there has been a change in operating expenses that would be relevant to the additional rent increase application.

In assessing the landlord's application for an additional rent increase, I have evaluated the landlord's application. One tenant raised concerns that the landlord has not completed the application form in its entirety. However, the portion of the application form that was left incomplete did not refer to an application in the category the landlord relies on.

The fact that the landlord completed significant repairs with a total cost of $124,359.79 was proven by the landlord's documentary evidence and supporting witness testimony. This fact was not disputed by the tenants at this hearing. In fact, most of the tenants in attendance conceded the necessity and reasonableness of the repairs in these circumstances. The tenants argued, among other points that the landlord should have been more financially responsible and prepared for this repair (given the life of the part) and its costs; that the landlord should therefore incur this cost; and that the tenants will be caused a financial hardship by enduring this rent increase if it were allowed.

There are some differences between the provisions to meet when applying for an additional rent increase under the *Residential Tenancy Act* (including whether repairs should be expected/anticipated as suggested by the tenants) and the *Manufactured Home Park Act*. Pursuant to section 33(1)(b) of the *Manufactured Home Park Regulation*, the requirements for a landlord's application for a rent increase under the *Manufactured Home Park Act*, when all other policy considerations have been made, is whether the landlord has completed significant repairs or renovations to the manufactured home park:

- are reasonable and necessary, and
- will not recur within a time period that is reasonable for the repair or renovation.

In considering the landlord's application and the contents of their evidence, I find that the landlord has shown that the repairs undertaken to the sewage system were significant in that the benefit of the repair can be expected to extend beyond a year and the repair was notable in the expenditure incurred by the landlord. This meets the criteria for a significant repair in a Manufactured Home Park tenancy as provided in the Policy Guidelines (No. 37).

I find that the landlord has shown that, pursuant to the Policy Guidelines, the repair work done and the costs incurred were reasonable in the circumstances. The documentary evidence of the landlord as well as the testimony of Witness SH confirmed that these repairs would have been more costly if done to the entire sewage system and would not have been sustainable if done on a smaller scale. I find that the landlord's evidence in

documents and testimony has shown that the repairs done were necessary to comply with health, safety and housing standards as well as to maintain water and sewage facilities. These are the criteria for “necessary repairs” under Policy Guideline No. 37.

I accept the testimony of Witness SH in its entirety. His testimony was measured, objective and informed by previously documented conversations and advice. Beyond Witness SH’s demeanor, I found that his expertise was evident in his ability to explain the nature of the repairs necessary. I accept the testimony of Witness CI in that he researched options and, with the advice of Witness SH, took reasonable and necessary steps in repairing the sewage system.

The testimony of the landlord’s witnesses combined with the documentary evidence supplied proved that the need for repairs to the RBC will not recur in a time period that is reasonable for that repair (in this case, approximately 20 years).

In accordance with the *Manufactured Home Park Act* and *Regulations*, and given my findings that this repair was significant, necessary and reasonable as well as that it will not be required again for a reasonable period of time, I find that the landlord is entitled to implement an additional rent increase beyond the annual allowable amount.

Policy Guideline No. 37 and section 33(4) of the *Regulation* allow me to consider how an additional rent increase will be implemented. In evaluating the landlord’s application, I have considered the tenants’ written and oral submissions as part of a thorough analysis. Fairness and natural justice are priorities in both the hearing process and the decision making process for residential tenancy matters. Both procedural fairness and overarching fairness are goals in the dispute resolution process. Examples of the importance of fairness includes the requirements of service to ensure a party has an opportunity to know the case against them and the timelines for service to ensure an opportunity to respond to the case against them. Other examples include the prohibition of “unconscionable” (oppressive or grossly unfair) agreement terms in the *Residential Tenancy Act* and the *Manufactured Home Park Act* as well as their attendant regulations. Under both *Acts*, tenants and landlords have rights and obligations that are legislated and maintained through a process of resolving disputes. The Dispute Resolution Rules of Procedure provide have an objective which expands beyond procedure itself*: to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.* Within the *Manufactured Home Park Regulation* there is a many requirements in administration of a Park to ensure that fairness and equity.

Policy Guideline No. 37 informs an arbitrator’s decision to determine how to implement an approved additional rent increase. An arbitrator may order an increase phased in

over a period of time given the context of the particular application. In these circumstances, the tenants have provided unified and compelling testimony that the rent increase will be significant to them in their particular circumstances (fixed income). I note that I have found the repairs that resulted in the application for an additional rent increase to be significant, necessary and reasonable. The landlord's testimony is that this significant repair will benefit the Park for approximately 20 years, thereby having a lasting and long-term benefit to the Park. In the interest of a fair resolution of this matter, I find that it is appropriate to phase in the additional increase. Therefore, the rent increase will occur over two phases as follows,

> The landlord must serve on each tenant a notice of rent increase in the prescribed form together with a copy of this decision. The first notice will increase the rent for each tenant by 4% per month based on the current rental amount for each site and will take effect 3 full months after the notice is served.
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> After the first rent increase has taken effect, the landlord may serve another notice of rent increase in the prescribed form which will take effect no earlier than 6 months after the first notice has taken effect and no earlier than 3 full months after the landlord serves the notice. The second notice will increase the rent by a further 3.3% a month for each tenant based on their current rental amount.
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> For the sake of clarification, if the first notice is served in the month of June 2016, the first rent increase will take effect September 2016. If the landlord serves the second notice in September 2016, the second rent increase will take effect December 2016. An order for a phased-in increase applies to the existing tenant and any assignee of the tenancy agreement from the tenant. New tenants under new tenancy agreements cannot rely on phased increases previously ordered for that rental unit.

Before concluding, I refer all parties to the following section Part 4 of the *Manufactured Home Park Act*, sections 32 and 33 of the *Manufactured Home Park Regulation* and Policy Guideline No. 37 which provides valuable guidance on rent increases including but not limited to;

A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least 3 months before the increase is to take effect…

A landlord cannot carry forward any unused portion of an allowable rent increase or an approved additional increase that is not issued within 12 months of the date the increase comes into effect without an arbitrator's order.

A landlord cannot carry forward any unused portion of an allowable rent increase or an approved additional increase that is not issued within 12 months of the date the increase comes into effect without an arbitrator's order.

Conclusion

I allow that landlord to increase the rent by an additional amount totalling 7.3% of each tenant's current rental amount.

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: May 19, 2016

Residential Tenancy Branch