



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAVA INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ARI

Introduction

This hearing was convened in response to the Landlord's Application for Additional Rent Increase.

The Landlord stated that on May 12, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to each Respondent, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Manufactured Home Park Tenancy Act (Act)*; however not all of the Respondents appeared at the hearing.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

With the consent of all parties, the Application for Additional Rent Increase was amended to correct the spelling of the male Tenant in site 10.

Issue(s) to be Decided

Is the Landlord entitled to a rent increase of 7%?

Background and Evidence

The Landlord has applied for a rent increase of 7% for units 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 21, 23, 25, and 26. This is an increase of 3% greater than the allowable rent increase for 2018.

If this rent increase is approved, the rent for sites 3, 4, 6, 8, 9, 10, 12, 13, 14, 16, 18, 21, 23, and 25 would increase from \$331.00 to \$354.00.

If this rent increase is approved, the rent for site 7 would increase from \$325.00 to \$347.25.

If this rent increase is approved, the rent for site 11 would increase from \$336.00 to \$359.50.

If this rent increase is approved, the rent for site 26 would increase from \$350.00 to \$374.50.

The Landlord stated that there are 25 sites at this manufactured home park. The Agent for the Landlord stated that 8 of the tenants in the park agreed to a 7% rent increase for 2018 and are not, therefore, named in this Application for Additional Rent Increase.

The Landlord stated that rents in this manufactured home park were increased in 2014 and 2017, but not in 2015 or 2016. The Tenant in site 10 stated that rent was increased in 2016 and 2017, but not in 2014 or 2015. The Tenant in site 12 stated that rent was increased in 2016 and 2017; it was not increased in 2014; and she is not certain about 2015.

The request for an additional rent increase is being made on the basis that the Landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that could not have been foreseen under reasonable circumstances and will not recur within a time period that is reasonable for this repair or renovation.

In support of the application for an additional rent increase the Landlord stated that the Landlord renovated the three electrical services that provide electricity to the park. These renovations include building a new shed for one of the services, replacing equipment and cabinets for one of the services, replacing electrical panels, and updating how the electrical wires are attached to poles. He stated that these repairs/upgrades were recommended by the local electrical inspector.

The Landlord stated that the electrical upgrades were started in the fall of 2016 and were completed in December of 2017. He stated that the upgrades are expected to last between 15 and 25 years.

In support of the application for an additional rent increase the Landlord stated that the Landlord repaired a broken water pipe in September of 2017. He stated that he does not anticipate further repairs to this pipe in the near future.

The Landlord submitted invoices and hydro bills that indicate the Landlord paid \$31,626.56 for the electrical upgrades and the pipeline repair.

The Landlord stated that there have not been any expenses related to this electrical upgrades or the pipeline repair in the previous 3 years and that these expenses are not related to improper maintenance.

The Landlord stated that the Residential Tenancy Branch has not previously determined that the Landlord failed to maintain the residential property.

The Landlord stated that the Landlord has not been previously awarded a rent increase in regards to these repairs.

The Landlord stated that the Residential Tenancy Branch has not, in the last six month, set aside a Notice to End Tenancy regarding this manufactured home park.

The Landlord stated that the Landlord has not been found to have previously provided false evidence to the Residential Tenancy Branch.

The Tenants in attendance at the hearing did not dispute any of testimony or evidence of the Landlord, with the exception of the years rent was increased.

In response to the application for an additional rent increase the male tenant of site 10 stated that he does not own the manufactured home park and he does not believe he should be responsible for any upgrades to the park.

In response to the application for an additional rent increase the tenant of site 12 stated that:

- she does not think she should be responsible for repairing manufactured home park that she will never own;

- the Landlord purchased an older park and that repairs should have been anticipated;
- the repairs/upgrades were not her fault; and
- the repairs/upgrades are not her problem.

Analysis

Section 36(1) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application under subsection (3), or agreed to by the tenant in writing.

Section 36(3) of the *Act* stipulates that 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) by making an application for dispute resolution.

Section 33(1)(b) of the *Manufactured Home Park Regulation* stipulates that a landlord may apply under section 36 (3) of the *Act* if the landlord has completed significant repairs or renovations to the manufactured home park in which the manufactured home site is located that are reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation.

Residential Tenancy Branch Policy Guideline #37 reads, in part:

In order for a capital expense for a significant repair or renovation to be allowed in an Application for Additional Rent Increase for a manufactured home park tenancy, the landlord must show that the repair or renovation was reasonable and necessary, and will not reoccur within a time period that is reasonable for the repair or renovation.

A repair or renovation may be considered “reasonable” when (i) the repair or renovation, (ii) the work performed to complete the repair or renovation, and (iii) the associated cost of the repair or renovation, are suitable and fair under the circumstances of the repair or renovation. A repair or renovation may be considered “necessary” when the repair or renovation is required to (i) protect or restore the physical integrity of the manufactured home park, (ii) comply with municipal or provincial health, safety or housing standards, (iii) maintain water, sewage, electrical, lighting, roadway or other facilities, (iv) provide access for persons with disabilities, or (v) promote the efficient use of energy or water.

On the basis of the undisputed evidence I find that the Landlord repaired a pipeline in the manufactured home park because it was broken. I therefore find that the repair was necessary to ensure water continued to flow in the park.

On the basis of the undisputed evidence I find that the Landlord upgraded the electrical service in the manufactured home park and that the electrical upgrades were done upon the recommendation of an electrical inspector. As the upgrades were recommended by an electrical inspector, I find it reasonable to conclude that they were needed to maintain electrical service in the park.

In the absence of any evidence to suggest that the scope of the electrical upgrades and pipeline repair and the associated costs were excessive, I find that repair and electrical upgrades were reasonable.

Residential Tenancy Branch Policy Guideline #37 further reads, in part:

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.

I find that the electrical upgrades can reasonably be expected to ensure continued uninterrupted electrical service to the manufactured home park and, therefore, that it has a notable effect on services in the park. I find that the repaired pipeline will ensure that the water will continue to flow in the park and, therefore, that it has a notable effect on services in the park. I find that the benefits of the electrical upgrade and the pipeline repair can reasonably be expected to last for many years and I therefore find that the repairs/upgrade are “significant”.

As I have concluded that 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 the Landlord is entitled to an additional rent increase, pursuant to section 36(3) of the *Act*.

Section 33(3)(a) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider the rent

payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect. As the rent for all of the sites are reasonably similar, I find that this issue has little impact on my decision.

Section 33(3)(b) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider the rent history for the affected manufactured home site in the 3 years preceding the date of the application. As all parties agree that rent has only been increased twice in the previous four years, I find that the additional rent increase is not unreasonable or particularly onerous.

Section 33(3)(c) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider 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. As there is no evidence that there has been a change in a service or facility at the park in the past year, I find that this issue has no impact on my decision.

Section 33(3)(d) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider 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. I find that the upgrades and repairs that are the subject of this application for a rent increase are not related to increased operating expenses or previous capital expenditures and are not, therefore, relevant to this decision.

Section 33(3)(f) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider a relevant submission from an affected tenant. I find that the submissions made by the Tenants do not negate the Landlord's right to the additional rent increase. Although I understand the Tenants' concerns that they are paying for the cost of improving/maintaining the manufactured home park, it is clear that the legislation allows a landlord to impose an additional rent increase, in certain circumstances, to recover such costs.

Section 33(3)(g) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider a finding by the director that the landlord has contravened section 26 of the *Act*. As there is no evidence that the Residential Tenancy Branch has previously determined that the

Landlord failed to maintain the residential property, I find that this issue has no impact on my decision.

Section 33(3)(h) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider 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. As there is no evidence that the pipeline repair or electrical upgrade is directly related to inadequate maintenance, I find that past maintenance has no impact on my decision.

Section 33(3)(i) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider whether 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. As there is no evidence that a previous rent increase has been approved, I find that this issue has no impact on my decision.

Section 33(3)(j) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application. As there is no evidence that a notice to end tenancy for a site in this manufactured home park has been set aside in the previous six months, I find that this issue has no impact on my decision.

Section 33(3)(k) of the *Manufactured Home Park Regulation* stipulates that when considering the application for an additional rent increase I must consider whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has submitted false or misleading evidence or failed to comply with an order of the director for the disclosure of documents. As there is no evidence that the landlord has submitted false or misleading evidence or failed to comply with an order of the director for the disclosure of documents, I find that this issue has no impact on my decision.

Section 33(4)(a) of the *Manufactured Home Park Regulation* permits me to grant an application for an additional rent increase in full or in part.

I find that the Landlord will collect \$2,032.20 per month if the additional rent increase of 3% is approved. I find that the Landlord will also collect \$860.04 per month from the

tenants who agreed to the 3% additional rent increase. I therefore find that the Landlord will collect an additional rent increase of \$241.02 per month, or \$2,892.24 per year.

If I were to grant the additional rent increase of 3%, the Landlord would recover his \$31,626.56 in expenses for the electrical upgrade and pipeline repair in approximately 11 years (when I include the tenants who agreed to the 3% additional rent increase).

Given that the Landlord estimated the electrical upgrades will last between 15 and 25 years and I find it reasonable to conclude that the pipeline repair will last a similar amount of time, I find it reasonable for the Landlord to recover his \$31,626.56 in expenses over a 20 year period.

I therefore grant the Landlord an additional rent increase of 1%. I find that the Landlord will collect \$677.40 per year with an imposed additional rent increase of 1%. When combined with the \$860.04 per year from the tenants who agreed to the 3% additional rent increase, I find that the Landlord will collect an additional rent increase of \$1,537.44 per year. At this rate the Landlord will recover his \$31,626.56 in expenses in approximately 20 years.

I hereby authorize the Landlord to impose a 5.0% rent increase for 2018, which includes the permitted increase of 4% and an additional rent increase of 1%.

The Landlord must serve notice of this increase pursuant to section 35(1) of the *Act*, which reads:

- (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
 - (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the manufactured home site;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.

Conclusion

The Landlord has the right to impose a 5.0% rent increase for 2018, which includes the permitted increase of 4% and an additional rent increase of 1%.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 20, 2018

Residential Tenancy Branch