Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's Application for an Additional Rent Increase (the "Application") pursuant to section 36(3) of the *Manufactured Home Park Tenancy Act* (the "*Act*").

This hearing was conducted by way of a teleconference hearing. On March 30, 2016, the hearing commenced and after 146 minutes the hearing was adjourned to allow for additional time for the parties to present their evidence. An Interim Decision dated April 1, 2016 was issued which should be read in conjunction with this Decision. On May 10, 2016, the hearing reconvened and after an additional 147 minutes the hearing was adjourned for a second time to allow for additional time for the parties to present their evidence. A second Interim Decision was issued dated May 11, 2016 which should also be read in conjunction with this Decision. On June 22, 2016 the hearing reconvened and after an additional 124 minutes, the hearing concluded.

Neither party raised any concerns regarding the service of documentary evidence. I have reviewed all testimony and evidence presented that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the tenants questioned whether the correct name of the landlord was on the landlord's Application. After considering testimony and documentary evidence from both parties I am satisfied that the correct name of the landlord was used on the landlord's Application and that an amendment pursuant to section 57(3)(c) of the *Act* is not necessary.

Also at the outset of the hearing the landlord requested to remove the tenant of site 273 from his Application as that tenant passed away. As result, I have removed site 273

from the landlord's Application pursuant to section 57(3)(c) of the *Act* which results in a reductions from 23 sites to 22 sites related to this Application.

Issue to be Decided

- Is the landlord entitled to an additional rent increase by proving significant repairs or renovations have been completed which were reasonable and necessary, and will not recur within a time period which is reasonable for those repairs or renovations?

Background and Evidence

The manufactured home park is made up of 96 sites. There is no dispute that the park was built in the 1970's and had 60 amp electrical services dating back to the 1970's. The tenants of 74 of the 96 sites have already agreed to the additional rent increase in writing resulting in tenants of 22 sites disputing the additional rent increase.

Landlord's evidence

The landlord is applying to receive a rent increase of 9.2%, comprised of the allowed increase of 2.9% for 2016, plus 6.3%, to apply against 22 of the rental sites in the manufactured home park that have not already agreed to the additional rent increase in writing.

The landlord has put forward one reason for their request for an additional rent increase. The landlord writes in their Application that the significant repairs or renovations are comprised of "upgrade electrical service to 100 amps" from 60 amp electrical service.

The electrical service is connected to all 96 sites in the manufactured home park. The other 3 sites that the landlord indicates are not currently rented and are for the landlord's use are not considered in this Decision. The life expectancy of the electrical upgrade project (the "electrical project") is "post 2035" which is at least nineteen years from the year this Application was filed. The landlord submitted that the total cost of the electrical project is $537,905.44, including the cost of financing over 20 years.

The landlord has submitted the following the following request for additional rent increase by site number:

Site Number	Current Rent	Requested Increase of 9.2%	Total after increase
198	$382.25	$35.17	$417.42
205	$382.25	$35.17	$417.42
208	$345.50	$31.79	$377.29
215	$345.50	$31.79	$377.29
216*	$335.00 ($295.00)	$30.82 ($27.14)	$365.82 ($322.14)
220	$382.25	$35.17	$417.42
224	$345.50	$31.79	$377.29
226*	$358.75 ($318.75)	$33.01 ($29.32)	$391.76 ($348.07)
233	$345.50	$31.79	$377.29
236	$366.25	$33.70	$399.95
237	$345.50	$31.79	$377.29
238	$382.25	$35.17	$417.42
240	$345.50	$31.79	$377.29
242	$345.50	$31.79	$377.29
245	$345.50	$31.79	$377.29
253	$382.25	$35.17	$417.42
256	$345.50	$31.79	$377.29
258	$345.50	$31.79	$377.29
269	$382.25	$35.17	$417.42
270	$345.50	$31.79	$377.29
277	$345.50	$31.79	$377.29
286	$360.00	$33.12	$393.12

**In addition to the above table, the parties agreed that sites 216 and 226 did not accurately reflect a $40.00 credit from the landlord each month for discontinuing cable service to those sites. As a result, the accurate amounts have been included in parentheses in the table above.*

The landlord submitted that currently all sites are occupied and that residents have lived in the park ranging between less than one year to over 37 years. The landlord submits that up until 2014, the park was served by 60 amp electrical service, the standard amperage for parks built in the 1970's and that comparing the electrical load required in a typical home in the 1970's to a new home, there are significantly more appliances, modern television sets, computers, etc. In April 2014, an inspector from the British Columbia Safety Authority (the "Safety Authority") visited the park and issued an order stating that the existing electrical service to the park was not "adequate to supply the connected load." A copy of that order was submitted in evidence. The landlord writes

that the order was to upgrade to the 100 amps service to each of the 96 sites. This order was based on the BC Electrical Code (the "Code") requirement that any home larger than 80m^2 must have 100 amps electrical service. While many of the home themselves are smaller than 80m^2 over the years most residents have added various additions, with the result that 84 of the 96 homes are now over 80m^2.

The landlord describes the electrical project which involved digging trenches throughout the park, removing existing underground cables and installing cables meeting current Code, building new electrical distribution sheds and supplying 100 amps electrical service to the park and to each home. The landlord writes that in the area of the manufactured home park there are few companies that are qualified to do the necessary work therefore multiple quotes could not be obtained.

The landlord writes that one verbal quote provided was $1.2 million plus two written quotes. The lower of the two written quotes was selected. The project began in July 2014 and a declaration of completion and compliance was issued October 5, 2015, which was submitted in evidence. The agent testified that all plans were presented to the Safety Authority and required approval from them.

The landlord denies misleading the tenants and that there were several meetings that the landlord had with electrical company and the Safety Authority. The agent testified that "if there were any safety issues we would have been shut down right away and we were not". The agent also referred to the fact that the landlord was granted an extension to complete the work which was ultimately completed. The agent stated that they rely on the expertise of the inspectors and when they were advised of the issues, they addressed them and that it was not an option to have a majority of units remove extensions etc. and that the only viable option to keep the park operating would be to upgrade from the 60 amp service to the 100 amp service.

The agent also referred to the lead tenant's site as one of the units that exceeds the 80m^2 size limit for 60 amp service and that the lead tenant has inquired about a heat pump for his own unit on his site. The agent testified that he was not aware that some of the new units exceeded the 80m^2 size limit for 60 amp service as the tenants did not disclose that information to the agent. The agent testified that now that the electrical project is complete the tenants have the benefit of 100 amp service and that the total amount is amortized over the course of 20 years leading to what the agent described as reasonable rent increases.

In support of the costs of the work completed the landlord submitted in evidence extensive invoices, photos, and other documents.

Tenants' evidence

The tenants assigned a lead tenant J.M. (the "tenant") to present the tenants' evidence. The tenants submitted many different arguments against the additional rent increase.

The tenants allege that the landlord has violated section 26(1)(a) and section 26(1)(b) of which read in part:

> **Landlord and tenant obligations to repair and maintain**
>
> **26** (1) A landlord must
>
> (a) provide and maintain the manufactured home park in a reasonable state of repair, and
>
> (b) comply with housing, health and safety standards required by law.
>
> [reproduced as written]

The tenant referred to a whistleblower tip regarding the alleged hazardous state of the park and the resulting order in evidence.

The tenant stated that while the landlord wants to submit that the electrical project was simply an upgrade to 100 amp electrical service it was much more than that. The tenants allege that the landlord has failed to maintain the park as per the safety standards defined in the *Act.*

The tenant stated that the landlord threatened park closure if the electrical project did not move forward and evidence from one tenant was submitted as she didn't want to listen anymore from the landlord so she just agreed to the rent increase. The tenant also referred to one tenant P.B. who writes that he signed on duress and regrets signing the agreement to the rent increase. The tenant also submitted that tenant G.F. did not have the opportunity to read what she was signing or get her glasses before signing the agreement to the rent increase.

The tenant stated that he was advised by the agent that the park would close if tenants did not agree to the rent increase. The tenant alleges that the money from the park has not been used to maintain the park and that since being forced to comply by the Safety

Authority the owner of the park has passed the costs on to the tenants, whom are seniors.

The tenant alleged that the landlord attempted to mislead the tenants of the park by not holding a general meeting about the additional rent increase and instead conducted individual meetings with tenants of each site.

The tenant raised the issue regarding the amount of the additional rent increase. The tenant stated that the 9.2% amount should read 9.1% as the landlord incorrectly used the wrong percentage based on the numbers provided in the landlord's evidence. The agent did not disagree that the total percentage should be 9.1% instead of 9.2% and that the landlord's accountant provided the numbers and not the agent.

The tenants allege that since the landlord permitted tenants to build extensions and allow new homes onto sites that exceed size limits prescribed by the Code that the landlord has contributed to the situation the tenants are now faced with. The tenant also referred to section 33(3)(k) of the Manufactured Home Park Tenancy Regulation (the "Regulation") and alleged that due to the landlord's failure to maintain the power sheds the landlord has breached section 26(1) of the *Act.*

Regarding the amount of the loan for the electrical project, the tenant claims that standard amortization period is 25 years and not 20 years.

The tenant referred to the Code which dates back to 1982. The tenant testified that the Code has been in existence for most of the time the park has been in existence.

The tenants submitted over 50 pages of documents in evidence for consideration in response to the landlord's Application.

Evidence of both parties

Both parties spent considerable time presenting evidence regarding an allegation that the landlord was seeking $150.00 from the tenants which turned out to be related to a coincidental amount that matched another amount in the landlord's evidence.

The parties also spent considerable time explaining their concerns with why a general meeting was not held regarding the landlord's request for an additional rent increase. The landlord denied that he required tenants to sign or forced any tenants to sign the agreement for an additional rent increase.

In addition, the parties spent considerable time analyzing an email response from D.W., a Safety Officer with the Safety Authority. In the email the Safety Officer writes that there are two parts to the equation the load capacity issue and the unsafe, unmaintained infrastructure that would require replacement. The Safety Officer clarifies the earlier email from the tenant by stating that when the Safety Officer mentioned a potential fire hazard, he was referring to the overloaded services and not the condition of the infrastructure that enclosed the various services.

A majority of the hearing time was spent presenting evidence regarding invoices and receipts related to the electrical project itself with the tenant asking where items such as plants were located in the park and included an allegation by the tenant that the tenants were not satisfied that landlord was not charging the tenants for plants which could have been used in the other projects the landlord was involved with. While the agent could not provide locations of the plants receipts, the landlord referred to the invoices which included the name of the park, with the exception of receipts from a popular home improvement store. The agent vehemently denied that the landlord charged any amounts for the electrical project that did not specifically related to the electrical project and that replacing plants due to all the road work and trenches was something the landlord took pride in to ensure the park was put back to the same condition as it was in before the work began.

The tenants were concerned regarding specific invoices where a receipt attached to a document was folded over before being photocopied. The agent responded by stating that the folded receipt was an inadvertent error in photocopying and was not an attempt to conceal or hide information.

The tenants raised a concern regarding the purchase of equipment over the cost of rental equipment related to the electrical project. The agent testified that it was cheaper to purchase items like a cement mixer that was ultimately disposable after a large job than to keep renting a unit which would have exceed the purchase price of what the agent described as a disposable cement mixer. Many invoices and receipts were reviewed by the parties and discussed during the hearing. The agent testified that he and his spouse did a lot of the landscaping work themselves and has not charged for that labour as part of the electrical project. The agent testified that he has attempted to keep costs at a minimum for tenants which is why they rejected the first verbal quote at $1.2 million and ultimately reduced the total project down to $537,905.44, comprised of the following:

Total project cost:	$537.905.44*

(($372.513.44 project cost plus loan interest of $165,392.00 on a 20 year loan of $350,000.00 for a total project cost of $537,905.44)

Divided by 20 years: $26,895.27 per year
Divided by 96 sites: $280.16 per site per year
Divided by 12 months: $23.35 average cost per site per month

Currently monthly total unit rent: $33,990.75
Highest individual monthly rent: $382.75
Maximum increase of $35 ($25 + $10): $417.75 = 9.2%**
Less allowable rent increase of 2.9% = 6.3%**

***these amounts will be further addressed below in the Analysis section of this Decision.*

Analysis

Based on the foregoing, the evidence submitted, and on a balance of probabilities, I find the following.

I find that neither party disputes that the electrical project was completed. I also find that there is no evidence before me that the Code requirement of 100 amp service for dwellings exceeding 80m^2 was in existence in the 1970's when the park was first built.

Regardless of all of the evidence provided, the only matter for me to decide is whether the landlord is entitled to an additional rent increase by proving significant repairs or renovations have been completed which were reasonable and necessary, and will not recur within a time period which is reasonable for those repairs or renovations.

I will first deal with the mathematical error in the landlord's Application. There is no dispute between the parties that the landlord incorrectly used the amount of 9.2% when in fact the amount should read 9.1%. In support of this I note that the amount of 9.2% was indeed rounded up in error and that 9.1% is the correct amount before subtracting the 2.9% allowable rent increase for 2016 resulting in the additional increase portion being sought of 6.2%.

I will now deal whether I am satisfied on the balance of probabilities that the landlord has met the burden of proof in proving that the significant repair or renovation has been completed and that it was both reasonable and necessary.

Firstly I find there is insufficient evidence before me that the Code was in existence in the 1970's when the park was first built. As a result, I find there is insufficient evidence

before me to support that the landlord breached section 26(1)(a) and (b) of the *Act* which reads:

> **Landlord and tenant obligations to repair and maintain**
>
> **26** (1) A landlord must
>
> (a) provide and maintain the manufactured home park in a reasonable state of repair, and
>
> (b) comply with housing, health and safety standards required by law.
>
> [reproduced as written]

Secondly, I afford little weight to the allegations that tenants were pressured into signing the additional rent increase agreement with the landlord as both parties have the right to rely on those signed written agreements and that proper due diligence should have been exercised before signing any documents including a mutual agreement regarding an additional rent increase.

Thirdly, I prefer the evidence of the landlord over that of the tenants in that the only viable option after having been ordered to bring the park into compliance with the current Code was to complete the electrical project by upgrading the park from 60 amp electrical service to 100 amp electrical service. I accept that the electrical needs have increased since the 1970's with the introduction of many more electrical devices such as heat pumps, personal electronics, computers and other devices that result in a great need for 100 amp electrical service. For these reasons, I find that the electrical project was both necessary and reasonable and that without the electrical project, the park would likely close resulting in 96 tenants being negatively impacted.

Residential Tenancy Policy Guidelines #37 - Rent Increases states that if the landlord makes an application for significant repairs that are reasonable and necessary and will not recur within a time frame that is reasonable for the repair, the landlord **must** make a single application to increase the rent for **all sites** in the manufactured home park by an equal percentage. If one or more tenants of sites in the home park agree in writing to the proposed increase, the landlord must include those sites in calculating the portion of rent increase that will apply. Guideline #37 also states that the additional rent increase **must apply equally to all rental sites.**

I afford little weight to the disputed receipts and invoices as I am satisfied on the balance of probabilities that the landlord has acted in good faith to reduce the costs to the tenants throughout the electrical project. In reaching this decision I have considered such evidence that the agent performed work himself and did not charge for his labour costs as part of the project.

Based on the above, **I allow** an additional rent increase of **9.1%** for sites 198, 205, 208, 215, 216, 220, 224, 226, 233, 236, 237, 238, 240, 242, 245, 253, 256, 258, 269, 270, 277 and 286. This amount is comprised of the annual allowable increase of 2.9% for 2016, plus an additional rent increase in the amount of 6.2% for a total of 9.1%. The landlord must serve each of the respondent tenants with a copy of this entire Decision along with a copy of the Notice of Rent Increase. The landlord must provide the Notice of Rent Increase in accordance with section 35 the *Act*, which requires three months' notice in advance of the increase taking place.

The additional rent increase of 9.1% results in the following increases to the respondent tenant sites:

Site Number	Current Rent	Permitted Total Increase of 9.1%	Total after increase
198	$382.25	$34.78	$417.03
205	$382.25	$34.78	$417.03
208	$345.50	$31.44	$376.94
215	$345.50	$31.44	$376.94
216*	$295.00	$26.84	$321.84
220	$382.25	$34.78	$417.03
224	$345.50	$31.44	$376.94
226*	$318.75	$29.00	$347.75
233	$345.50	$31.44	$376.94
236	$366.25	$33.32	$399.57
237	$345.50	$31.44	$376.94
238	$382.25	$34.78	$417.03
240	$345.50	$31.44	$376.94
242	$345.50	$31.44	$376.94
245	$345.50	$31.44	$376.94
253	$382.25	$34.78	$417.03
256	$345.50	$31.44	$376.94
258	$345.50	$31.44	$376.94
269	$382.25	$34.78	$417.03

270	$345.50	$31.44	$376.94
277	$345.50	$31.44	$376.94
286	$360.00	$32.76	$392.76

**$40.00 deduction described earlier in this Decision applied to the current rent for units 216 and 226.*

Conclusion

I am satisfied that the landlord is entitled to an additional rent increase having provided sufficient evidence to support that significant repairs or renovations have been completed which were reasonable and necessary and will not recur within a time period which is reasonable for those repairs or renovations.

While I do not allow the additional increase of 9.2% due to a mathematical error, I have corrected that error and find that the landlord is entitled to an additional rent increase of 9.1% which is comprised of the 2.9% allowable rent increase for 2016 plus an additional 6.2% to cover the cost of the electrical project.

The landlord must serve the tenants with a Notice of Rent Increase in accordance with the *Act*, along with a copy of this entire Decision, granting the additional rent increase.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 11, 2016

Residential Tenancy Branch