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) seeking an increase in rent for the above noted sites pursuant to section 36 (3) of the *Manufactured Home Park Tenancy Act (Act)*.

The hearing was conducted via teleconference and was attended by the landlord's legal counsel, the landlord's agents, the legal counsel for tenants in 33 of the sites and tenants from two other sites not represented by legal counsel. The remaining tenants did not attend and were not represented at the hearing. Legal counsel for the landlord (the landlord) and legal counsel for the tenant (the tenant) indicated that they would be the primary speakers during the hearing.

The landlord submitted that all the tenants were served with the notice of hearing documents including the Application and supporting evidence, pursuant to Section 52(3) of the *(Act)* by way of registered mail on December 04, 2018. The landlord provided copies of the Canada Post tracking numbers to confirm these registered mailings as well as a list of occupants of the park who were not served. The landlord stated that all tenants of the Park reside at their site and receive mail there.

Based on the testimony and submissions of the landlord, I am satisfied that all tenants have been sufficiently served with the documents pursuant to sections 81 and 82 of the *Act*, which permit service by registered mail to the address at which the person resides.

The landlord submitted that they only received the tenants' evidence on January 10, 2019, by e-mail and were only able to review portions of it. The landlord requested that the tenants' evidence not be considered due to its late service.

The tenants' counsel stated that they only met with the tenants on January 02, 2019, which is when they received the landlord's evidence, and requested that their evidence be considered as it was submitted as soon as it was possible in the time given.

Although not served in accordance with section 81 of the *Act*, I find the landlord is duly served with the tenants' evidence on January 10, 2019, pursuant to section 64 2 (c) of the *Act*, which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing, I have found that the landlord did receive the evidence and was able to refer to it as the tenants' counsel submitted their arguments during the hearing.

I further find that a large portion of the tenants' evidence consists of permission forms for representation and one of the landlord's own internal documents that they would have had previous access to and as such I find who is not prejudiced by its consideration. I find that the landlord had time to review and prepare a response in the hearing to the relevant portions of the tenants' submissions. For the above reasons, I will consider the tenants' evidence.

While both parties provided a substantial amount of documentary submissions, including the testimony of the parties, I have only considered and recorded in this decision that which is relevant to the adjudication of the Application.

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled an additional rent increase for the subject sites, pursuant to Sections 35 and 36 of the *Act.*

Background and Evidence

The landlord's submission describes the property as a 71 site manufactured home park (the Park) developed in 1960 in which the tenants are all residents in the park and have each entered into an agreement to rent the manufactured home sites which comprise the Park.

The landlord indicated in their written submission that, prior to any improvements, "as the rainfall hit the ground the soil would absorb some of the water and the excess water would travel through grading on the roads of the Park into catch basins (the Previous Drainage System)."

The landlord states that they have submitted their Application to recover significant costs of repairs the landlord undertook to “design and construct a new mechanism to improve the existing storm system and to supplement the drainage system at the Park (the Storm Project) which were completed in 2017”. The landlord submitted that they have already paid a total of $246,881.66 for the Storm Project that they are seeking to recover, which includes labour, materials and taxes for the Project.

The landlord requests that they be permitted to issue a standard rent increase in the amount of 2.5% and an additional rent increase in the amount of 2.81%. The landlord has determined that the additional rent increase of 2.81% will allow the landlord to recover the costs associated to the Storm Project amortized over a period of 25 years, which represents the life expectancy of the Storm Project as per the Residential Tenancy Policy Guideline #40 regarding the useful life of building elements for storm systems.

In their submission, the landlord refers to section 33 (1) (b) of the Manufactured Home Park Tenancy Regulation (the Regulation) which allows the landlord to apply for an additional rent increase if they have completed significant repairs or renovations which are reasonable and necessary, and will not recur within a time period that is reasonable for the repair or renovation.

The landlord submitted in evidence:

- A copy of the Application which shows a rent increase in the amount of 2.81% for each rental unit which is between $9.00 and $13.00 per month depending on the site
- A map of the park;
- Various street level photos of the park;
- A copy of the park’s drainage map and a copy of the park’s storm catchment area;
- Various correspondence between the landlord, their agents regarding work being completed within the park
- Engineering reports for storm water rain analysis which were provided to the municipality after completion of the Storm Project;
- Copies of forms for the Acceptance of Additional Rent Increase signed by tenants of seven different sites in the Park;
- A copy of a calculation showing the amount of $246.881.87 being divided over 300 months with a monthly recovery of $822.94 required which represents 2.81% of the monthly revenue of $29.319.32 of the Park; and

- Copies of invoices for payments made to a construction company and an engineering firm in the total amount of $246,881.87 for the Storm Project completed in the Park in 2017.

The landlord submits that rent increases in the last three years were made in accordance with the allowable amounts of 4.0% for 2018, 3.7% for 2017 and 2.9% for 2016 with no proportional amounts added to the standard increases.

Legal Counsel, for 33 of the sites in the Park, submitted into written evidence:

- Authorization forms and a list for the sites represented by the legal counsel;
- A submission which indicates that the landlord should have been aware of the improvements and that it is reasonable that the landlord paid a lower price due to this. The submission states that if the landlord did not pay a lower price for the Park, the tenants should not have to pay for the landlord's lack of due diligence. The submission states that the landlord would potentially become "unjustly enriched by paying a lower price for the park and then having the Tenants pay for the repairs for which the Landlord was already compensated for".
- The legal counsel submits that, in the alternative, the amount paid by the tenants over 25 years should be reduced for several reasons. The submission states that the landlord had a cheaper option to complete the required repairs, that it is unclear if all of the repairs were completed in the Park, that the landlord was aware of some of the required repairs prior to purchase, that the landlord has not been clear about what the costs of financing, that the Storm Project has only been partially effective, that the previous landlord failed to complete the required work and that the financial circumstances of the Tenants should be considered. The submission puts forward that the Park is for seniors on fixed incomes and refers to a previous supreme court decision in which the courts found it reasonable for an arbitrator to consider financial hardship for an application for additional rent increase;
- A copy of the landlord's Post-Acquisition Business Plan for the Park (the Plan) dated March 02, 2015, which refers to an infrastructure assessment conducted by a third party and indicates a total of $57,500.00 allocated to estimated repair costs for infrastructure over the first 10 years of the landlord's ownership for the purpose of maintaining Domestic Water, Storm Water Management, the sewage system, electrical power and other items. The Plan also refers to work done in 2012 on the drainage system;
- A copy of a British Columbia Supreme Court decision involving the Residential Tenancy Branch regarding a similar case as to the one before me although specifically addressing the phasing in of a rent increase in which a judge states

that, despite not including financial considerations in the language of the Act, it is not patently unreasonable for the arbitrator to consider it as the language does not specifically exclude the consideration of financial considerations for the tenants;

- Copies of statements from three tenants of three different sites, two of which are dated in January 2019, which indicate that flooding problems still exist in certain sites even after the Storm Project was completed.

The landlord testified that they have submitted their Application to recover costs associated to a significant repair in the Park referred to as the Storm Project. The landlord stated that the Storm Project was designed, constructed and paid for in 2017 in the amount of $246,881.87. The landlord submitted that an additional rent increase in the amount of 2.81% is being requested to pay for the Storm Project, in addition to the standard rent increase of 2.5%, which is a total of 5.31%. The landlord referred to section 33 (1)(b) of the Regulation which allows the landlord to apply for an additional rent increase when the landlord has completed significant repairs.

The landlord stated that the park was developed in 1960 and that the landlord purchased it in March of 2015. The landlord submitted that the previous drainage system was not effective and that, after rainfalls, excess water would pool in various sites in the Park.

The community manager of the park stated that it was observed in the next winter season after the purchase of the Park that there were huge amounts of water pooling on different sites which were not being drained. The community manager testified that they had tried to clean all the drains but that this solution was not effective due to a design flaw and that it was not a maintenance issue. The community manager submitted that they had many complaints from tenants of the Park.

The Director of Property Operations testified that the situation with flooding in the Park was brought to his attention due to the numerous complaints and that they then retained an engineer to improve the efficiency of the system. The director stated that there were a couple of options which were discussed, one of which required the moving of all of the manufactured homes, which were not deemed practical to complete the improvements.

The landlord’s engineer, whose company designed the Storm Project, testified that the previous drainage system had two catch basins, but that the run off was not making it to them. The engineer submitted that they decided to intercept it by adding curbs and

gutters along with a French Drain and weeping tile as shown in their submitted evidence. The engineer stated that the Storm Project should last around 25 years.

The landlord's project manager referred to payment certificates submitted which show payments made to a construction company and the engineering firm which total $246,881.87. The project manager confirmed that these amounts have already been paid by the landlord.

The tenants' counsel referred to page 56 of the Plan which indicated that there was $57,000.00 already allocated towards the Storm Project and that the landlord knew about the problem with the previous drainage system. The tenants' counsel questioned whether the work was all done in the Park. The tenants' counsel also inquired as to the costs of financing for the Storm Project and whether the landlord paid a lower price for the park than market value.

The tenants' counsel stated that an additional rent increase would cause financial hardship for many of the tenants and submitted that financial hardship should be considered in the arbitrator's decision as demonstrated in the Supreme Court decision provided in evidence. The tenants' counsel stated that the Park is for older tenants, many of them on pensions and fixed incomes that would be negatively impacted by an additional rent increase. It was submitted that the tenants have already been subjected to the maximum standard increase over the last three years which has resulted in an increase around $150.00.

The tenants' counsel then called on three tenants who provided oral statements regarding their financial hardship and that there are still water problems that exist in the Park. One tenant read from a letter which refers to the continuing water problems with a site in the Park which they state is sinking.

The tenants' counsel argued that the Storm Project was too expensive and has not resolved the drainage problem as there is pooling water still occurring. The tenants' counsel argued that the previous landlord's lack of maintenance should be factored into the tenants having to bear the cost for the landlord's Storm Project.

The tenants' counsel submitted that the landlord knew about the drainage problems with the Park and paid a lower price due to the issue. The tenants' counsel stated that the landlord is going to become unjustly enriched due to paying this lower price for the Park as the tenants will pay for the work completed. Tenants' counsel submitted that the Storm project which will increase the value of the park thereby giving the landlord a

profit at the expense of the tenants at the Park. The tenants' counsel again referred to the $57,000.00 allocated for improvements to the drainage system as evidence of their knowledge of the drainage issues.

The Director of Property Operations stated that the money allocated in the internal document was for more than just the previous drainage system as it was for the general infrastructure in the Park. The engineer maintained that 99% of the work was completed in the Park.

The landlord's Analyst for Asset Management stated that the costs of financing were not included in the totals presented for the rent increase and that they have no information available as to what the Park was initially purchased for.

The landlord responded that the repairs performed were necessary, reasonable and in accordance with the Act as well as the municipal by-laws as the landlord has an obligation to maintain adequate drainage systems for the Park. The landlord reiterated that they have the right to apply to recover the costs for the Storm Project over 25 years, as per the Regulation, which is the expected life of the Storm Project in accordance with the useful life of drainage systems as per the residential tenancy policy guidelines.

The landlord submitted that the tenant did not provide any documentary proof of financial hardship and questioned its consideration due to the test under the Regulation which only refers to significant repairs which have been completed as the basis for the additional rent increase. The landlord stated that they took the tenants' financial situations into account by seeking to recover the costs amortized over 25 years.

The landlord admitted that there may still be issues with standing water pooling in certain places but that there is no evidence submitted which indicates that it is a problem caused by or related to drainage issues that have been addressed by the Storm Project. The landlord submitted that maintenance was not the issue with the previous drainage system, it was just poorly constructed. The landlord stated that the Storm Project protects the Park and that the landlord took all the appropriate steps to consider all options and their impact on the tenants in the Park.

The landlord stated that no documentary evidence had been provided to demonstrate that the landlord obtained the Park for a discounted price and that there is no evidence that the landlord knew about the scope of the repair prior to acquiring the Park.

Although the landlord referred to the following items in their written submission to state that they did not find these sections relevant to their Application, neither party provided any documentary evidence or testimony of:

- the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect;
- 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;
- a finding by the Director that the landlord has contravened section 26 of the Act (obligation to repair and maintain)
- 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;
- The director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
- 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.

Analysis

Section 36 of the *Act* states a landlord may impose a rent increase only up to the amount which is either calculated in accordance with the regulations, ordered by the director on an application under subsection; or agreed to by the tenant in writing. 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 by making an application for dispute resolution.

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

Section 33(3) of the Regulation stipulates that in deciding to approve an application for a rent increase under subsection (1) I must consider:

(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.

Prior to considering the 11 key items under Section 33(3) of the Regulation, I must determine whether or not the landlord has provided sufficient evidence to establish that the landlord has completed significant repairs to the manufactured home park that are reasonable, necessary and will not recur for a reasonable amount of time.

Residential Tenancy Policy Guideline #37 states that the landlord is required to provide affected tenants with copies of the evidence used in support of the Application for Additional Rent Increase, including relevant invoices, financing records, and financial statements if applicable. The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount.

Having reviewed the evidence and testimony, I find that it is undisputed that the landlord has completed the Storm Project and I accept their evidence in the form of certificates for amounts paid to the engineering firm and the construction company which support the amount of the additional rent increase being requested.

Although the tenants' counsel inquired into costs of financing, I find that the landlord has not requested to recover any costs for financing nor have they submitted any evidence regarding it. I find that the costs of financing are moot as they are not being requested by the landlord. I find that the landlord has met the burden of proving the costs paid for the Storm Project.

Although the tenants' counsel submitted that there was a cheaper option to repair the drainage system, I find that there was no evidence submitted as to what the cheaper option would be and what the costs would be which would support the tenants' counsel's statement. I find that there is no documentary evidence submitted which demonstrates that there is a second option that would have the same or improved efficiency as the Storm Project for comparable costs and impact on the tenants. I accept the landlord's submission that the option of altering the grading in the Park, which would have required the removal of some manufactured homes from their sites and would have displaced a number of tenants, was not a more reasonable option than the Storm Project due to the lesser impact on tenants' living situations. I find that the tenants have not submitted that this option would have been cheaper or evidence of any other cheaper option that would have accomplished the same goals as the Storm Project.

I find that the tenants' submissions have not argued that the Storm Project was not necessary, only that they felt maintenance should have been completed previously to mitigate the current needed repairs, that the Storm Project has not been as effective as some believe was necessary, that the landlord knew about the problem and has sought to become unjustly enriched by the repairs in addition to financial hardship as their primary arguments against the additional rent increase requested by the landlord.

Residential Tenancy Policy Guideline #40 regarding the useful life of building elements states that a storm system has an anticipated life expectancy of 25 years.

I find that there is no evidence of a similar Storm Project being undertaken in the Park over the past 25 years and that any drainage system currently in place would have been past its useful life as per the residential tenancy policy guidelines.

Based on a balance of probabilities and taking into consideration the expenditures invested by the landlord into the design and construction of the Storm Project, I accept the engineer's submission that the Storm Project has a life expectancy of 25 years which aligns with the policy guidelines.
Although some tenants have indicated that they are still having issues with water pooling in their sites, I find that they have not provided evidence that these continued issues are associated to the improvements that the Storm Project was intended to address. If there are concerns with specific sites, the tenants are at liberty to address them with the landlord; however, I find that there is no evidence of any applications submitted to the landlord to address these issues.

For the above reasons, I find that the landlord has demonstrated that they have completed a significant repair, which they have called the Storm Project, which was reasonable, necessary and will not recur within a time period that is reasonable for the repair or renovation. As I have established that the landlord has completed a significant repair, I now turn my attention to consider the items noted above under section 33 (3) of the Regulation.

Of the items to consider, I find that neither party submitted any evidence of:

- the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect;
- 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;
- a finding by the Director that the landlord has contravened section 26 of the Act (obligation to repair and maintain)
- 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;
- The director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
- 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.

As neither party submitted evidence regarding the above items having an impact on the landlord's Application, I have not considered these particular items.

As for the remainder of the item to consider

- The landlord confirms 3 rent increases in the past the three years (as noted above). The landlord also confirms that these rent increases were only for the allowable percentage and did not include any proportional amounts. The proportional amount is defined as the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the park;
- The oral submissions from a few affected tenants regarding financial hardship and the effectiveness of the Storm Project have been considered in my response to the tenants' counsel's submissions;
- Although the landlord submitted that a change in operating expenses and capital expenditures in the 3 years preceding the date of the application is not relevant. I find that the landlord has provided documentary evidence of a capital expenditure, named the Storm Project, and that consideration of this capital expenditure is relevant and reasonable. As noted above, I find that the landlord has sufficiently proven their costs associated to the Storm Project and that this expenditure is directly relevant to the landlord's requested additional rent increase;
- As the landlord only purchased the property in March 2015, and started construction in two years, I accept their submission that they only became fully aware of the severity of the issues with the previous drainage system in the following winter and that they took action within a reasonable period of time to address the drainage issue. I find that there is no evidence submitted of any applications submitted by the tenants to have the previous or the current landlord address maintenance issues with the previous drainage system or any other evidence of maintenance issues in the last year which would have impacted the total cost of the project. I accept the landlord's submissions that it was not a maintenance issue.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Having reviewed the evidence and affirmed testimony, I find that tenants' counsel has not demonstrated that financial hardship is a consideration which should be taken into account when determining whether to allow the additional rent increase requested by the landlord.

Although I accept that many of the tenants are on fixed incomes, I find there is no actual documentary evidence to support the tenants' claim of financial hardship and that having a fixed income is not directly related to financial hardship.

I find that the landlord's request is not for an arbitrary amount, but represents the direct costs of the Storm Project amortized over a period of 25 years, which represents the expected life of the Storm Project for the purpose of minimizing the amount of the rent increase requested and its financial impact on the tenants.

If there are other pooling or drainage issues which have not been resolved by the Storm Project, I find that they are not relevant to the fact that a new drainage system with expanded capacity was designed, installed and paid for by the landlord which is a significant repair.

I find that the landlord has submitted documentary evidence, also submitted to the municipality, which demonstrates the Storm Project's effectiveness in accomplishing its intended purpose to improve the drainage system. If other sites continue to have issues with pooling and drainage, it is up them to address those issues with the landlord but it does not detract from the work completed.

I find that the tenants' counsel's submission that the landlord is potentially becoming enriched by purchasing the Park for a lower price is not supported with any actual documentary evidence of what the landlord paid for the park in comparison to any market evaluations for comparable properties at the time of the purchase. I find that tenants' counsel has not sufficiently proven that the landlord is becoming unjustly enriched as the recovery of the costs is spread out over 25 years and which represents the life expectancy of the system with no guarantee that the landlord will continue to own the Park at the end of the 25 years.

I find that the allocated money of $57,000.00 in the Plan for infrastructure improvements is for more than just the drainage system as it encompasses multiple areas of infrastructure and is intended to be spread out over 10 years.

I find that this amount of funds allocated is not sufficiently large enough to be perceived as money intended for the Storm Project, which cost over $240,000.00 and was mostly paid for within a year, or that it reflected the extent of the work that was performed by the landlord.

I find that that the wording, and the funds allocated in the Plan, does not demonstrate that the landlord would have known about the significant costs to repair the previous drainage system prior to considering their options when becoming aware of the issue.

I accept the landlord's submission that the other option considered by the landlord, which required a re-grading of the Park and the moving of manufactured homes from their site for an undetermined amount of time, to not be a desirable option due to the potential impact on those being displaced from their homes**.** I find that that the tenants' counsel has not provided sufficient evidence to demonstrate that this was a cheaper option and by how much it would have been cheaper, while also taking into consideration how many tenants would have been affected which would directly affect the associated costs of the displacement option.

I accept the landlord's documentary evidence that the majority of the work for the Storm Project was done in the Park and that the Storm Project was designed specifically for the drainage issues with the Park. For the above reason, I find that the argument of where the work was completed is not relevant to the consideration of the additional rent increase as the work was done in the Park.

For the above reasons, in consideration of the Act, the Regulation as well as the above evidence and testimony, I find that the landlord has demonstrated that they have completed a significant repair that was reasonable and necessary and will not recur within a time period that is reasonable for the repair. I have found that the landlord has proven the costs to be recovered for the repair of the drainage system reasonably requested to be amortized over the expected life of the repair.

Therefore, I allow the landlord to increase the rent by 5.31% for all of the sites in the Park pursuant to sections 36 of the Act and section 33 (1)(b) of the Regulations.

I note the standard rent increase may only be effective as of 12 months from the date that the last standard rent increase was issued for each site in accordance with the section 35 of the Act.

Conclusion

The landlord is granted their request for a rent increase in the amount of 5.31%, effective three months from service of the Notice of Rent Increase forms in accordance with section 35 of the Act.

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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: February 13, 2019

Residential Tenancy Branch