Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

This hearing dealt with the landlord's Application for Additional Rent Increase ("AARI") made under section 36 of the *Manufactured Home Park Tenancy Act* ("the Act"). The hearing was held over three dates and two Interim Decisions were issued. The Interim Decisions should be read in conjunction with this final decision.

The landlord's agents and representatives appeared for the hearing.

Several tenants had congregated in one place to participate in this hearing, including DM, the tenant elected to be the primary speaker on behalf of numerous tenants. DM provided the site numbers of the tenants who had authorized him to represent them and I have recorded such on the cover page of this decision. Some of the tenants represented by DM were also present, as were several other tenants not represented by DM. DM did the majority of the speaking on behalf of the tenants; however, I gave all of the tenants who had appeared for the hearing the opportunity to make submissions and ask questions.

As seen in the first and second Interim Decisions, I had explored service of hearing documents upon the tenants and made findings and orders with respect to service. As I had issued orders for the landlord to serve additional documents upon some of the tenants at the end of the second hearing, at the outset of the third hearing session I explored whether the landlord had complied with the orders I had issued in the Interim Decision dated September 25, 2019. I confirmed that the landlord revised the schedule J to correct the rental increase sought for sites 61, 62 and 63. I was provided evidence that an application package, including a revised schedule J, was served upon each of the tenants for sites 4, 15, 16, 20, 28, 49, and 62 by personal delivery or registered mail; and, I was provided evidence that each of the tenants of sites 61 and 63 and DM were provided the revised schedule J by registered mail.

I indicated to the parties that I was satisfied the landlord had duly notified all of the tenants who are subject of this application pursuant my orders contained in the Interim Decisions and in accordance with service provisions of the Act and that I was prepared to proceed with this matter. There was no objection on part of the tenants.

I proceeded to explain the hearing process to the parties and permitted the parties the opportunity to ask questions about the process.

The tenants indicated that the meeting room where they had gathered was available to them until 11:30 a.m. but that, if the hearing had to go past 11:30 a.m., they could reconvene in another location using a different phone. I informed the parties that I could accommodate a recess in order to facilitate that, if necessary. Shortly after 11:30 a.m. I had heard from the parties and I canvased the parties to enquire as to whether they wished to reconvene at a later time at another relocation to make any further submissions to me. Both the tenants and the landlord's agents communicated that they felt they had presented their evidence and conveyed all of their relevant submissions and were comfortable with ending the hearing and have me make a decision based on what I had been presented thus far, in the form of oral submissions and testimony and documentary submissions. I had indicated that there may be mathematical discrepancies in the revised Schedule J presented to me and I canvassed the parties as to whether they were agreeable to me recalculating amounts and making a decision based on my calculations. Both parties indicated they would be satisfied with an order based my calculations, if necessary, to conclude the proceeding.

This decision is being emailed to the landlord's agent, to DM who will distribute the decision to the tenants he represents, and tenant referred to by initials EH in keeping with their preferences. The remainder of the tenants shall be sent a copy of the decision by regular mail by the Residential Tenancy Branch.

Issue(s) to be Determined

Has the landlord established that significant repairs or renovations were made to the property where the manufactured home sites are located that were reasonable and necessary, and, will not recur within a time period that is reasonable for the repair or renovation? If so, should the landlord's request for an additional rent increase be granted?

Background and Evidence

The manufactured home park currently has 71 sites that are numbered 1 through 70, plus site 48A. The manufactured home park was largely constructed in two phases: the first phase (sites 1 through 22) was constructed approximately 60 years ago and the second phase (sites 23 through 70) was constructed approximately 40 years ago, with site 48A being created only recently.

The landlord's agent submitted that in 2015 the landlord replaced the water line in the older phase (sites 1 -22) and that upgrade is not part of this application. In 2017, the landlord replaced the water supply line and installed concrete shut off boxes for the sites in the newer phase (sites 23 – 70) and this repair is the subject of this application.

The landlord submitted that the cost to excavate, remove the old water supply line, install the new supply line, install concrete shut off boxes for each site in phase 2, and repave any cuts in the asphalt was completed in 2017 at a cost of $181,650.00 and the landlord has paid this amount to the contractor authorized to do the work. The lanldrod provided an executed work order and two invoices prepared by the contractor as evidence of the work done and the cost for doing so.

The landlord's agent submitted that the old water lines were replaced due to age and leaks had started to occur. The new lines are expected to last approximately 40 years although the landlord's agent acknowledged that the exact date they will require replacement again is difficult to pinpoint.

The landlord proposes to increase the monthly rent payable by the tenants to recover the cost of the repair by phasing in increases over five years. There are three different rental rates for the tenants that are the subject of this application. Currently, the tenants that are subject of this AARI are paying: $603.81, $612.25, and $636.88 effective October 1, 2019. The monthly rent includes the provision of water by the landlord.

The landlord calculates that it collects an average monthly rent of $610.92 by adding up all of the rent receivable for all of the sites and dividing that sum by the number of sites. Based on the average rental rate of $610.92, the landlord proposes to increase the rent by 2.326% in the first year, for an average of $14.21, in addition to the annual allowable rent increase provided by the Regulations. Then every year afterward, for four more years, the landlord proposes to increase the rent by an additional $14.21, based on the average rent. Assuming the rent increase is granted, the average rent will increase by 11.63%, or $71.05, in the last year of the proposed rent increase, year 5. To illustrate: assuming a tenant pays the average rent of $610.92 the tenant's rent would increase to $625.13 starting October 1, 2020, then $639.34 starting October 1, 2021, then $653.55 starting October 1, 2022, then $667.76 starting October 1, 2023 and $681.97 starting October 1, 2024.

The landlord had requested the tenants provide written consent to the increase by way of a consent letter dated February 25, 2019. Approximately one-third of the tenants provided written consent for the proposed increase. The landlord proceeded to make this Application to seek authorization to increase the rent for those tenants who did not

consent or subsequently withdrew their consent. For those that had provided written consent, the consent agreement stipulated that the increase imposed for those tenants would not exceed any rent increase permitted by way of this AARI. The landlord provided copies of the consent letters.

The tenants submitted that they had sought additional information, mostly from the park manager, about the proposed rent increase and they were of the view that they were not provided complete information or were given misinformation concerning the project. The tenants also tried to obtain information about the project from the contractor but the contractor would not release information to them. The tenants pointed out that through this process the tenants have a better understanding of the scope of the project.

The tenants pointed to a cut in the asphalt, near site 48, that had not been repaved after the water line was installed, and the tenants questioned whether the contractor had failed to complete the project since all asphalt cuts were supposed to be repaved. The landlord's agent responded by stating this particular cut in the asphalt was not part of the water line project but that it was the result of running electrical lines underground when site 48A was created. The tenants acknowledged that it this cut in the asphalt has been subsequently repaved in or around September 2019.

The tenants pointed out that a concrete shut off box was not installed in front of site 8. The landlord's agent responded that the water line to site 8 was replaced as part of the upgrade done in 2015 and was not part of the project that took place in 2017 and subject to this Application; however, in making an AARI, the increase sought must be applied to all sites, even those that were subject to a different water line replacement project. The tenants pointed out that they were unaware that water lines in the park were replaced in two phases or that this AARI only pertains to the second water line project since the scope of the project was not indicated in the evidence provided to them, namely the 2017 invoices and work order. Without having a clear understanding of the scope of the project they did not know that concrete water shut off boxes for sites 1 through 22 were not part of the 2017 project. The tenants acknowledged that they now have a better understanding of the scope of the 2017 project.

The tenants submitted that in some cases, there are no shut off boxes in front of sites but there are multiple shut off boxes installed in groupings in front of other sites. The tenants questioned whether each site has its own shut off box since there is no site numbers indicated on the shut off boxes. The landlord's agent responded by acknowledging that some shut off boxes are installed next to one another in groupings but that there is a concrete shut off box for each site numbered 23 through 70. The landlord's agent confirmed to the tenants that in the event the water needs to be shut off

for a particular site, the park manager will do so, and the tenants need not be familiar with the location of the shut off box for their site. Rather, in the event of a water leak, the tenant may shut off water to their home at the valve located on the home or if the tenant has difficulty locating such a shut off valve, the tenant may approach the park manager to get him to shut off the water to their site. The tenants appeared satisfied that they do not need to know the location of the shut off box for their particular site.

The tenants provided a photograph of a water box that appears to be covered by wood boards and questioned whether this was to be included in the project. The landlord's agent submitted that the subject wood covered box is actually the point at which the city's water supply line is connected to the park's water system and it is the property of the city, not the landlord.

The landlord's agent stated that "as builts" were provided by the contractor after the water line project was completed in 2017 and the "as builts" provide a diagram of the water line placement and location of shut off boxes. The landlord had not included copies of the "as builts" in the landlord's evidence. DM stated he is familiar with construction and the term "as builts" and he accepted that such diagrams would reflect the scope of the project. DM was asked whether it would be helpful to see the "as builts" to which he indicated it was not necessary.

The tenants questioned how the landlord determined the water line was in need of replacement and whether an expert was consulted or what constitutes a "reasonable and necessary" repair. The landlord's agent submitted that the landlord paid for the project at the time of the project and the landlord does not undertake large expenditures such as this needlessly. I also informed the parties, that Residential Tenancy Branch Policy Guideline 40 may be useful in analysing whether the water line replacement was reasonable at the 40 year old mark.

As for the landlord's mathematical calculations, I had noted some errors in the revised Schedule J. The tenants indicated that they had also noticed some discrepancies. As I indicated previously in this decision, both parties indicated they would be satisfied if I were to determine the appropriate rent increase and correct any mathematical errors in making my decision.

Analysis

This application is being made by the landlord pursuant to section 36(3) of the Act. Section 36(3) provides:

> (3) 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) (a) by making an application for dispute resolution.

I have been delegated by the Director to make this decision on the Director's behalf pursuant to section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

As seen in section 36(3) of the Act, the circumstances for seeking an additional rent increase are provided in the Manufactured Home Park Regulations (the Regulations), and in particular section 33 of the Regulations. There are a number of circumstances where a landlord may seek an additional rent increase and in this case the landlord is making the application in the circumstances provided under section 33(1)(b) of the Regulations.

I have reproduced section 33 below in its entirety, with my emphasis in bold:

> **Additional rent increase**
>
> **33** (1) A landlord may apply under section 36 (3) of the Act *[additional rent increase]* if one or more of the following apply:
>
> (a) Repealed. [B.C. Reg. 225/2017, App. 1.]
>
> **(b) 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**;
>
> (c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the manufactured home park;
>
> (d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the manufactured

home park, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same manufactured home site.

(2) If the landlord applies for an increase under paragraph (1) (b), (c), or (d), **the landlord must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage.**

(3) **The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1)**:

(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.

(4) In considering an application under subsection (1), 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.

(5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

In this case, I was provided evidence that the water line supplying water to sites 23 through 70 (a total of 49 of the 71 sites in the park) was replaced at a cost of $181,650.00 and the project took several weeks or months to complete in 2017. I accept that such a repair is significant based on the cost and the length of time it took to complete.

As for the reasonableness or necessity of the water line replacement, I heard unopposed evidence that the water line was approximately 40 years old and there had

been a few issues with leaks. When I turn to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements*, I note that "wells and water systems" are listed as having an average useful life of 20 years. As such, I accept that a 40 year old water line was at or beyond the end of its life and that its replacement is reasonable and necessary in the circumstances. Although the water line had not yet had a major failure, I find it is not necessary or advisable to wait for that to happen or wait for the order of an expert or health and safety officer before the water line is replaced. Rather, I am of the view that replacing infrastructure when it is aged but not yet completely failed is prudent action on part of the landlord to ensure the water supply to the tenants is not interrupted or contaminated by a major failing or repeated failing of the line. Therefore, I find the water line replacement project of 2017 meets the criteria of section 33(1)(b)(i) of the Regulations.

The second criteria of an application under section 33(1)(b) is that the repair is not expected to recur within a period of time that is reasonable for the repair. The landlord estimated that the new water line will last approximately 40 years and I find that is a reasonable estimation considering the old line lasted 40 years. Therefore, I am satisfied the criteria of section 33(1)(b)(ii) has been met.

Section 33(2) of the Regulations requires the landlord make a single application to increase the rent for all of the sites by an equal percentage. In this case, the landlord had obtained written consent from some of its tenants to increase the rent by an amount ordered by the Director of the Residential Tenancy Branch. The landlord had identified and served the tenants who did not provide written consent with this AARI and I accept that is in keeping with procedural fairness and to give the tenants who did not consent to the increase the opportunity to make submissions. The landlord had indicated to me during the hearing that the landlord would have preferred to increase the rent by the same amount for every site but the landlord did recognize the requirement to increase rent by an equal percentage. Since an additional rent increase must be increased by an equal percentage it stands that a different increase will result for tenants paying a different amount of rent before the increase. As set out in the background section of this decision, the landlord is requesting an increase of 2.326% the first year and the result will then accumulate every year by that amount until the fifth year when the increase will reach 11.63%. As for the specific amount of the increases, I have provided tables of the annual rent increases further below in this analysis.

Next, I turn to section 33(3) of the Regulations for matters that I must consider in making this decision. In making its AARI, the landlord had reproduced section 33(3) and provided a response to each paragraph. The tenants did not oppose any of the

responses put forth by the landlord. Below, I have captured the information and responses applicable under section 33(3):

The landlord confirmed that the increase sought is for the same percentage for all sites, as required under paragraph (a).

The landlord provided the rental payment history for all of the sites in the preceding 3 years as required under paragraph (b). Upon my review of the history, it appears the rents were increased every year by the annual allowable amount, or new tenancies were entered into, but that no additional rent increases were made since this is the landlord's first AARI, as confirmed under the landlord's response to paragraph 33(3)(i).

Under paragraph (c), the landlord indicted that there were no changes to services or facilities provided to the tenants in the 12 months preceding the application and I was not provided evidence to contradict that submission.

Under subsection (d), I am to consider changes in operating expenses or capital expenditures in the three preceding years that the director considers relevant and reasonable. The landlord indicated there were no changes other than the water line upgrade that is the subject of this application. I heard that there was a water line upgrade in 2015 for sites 1 through 22. Since this application was being made in 2019, I accept the first water line upgrade pre-dated the application by more than 3 years and there does not appear to be any relevant changes in the preceding three years for me to consider.

Since there were no changes noted under paragraph (d), paragraph (e) does not apply.

Under paragraph (f), I must consider the submissions of the tenants. The tenants provided a written submission, complete with photographic evidence, that I have considered. The tenants also questioned the completion of the project during the hearing since they had not been informed of the scope of project since it was not obvious by the documents served upon them. The landlord's agent responded to each of the tenant's concerns surrounding possible incomplete aspects of the project and I find the landlord's agent adequately explained that the areas of concern identified by the tenants were not part of the water line replacement project of 2017.

The tenants also questioned the mathematical calculation included in the landlord's revised Schedule J of October 7, 2019. I shall address that matter further below in this analysis.

Under paragraph (g), I must consider whether this application is the result of the landlord's failure to repair and maintain under the Act. Having heard the landlord is replacing a 40 year old water line mainly due to its age and some leaks, I find the timing of this water line replacement is appropriate and is not the result of negligence or failure to repair the line in the past considering water line was 40 years old and water lines have a limited useful life due to aging.

Pursuant to paragraph (h), I was not provided any evidence or suggestion that the project costs were increased or elevated due to failure to make repairs in the previous year.

I find paragraph (i) does not apply as an additional rent increase was not previously requested or approved.

Under paragraph (j), the landlord submits that a notice to end tenancy has not been issued in the last six months, and I am satisfied that a recent notice to end tenancy is not the basis for seeking this additional rent increase.

Under paragraph (k), I must consider whether the landlord has submitted false or misleading evidence in making this application or a previous application under this section. This is the landlord's first application for an additional rent increase and I do not see indication of false or misleading evidence being submitted to me by the landlord. I had ordered the landlord to serve documents included in this application to additional tenants and I have been satisfied that was accomplished.

In light of the above, I grant the landlord's application to increase the rent to recover the cost of the 2017 water line replacement project.

The landlord seeks to increase the monthly rent by 2.326% the first year and then compounded by that amount every year up to an including the fifth year. I have verified that the landlord's request will not exceed the cost of the water line repair project as seen in the chart below:

Chart 1

Additional Rent Increase
Phased in over 5 years

		Monthly rent increase requested (based on avg rent)	Monthly site rental	# of sites	Total monthly rent receivable	Increase Landlord will receive (monthly)	# of months in year	Increase Landlord will receive (annually)
Base year	0		$ 610.92	71	$43,375.32	$ -		$ -
Year	1	$ 14.21	$ 625.13	71	$44,384.23	$ 1,008.91	12	$ 12,106.92
	2	$ 28.42	$ 639.34	71	$45,393.14	$ 2,017.82	12	$ 24,213.84
	3	$ 42.63	$ 653.55	71	$46,402.05	$ 3,026.73	12	$ 36,320.76
	4	$ 56.84	$ 667.76	71	$47,410.96	$ 4,035.64	12	$ 48,427.68
	5	$ 71.05	$ 681.97	71	$48,419.87	$ 5,044.55	12	$ 60,534.60
Additional Rent received after rent increase fully phased in								$ 181,603.79
Cost of water line project								$ 181,650.00

To illustrate the requested increase, as a percentage, I provide the following table:

Table 1

	New increase	Accumulated increase permitted
Year 1	2.326%	2.326%
Year 2	2.326%	4.652%
Year 3	2.326%	6.978%
Year 4	2.326%	9.304%
Year 5	2.326%	11.63%
Year 6	Nil	Nil

In recognition of the above permissible increases, as a percentage, and the three different rental amounts payable by the tenant's subject to this application, I have calculated the five years of annual additional rent increases for the three different rental amounts in the following table as an illustration.

Table 2

Oct 1, 2019 (current rent)	Oct 1, 2020 additional rent increase	Oct 1, 2021 additional rent increase	Oct 1, 2022 additional rent increase	Oct 1, 2023 additional rent increase	Oct 1, 2024 additional rent increase	Oct 1, 2025 additional rent increase
Base Year	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
	= Base year rent x 2.326%	=Year 1 result x 2	= Year 1 x 3 =	= Year 1 x 4 =	= Year 1 x 5 = 11.63%	Additional rent increase ceases
$603.81	$14.04	$28.08	$42.12	$56.16	$70.20	Nil
$612.25	$14.24	$28.48	$42.72	$56.96	$71.20	Nil
$636.88	$14.81	$29.62	$44.43	$59.24	$74.05	Nil

In light of all of the above, I find the landlord has satisfied the criteria for receiving authorization to impose an additional rent increase and I authorize the landlord to increase the rents by the amounts shown in the tables above starting no sooner than October 1, 2020.

Once the landlord has collected the additional rent increase for five years, the landlord must cease charging any part of the additional rent increase and the tenants' monthly rent obligation will return to the amount lawfully required without the additional rent increase.

To impose the additional rent increase I have authorized above, the landlord must serve the tenants with a Notice of Rent Increase at least three full months in advance, every year the additional rent increase is permitted. Since the landlord may be imposing annual allowable rent increases in addition to the authorized additional rent increase,

the landlord must denote the additional rent increase and refer to this decision in doing so.

Conclusion

The landlord's application for an additional rent increase is granted, as amended. The landlord is permitted to increase the rent by phasing in the authorized increase over five years, as seen in the tables provided this decision. The first increase must not start any sooner than October 1, 2020 and must be accomplished by way of serving the tenants with a Notice of Rent Increase at least three months in advance, every year the rent increase is in effect. Once the landlord has collected the additional rent increase for five years, the landlord must cease charging any part of the additional rent increase and the monthly rent obligation will return to the amount lawfully required without the additional rent increase.

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: December 11, 2019

Residential Tenancy Branch