



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BMH HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's Application for an Additional Rent Increase ("application") seeking remedy pursuant to section 36(3) and 62 of the *Manufactured Home Park Tenancy Act* ("Act").

An extended length participatory teleconference hearing was scheduled and began at 9:30 a.m. Pacific Time on October 18, 2018. In attendance for the landlord were the manager of the manufactured home park, DB ("manager") and an agent for the manufactured home park manager and owner, AK ("agent"). In attendance for the tenants were RC (42), JG (48), RK and her son RK ("son") (19), MBM (17), RN (21), MN (45), WT (27), and JW (29).

All parties were affirmed and given an opportunity to present their testimony and documentary evidence. I have reviewed all evidence presented to me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. The hearing lasted a total of 135 minutes.

Preliminary and Procedural Matters

At the outset of the hearing, the manager and agent confirmed that since the landlord filed the application before me, the landlord has entered into signed mutual agreements with three other sites 3, 35, and 39. As a result, the manager and agent requested to withdraw sites 3, 35 and 39 from the landlord's application which was granted as I find that such a request does not prejudice those tenants.

In addition, the landlord confirmed their email addresses as did three other tenants for sites 48, 21 and 27. The remaining tenants on the teleconference for sites 42, 19, 17,

45 and 29 requested to have the decision sent by regular mail. Therefore, the decision will be sent by email to the landlord agent and manager, and the tenants of sites 48, 21 and 27. The remaining tenants on the teleconference and all of the tenants of the sites who were absent from the hearing will be sent the decision by regular mail.

Also, the tenant of site 27, WT, confirmed during the hearing that she wanted to enter into a mutual agreement with the landlords and was no longer opposing the landlord's application for an additional rent increase. Therefore, I will deal with site 27 and tenant WT later in this decision by way of a mutual agreement with the landlord under the *Act*.

Regarding the service of documentary evidence all respondent tenants signed for and accepted their registered mail packages with the exception of two sites. As the landlord submitted documentary evidence to support that all respondent tenants were served by registered mail on August 31, 2018, I find that the two respondent tenants who failed to sign for and accept their registered mail packages addressed to them were deemed served five days later on September 5, 2018 pursuant to section 83 of the *Act*. Section 83 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. An "amended letter" referred to by tenant RN of site 21 was excluded from the hearing as the parties were advised that it was not before me in evidence in time for the hearing. Therefore, as tenant RN stated that the first letter was no longer accurate as it had been amended I have not considered the first letter from tenant RN as the tenant failed to present it during the hearing and appeared to be frustrated that his letter was not properly before me for the hearing.

Issue to be Decided

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

Background and Evidence

The manufactured home park ("home park") is made up of 51 sites plus one building. The building is not part of this application. There is no dispute that there have been problems with the home park water supply system which have existed for years and was in need of repair. The landlord is seeking an additional rent increase starting in 2019 and to make it easier on the tenants, is seeking to have the additional rent increase phased in over a three year period starting in 2020 and ending in 2022.

Landlord's evidence

The landlord is applying to receive a total additional rent increase of 6.54% phased in over a three year period comprised as follows: a 2.18% increase starting on January 1, 2020, a 2.18% increase on January 1, 2021, and a 2.18% starting on January 1, 2022. The landlord's evidence is that, of the 51 sites in the home park, tenants of 20 sites not including the tenant of site 27 which agreed during the hearing which will be described later in this decision, have consented in writing to the 6.54% increase over three years starting on January 1, 2020 at 2.18% per year as requested in the application before me, and includes a 2.18% increase as of January 2021 and another 2.18% increase as of January 1, 2022 and all three increases being based on site rent as of August 2018; the application date.

The landlord has put forward one reason for their request for an additional rent increase. The landlord has indicated that significant repairs or renovations to the home park, specifically the water system upgrade ("project") are reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation.

The landlord submits that the project services all 51 sites and the one building in the home park. The life expectancy of the project is about 24 years; 2042 is the year indicated on the application before me as the estimated year when the project would be expected. The landlord submitted that the total cost of the project is \$470,904.20, including the cost of financing over 25 years. The landlord has provided the following financial breakdown in support of their application:

Current total monthly rent	\$ 24,002.80
Current average monthly rent	\$470.64
Current total annual rent	\$288,033.60
Project cost	\$470,904.20
Project cost / 25 years	\$18,836.17
\$18,836.17 / 51 sites	\$369.34
\$369.34 / 12 months	\$30.78
\$30.78 as % of \$470.64	6.54%
3 year phased increases:	
Year 1 – 2.18% of current rent (for 2018)	
Year 2 – 2.18% of current rent (for 2018)	

Year 3 – 2.18% of current rent (for 2018)	
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The landlord has also submitted the following information that provide a monetary breakdown of how the landlord arrived at the 6.54% additional rent increase for the project as claimed as follows:

Site #	Date if last rent standard rent increase	Current rent for 2018 as of application date	Requested 6.54% increase amount	Total Rent after the 3 year phased-in proposed additional rent increase
18	Jan 1, 2018	\$467.80	\$30.59	\$498.39
13	Jan 1, 2018	\$490.00	\$32.05	\$522.05
6	Jan 1, 2018	\$467.80	\$30.59	\$498.39
36	Jan 1, 2018	\$467.80	\$30.59	\$498.39
31	Jan 1, 2018	\$467.80	\$30.59	\$498.39
34	Jan 1, 2018	\$467.80	\$30.59	\$498.39
42	Jan 1, 2018	\$467.80	\$30.59	\$498.39
12	Jan 1, 2018	\$467.80	\$30.59	\$498.39
23	Jan 1, 2018	\$467.80	\$30.59	\$498.39
30	Jan 1, 2018	\$467.80	\$30.59	\$498.39
48	Jan 1, 2018	\$467.80	\$30.59	\$498.39
10	Jan 1, 2018	\$467.80	\$30.59	\$498.39
9	Jan 1, 2018	\$467.80	\$30.59	\$498.39
19	June 1, 2018	\$490.00	\$32.05	\$522.05
40	Jan 1, 2018	\$467.80	\$30.59	\$498.39
44	Jan 1, 2018	\$467.80	\$30.59	\$498.39
8	Jan 1, 2018	\$467.80	\$30.59	\$498.39
17	Jan 1, 2018	\$467.80	\$30.59	\$498.39
21	Jan 1, 2018	\$467.80	\$30.59	\$498.39
45	Jan 1, 2018	\$467.80	\$30.59	\$498.39
22	Jan 1, 2018	\$467.80	\$30.59	\$498.39
46	Jan 1, 2018	\$467.80	\$30.59	\$498.39
25	Jan 1, 2018	\$490.00	\$32.05	\$522.05
38	Jan 1, 2018	\$467.80	\$30.59	\$498.39
49	Jan 1, 2018	\$470.00	\$30.74	\$500.74
2	Jan 1, 2018	\$490.00	\$32.05	\$522.05
26	Jan 1, 2018	\$467.80	\$30.59	\$498.39
27	Jan 1, 2018	\$467.80	\$30.59	\$498.39

29	Jan 1, 2018	\$467.80	\$30.59	\$498.39
47	Jan 1, 2018	\$467.80	\$30.59	\$498.39
1	Jan 1, 2018	\$467.80	\$30.59	\$498.39

The manager and agent testified that the home park is 45 years old and that the home park was purchased from the previous owners in 2010. The manager stated that water leaks in the water system had existed before 2016 when he became the home park manager. The manager testified that in 2014 the landlord underwent some preliminary work and eventually obtained three quotes ranging between \$299,751.00 and \$441,000.00 and that the lowest bidder was selected. The manager stated that after the lowest bidder was selected on or about January 2017, the work was estimated to take 60 days and that the project started in February 2017 and ended in May 2017. The manager referred to a document submitted in evidence which brought the total project cost to \$470,904.20 over a period of 25 years which includes costs for financing, and other related costs including city and engineering fees detailed in evidence.

The manager testified that the additional rent increase will be based on the 2018 current rent for all sites as of the time of this application dated August 20, 2018. In other words, starting in 2020 and continuing for 2021 and 2022, the 6.54% increase phased in at 2.18% over three years would be calculated based on the site rent as of August 2018 and does not include standard annual rent increases under the *Act* as at least one site, 19, would not be eligible for another standard rent increase to come into effect under the *Act* until June of 2019.

In addition, the manager clarified that water usage is not part of this application and that annual rent increases under the *Act* are not the same as applications for additional rent increases under the *Act* which are not automatic, require significant preparation and are only for specific purposes under the *Act* such as the application submitted for consideration before me. The manager also stated that they are not required to have a contingency fund for a water supply system replacement and that four years ago in 2014, the landlord advised the tenants that they would be seeking an application for an additional rent increase which could not be done until the work has been completed. A "Christmas letter" addressed to home park tenants from 2014 was referred to in evidence. The manager testified that the spreadsheets provided by the tenants do not have correct numbers as they have included the annual rent increases and that the annual rent increase amounts are not part of this application and are permitted under a different section of the *Act*.

In support of the costs of the work completed the landlord submitted 73 pages of documents including but not limited to correspondence, signed mutual agreements, quotes, invoices, proposed rent increases, rent rolls, copies of cheques, loan interest documents, financing agreement, summary of expenses, and mail tracking records, all of which was also served on the tenants.

Tenants' evidence

Firstly, I will deal with the tenant from site 27, WT, who confirmed during the hearing that she now agrees to the additional rent increase as proposed by the landlord after reading through the application and supporting documents, I will not include site 27 as part of the following tenants' evidence. I note that the tenant willingly and without pressure from the landlord or myself agreed during the hearing pursuant to section 56 of the *Act* and that the tenant of site 27, WT is bound by her agreement with the landlord which is now enforceable under the *Act*.

Secondly, for the remainder of the respondent tenants, the following was presented in evidence from the tenants in rebuttal of the landlord's application. Tenant JG (48) testified that since July 2015 new tenants pay a "water consumption fee" of \$25.00 per month which the manager clarified was for new residents/new tenancy agreements only and was designed to offset water consumption costs and was not related or relevant to this application.

Tenant RN (21) referred to his summary which indicated a proposal for a separate water meter per site. The manager stated that separate meters for each site would be **very** expensive and that the landlord would not pass that type of cost on to the tenants and that it would be cost prohibitive. Tenant RN then referred to page five of his summary documents where pressure reducing valves ("PRV's") were mentioned and alleged that the landlord advised them that hooking up the water to each site was going to be the responsibility of the tenants of each site. The manager disagreed and stated that the summary of tenant RN is incorrect and that of course the contractor would ensure water was connected to each site as the work was completed. The manager clarified that it was only the PRV's that were the tenant's responsibility and that the manager had advised tenants that they would get a discounted rate from the plumber to install a PRV at the time of the water connection if they were to choose to do so and that it was not required but given the lifespan of a PRV, was recommended.

As discussed above, the "amended letter" referred to by tenant RN was excluded as it was not properly before me during the hearing. Tenant RN made the decision during the

hearing not to read his original letter into evidence and as a result of the tenant failing to present further evidence, I have not reviewed the original letter as tenant RN clearly indicated that it was the amended letter that was to be considered and was accurate which I did not have before me during the hearing.

Tenant JG (48) presented a document ("petition") that reads in part:

"WHEREAS THE OLD WATER SYSTEM WAS IN USE FOR 44 YEARS (1973-2017) AND THE OWNERS COLLECTED RENT FROM THE TENANTS FOR 44 YEARS. THE OWNERS WILL CONTINUE TO COLLECT RENT FOR POSSIBLY ANOTHER 44 YEARS. WE THE PRESENT TENANTS DO NOT AGREE THAT REPLACING THIS WATER SYSTEM IS OUR FINANCIAL RESPONSIBILITY..."

[Reproduced as written]

The petition was signed by tenants of 40 sites. The manager clarified that of the 40 sites listed on the petition, 13 have since signed mutual agreements related to the additional rent increases which were submitted in evidence.

The tenants provided over 65 pages of evidence including a summary documents, the petition, copies of newsletters, emails, tenancy agreements, copies of correspondence with landlord, and an assessment.

One tenant stated that he has been in the home park for a period "better than 10 years" and that there has always been a water problem with many leaks and that he fails to understand why the tenants have to pay for the cost through an additional rent increase.

Another tenant stated that they have been in the home for 14 years and that they are disputing the entire application as they feel the water system should not be their responsibility and that the leaks have gone on much longer than four years.

Analysis

Based on the evidence presented, the testimony provided by the parties, and on a balance of probabilities, I find the following.

I find that neither party disputes that the project is necessary. I find that the tenants; however, dispute that the cost associated with the project should be their responsibility and result in an additional rent increase.

I accept that the tenants are clearly frustrated that water leaks have existed for years in the home park. I also accept that the original water system infrastructure which as lasted approximately 45 years since the park opened on or about 1973 is supported to be that age by evidence from both parties. Therefore, I find that the home park water system infrastructure has long since exceeded its' useful lifespan. I have reached this finding as the only party to provide evidence on an expected lifespan of the water system infrastructure was the landlord who writes in their application that the next expected water system project would be in approximately 25 years.

I also find the landlord has provided sufficient evidence to prove that the project work was significant. Based on the large expenditure incurred by the landlord, and the scope of the project, I find the landlord has completed or substantially completed significant repairs to the home park. I do not find that the significant repairs required could have been foreseen under reasonable circumstances as the water system was the original system built on or about 1973, approximately 45 years ago. There is also no provision in the *Act* requiring the landlord to establish a contingency fee for such repairs, as this would amount to something similar to requiring tenants to pay rent in advance. I further find the project and the associated repairs made were reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation.

Section 26 of the *Act* states:

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.

[My emphasis added]

Given the above, and based on both parties confirming that there were ongoing water leaks in the home park for years, I find this project was necessary and meets the requirements of the *Act* for an additional rent increase. I also find that the landlord mitigated the costs to the tenants as much as possible by accepting the lowest bid for the project and therefore, I find the landlord has complied with the *Act* by maintaining the park in a reasonable state of repair.

I reject the tenants' submissions that they should not bear the costs associated with the project as the *Act* allows for such applications by a landlord. I also reject the calculations submitted by the tenants as I find that they include the standard annual rent increase under the *Act* which makes the calculations incorrect as the standard annual rent increases are not the same as an additional rent increase under the *Act*. I also find that the landlord has been very accommodating by offering a phased in approach to the additional rent increase as follows:

3 year phased increases:
Year 1 – 2.18% of current rent (for 2018)
Year 2 – 2.18% of current rent (for 2018)
Year 3 – 2.18% of current rent (for 2018)

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 find that that the landlord has received the written consent of 20 of the 51 sites plus the consent of the tenant of site 27, WT as noted above, of whom agreed during the hearing to consent to the additional rent increase as proposed which totals 21 of 51 sites. I find the 6.54% amount as proposed by the landlord is correct as follows:

Current total monthly rent	\$ 24,002.80
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Current average monthly rent	\$470.64
Current total annual rent	\$288,033.60
Project cost	\$470,904.20
Project cost / 25 years	\$18,836.17
\$18,836.17 / 51 sites	\$369.34
\$369.34 / 12 months	\$30.78
\$30.78 as % of \$470.64	6.54%
3 year phased increases:	
Year 1 – 2.18% of current rent (for 2018)	Starting January 1, 2020
Year 2 – 2.18% of current rent (for 2018)	Starting January 1, 2021
Year 3 – 2.18% of current rent (for 2018)	Starting January 1, 2022

Based on the above, I find the closest equal percentage for all tenants to be **6.54%** as claimed and that this additional rent increase will be implemented over 3 years as follows:

6.54% / 3 years = 2.18% per year	
Year 1 – 2.18% of current rent (based on August 2018 rent)	Starting January 1, 2020
Year 2 – 2.18% of current rent (based on August 2018 rent)	Starting January 1, 2021
Year 3 – 2.18% of current rent (based on August 2018 rent)	Starting January 1, 2022

I also note that the additional rent increase does not include a standard annual rent increase which the landlord has the right to issue under the *Act* and is not part of the 6.54% additional rent increase.

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 for each year as indicated in the table immediately above. The landlord must also provide the Notice of Rent Increase in accordance with section 35 of the *Act*, which, for example, requires three months' notice in advance of the increase taking place.

Conclusion

I find the landlord has met the burden of proof to support that the landlord has incurred significant, reasonable and necessary expenses related to the water system project.

I grant the landlord an additional rent increase as claimed pursuant to sections 36 and 62 of the *Act*. I order the additional rent increase to be 6.54% over three years; comprised of 2.18% effective January 1, 2020, 2.18% effective January 1, 2021, and 2.18% effective January 1, 2022.

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: November 14, 2018

Residential Tenancy Branch