



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PAT 8 HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing was scheduled in response to an application by the Landlord seeking approval for an additional rent increase that is greater than the amount calculated under section 32 of the *Manufactured Home Park Tenancy Regulation*.

Pursuant to section 33(1)(b) of the *Manufactured Home Park Tenancy Regulation* (the “Regulation”), the Landlord applied for the increase on the following basis:

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;*

The Regulation requires that the Landlord must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage.

Pursuant to section 33(4) of the *Regulation* 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.*

Section 33 (3) of the Regulation requires the director to consider the following in deciding whether to approve an application for a rent increase:

- (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.**

Preliminary and Procedural Matters

The Landlord testified that he served a copy of his application and evidence to each unit within the Park. The Landlord testified that he personally posted the Application and

Notice of Hearing to the door of each unit. The Landlord's application includes a document providing the names of all the Tenants within the Park.

In response, the Tenants submitted that the Landlord's list is not accurate because a couple of people named within the list are deceased.

The Landlord submitted that the Landlord regularly receives the monthly pad rent on behalf of the deceased parties and that the parties were served with his application and notice of hearing at each unit.

I find that the Landlord is receiving rent from the estate of the deceased Tenants and that in the absence of being informed of the name of the executor of their estates, the Landlord properly served Notice to the parties who are paying rent on behalf of the deceased Tenants. I find that the Tenants within the Park were notified of the hearing and had an opportunity to participate and be heard.

The Tenants who reside in units # 30, #47, and #48 attended the hearing on behalf of the other Tenants within the manufactured home park.

The parties in attendance confirmed that they exchanged the evidence that I have before me prior to the hearing.

The Landlord has applied for an additional rent increase of 3.3% in addition to the permitted increase of 3.7% for 2017, for a total increase of 7%. If the Landlord's Application for an additional rent increase is granted, the Landlord must give the Tenants three month's notice before the rent increase will take effect.

The allowable rent increase for 2018 is 4.0%. The Landlord submitted that regardless of whether any rent increase is effective in 2017, or 2018, he is still seeking an increase of 3.3% in addition to the permitted increase.

During the hearing, the Tenants disconnected from the call at 10:05 am, and reconnected at 10:07 am. No testimony was taken during this two minute period.

Issue to be Decided

The Landlord has applied for an additional rent increase of 3.3% in addition to the increase permitted under the Act.

The issue to be decided is: Has the Landlord completed significant repairs or renovations to the residential property and 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.

Background and Evidence

The Guideline sets out the factors that must be considered, which I identified above.

The Landlord applied for a rent increase on the basis that the Landlord has completed significant repairs or renovations to the residential property that could not have been foreseen under reasonable circumstances and will not recur within a time period that is reasonable for the repair or renovation.

I find that the following factors within the Guideline are relevant to the application before me:

- Rent history for the three years preceding the date of the application
- Change in a service or facility in the Park in the 12 months preceding the date of the Application
- Change in operating expenses and capital expenditures in the three years preceding the date of the Application.
- Relevant submissions from the Tenants

Rent History

The Landlord testified that he has increased the pad rent in the Park for the past three years. He testified that the rent was increased by 2.3% in 2014. The Landlord provided documents showing the amount of rent increase applied to each Tenant for 2015, and 2016.

Change in a Service or Facility

The Landlord did not provided any testimony or provide any documentary evidence related to a change in a service or facility within the Park.

Change in Operating Expenses and Capital Expenditures

The Landlord testified that upgrades have been made to the Park septic system. He testified that the Park has its own septic treatment plant that breaks down the effluent and pumps it to a field.

The Landlord testified that he needed to perform significant upgrades to the septic system. He testified that he considered a few different systems and spoke to many septic experts before deciding to upgrade the existing system based on considerations of life expectancy and cost. The Landlord testified that he wanted to keep the costs reasonable.

The Landlord testified that recent work on the system required an upgrade to the shaft which was modified with a larger collar and thicker discs to break down the effluent.

The Landlord's Application indicates that the Landlord is claiming the amount of \$97,349.88 for significant repairs and renovations to the septic system.

The Landlord provided an expense document that itemizes the costs incurred for upgrades to the septic system over the past five years. The Landlord also provided invoices in support of the itemized costs within the expense document.

The Landlord also provided a three page document listing the dates and costs for septic maintenance from February 2008, to September 2016.

The Landlord testified that he approached the Tenants in January 2017, regarding the septic repair costs but was met with resistance to accept an additional rent increase. He testified that he proposed a 3.1 % increase at that time as an incentive.

Submissions from the Tenants

The representatives for the Tenants submitted that the discs on the shaft were repaired in 2012, and were not working properly because they were moving too fast. They submitted that the work completed in 2012, had to redone in 2016. The Tenants are concerned about the warranty for the work completed.

The Tenants submitted that they have had difficulty with the owner regarding safety and repair of the septic system. The Tenants submitted that a main concern is that none of the maintenance costs are born by the Landlord. The Tenants submitted that they are

told they are responsible to pay for the maintenance. The Tenants submitted that their lease agreements state that rent includes sewage disposal. They submitted that their responsibility does not extend past their lot line.

The Tenants raised a concern that the Landlord tried to bribe or entice them to accept the an additional 3.1% rent increase by offering a lower amount to those who agreed and suggested that work on the water mains may need to be completed and the cost charged to the Tenants.

The Tenants submitted that the Landlords claim is based on a lack of maintenance as shown by an analysis of the Landlord's maintenance documents and invoices in exhibit G. The Tenants' document suggests that maintenance was irregular.

The Tenants submitted that the Landlord has always charged the full amount of rent increases under the Act. The Tenants submitted that rent is lower in other parks in the area. The Tenants submitted that a 3.3% increase on an average rent of \$407.00 per month would pay for the Landlord's costs over a period of 11 years.

The Tenants submitted that they are concerned with the relationship between the park committee and the owner. They submitted that the owner's representative stated he would get rid of the park committee. The Tenants made reference to a previous mediation decision from 1999, where the parties agreed that communication will be improved by the formation of a local park committee. The Landlord met with the committee when he was attempting to negotiate the rent increase amount.

Analysis

Section 57 of the Act states that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Operating Expenses and Capital Expenditures

With respect to the Tenants' submission that their tenancy agreement states that rent includes sewage disposal, I find that section 33(1) of the Regulation allows a rent increase if the Landlord has completed significant repairs or renovations to the manufactured home park that are reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation. I find that rent includes regular or normal ongoing septic maintenance but does not limit the Landlord's right to

apply for an additional rent increase to recover capital costs for completion of significant repairs or renovations.

With respect to the Tenants' concern about bribery or enticement to agree to an additional rent increase, I find that the Landlord was offering a lower percentage of rent increase as an incentive to save time and money that would be incurred by proceeding with Arbitration. I do not find the Landlord's proposal to reach a negotiated agreement was inappropriate.

I find there is insufficient evidence from the Tenants to establish that the costs for the repairs results from inadequate repair or maintenance in a previous year. While I acknowledge that the repairs to the shaft occurred in 2012, and were repeated in 2016, there is insufficient evidence that this repair was due to inadequate maintenance practices.

While the Tenants provided a document recording the minutes of a park committee meeting in 2011, that indicates the septic should be emptied quarterly, there was no expert evidence provided by either party on how often a septic tank should be emptied or that failure to empty the tank regularly would cause damage to the septic system.

With respect to the amount of rental increase the Landlord is claiming, the Guideline permits the Landlord to include a change in operating expenses and capital expenditures in the three years preceding the date of the Application. The Landlord applied for the additional rent increase on July 12, 2017, and requested an increase based on changes over the past four years. Based on the Landlord's documentary evidence of when the costs were incurred, I find that the Landlord is only entitled to include costs of \$73,167.23 in this Application which are for the previous three years.

Therefore, as the amount that the Landlord is entitled to claim has been reduced by 25%, I find that the percentage of additional rent increase must also be reduced accordingly. This means the additional rent increase of 3.3% is reduced by 25% to be 2.5%.

After considering the testimony and evidence from the Landlord and Tenants, I find that the Landlord has completed significant repairs to the septic system at the manufactured home park that were reasonable and necessary. I also find that the pumping costs are reasonable in order to complete the repairs.

There was insufficient evidence from either party to establish whether or not the significant repairs will recur within a time period that is reasonable for the repair or renovation. However, based on the type of repair, the Landlord's testimony that he consulted experts, and the invoices from sewage treatment companies, I find the Landlord's claim for the repair costs is reasonable and should be allowed, as described below.

An additional rent increase of 2.5% on an average rent of \$407.00 per month amounts to \$10.17 per month. This percentage is in addition to the 4% that the Landlord is entitled to raise the rent for 2018. After combining the amounts, an additional rent increase of 6.5% on an average rent of \$407.00 per month amounts to a \$26.45 per month increase.

Pursuant to section 33(4) of the Regulation, I grant the Landlord's application in part.

The Landlord is authorized to issue an additional rent increase of 2.5% in addition to the allowable increase. The Landlord must provide the Tenants with a Notice of Rent Increase in the approved form, provide the required three month notice period, and must serve the Tenants with a copy of this entire Decision along with each Notice of Rent Increase.

Conclusion

I grant the Landlord's Application to increase the rent by an additional 2.5% above the allowable limit for all the rental units contained within the Application.

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 18, 2017

Residential Tenancy Branch