



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OL

Introduction

This hearing was convened in response to an application by the Landlord for an additional rent increase pursuant to section 36 of the *Manufactured Home Park Tenancy Act* (the “Act”). The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. One Tenant provided evidence on behalf of all Tenants on this application however individual Tenants also provided evidence on some points. All of the Tenants’ evidence is set out as being from the “Tenants”.

The Parties who attended the hearing are noted on the front cover. I accept the Landlord’s evidence that each Tenant that did not attend the hearing was served with the application for dispute resolution, notice of hearing and evidence (the “Materials”) by registered mail on July 24, 2020 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants that did not attend this hearing are deemed to have received the Materials on July 29, 2020.

Issue(s) to be Decided

Is the Landlord entitled to the additional rent increase amounts claimed?

Background and Evidence

The Landlord is seeking a monthly increase for a period of 10 years as follows: \$23.89 for nine sites; \$26.80 for one site, \$29.15 for one site; \$30.48 for one site, and \$41.20 for two sites. The Landlord submits in its revised application received July 17, 2020 the following repairs or renovations and cost allocations with reasons why the repairs or renovations were reasonable and necessary:

- Water and Electrical system: \$213,912.91 because “both systems original from 1970”;
- Financing costs: \$267,232.95 because “water system leaking”; and
- Project management costs: \$15,769 because “electrical system was upgraded/replaced.”

In its memo tagged as “L-3” in its evidence package, the Landlord makes submissions on why the above repairs and renovations and costs were reasonable and necessary.

Financing or Interest Costs

The Tenants provide a copy of a previous decision dated May 13, 2020, (the “Previous Decision”). The Previous Decision indicates that the Landlord originally applied for a rent increase based on repairs to the roads, water system, electrical system, security system and in relation to project management costs. The Decision notes that the Landlord also submitted for consideration of the rent increase financing costs of \$266,838.88 for the construction. The Previous Decision declines to consider the evidence of financing costs for the above repairs, awards a rental increase solely related to the repairs done to the roads including proportionate management costs for those repairs and grants the Landlord leave to reapply for a rent increase in relation to repairs to the water and electrical system and related project management costs.

The Landlord submits in its application revised on July 17, 2020 that it now seeks to have financing or interest costs of \$267,232.95 in relation to the water system repairs.

Electrical System

The Landlord states that the electrical system was old and required significant repairs to replace an electrical hub that was originally built in 1970 and to upgrade the other two hubs that were originally built in approximately 1992 and 1998. The Landlord states that the hubs only provided 60 amps and the Landlord wanted to provide 100 amps. The Landlord states that this was necessary as the system was aged, three sites were requesting more power and approximately 6 other sites were experiencing electrical problems. The Landlord states that the oldest hub had been regularly popping breakers and as it no longer met the code, it was unsafe. The Landlord confirms that it provides no supporting evidence in relation to the safety of the old hub. The Landlord states that the other 2 hubs were insufficient to meet the demands of tenants. The Landlord states that this is not just an assumption, as there is a greater number of appliances and devices being used and the system is not up to date to meet the demand. The Landlord states that the 60-amp system is no longer adequate to meet the electrical demands. The Landlord states that it has received 7 complaints from tenants in relation to insufficient power, overheating breakers and popping breakers. The Landlord argues that it has to make the decision about what repairs are necessary and that it is not essential to have supporting evidence of the Landlord's own determination of need. The Landlord states that it incurred costs for the electrical system of \$62,841.05. The Landlord states that 1/3 of these costs are related to the repairs to the hubs. The Landlord states that the life expectancy of the new electrical systems is at least 20 years. The Landlord confirms that it provided no supporting evidence of the expected life of the electrical system and that the electrician informed the Landlord of this life expectancy. The Landlord states that the previous electrical system was only safe for a minimum of 20 years.

The Tenants state that the Landlord's evidence of electrical costs is not supported by the Landlord's evidence of electrical invoices that total \$62,841.05 and that the electric bill does not detail costs. The Tenants state that they are disputing that the electrical work was necessary or reasonable. The Tenants state that the Landlord's oral

evidence of the life expectancy of the new electrical system is confusing as the Landlord's submission sets out at least 50 years as its life. The Tenants states that one of them has lived in the park for 10 years and that at least two hubs were upgraded in that time to 100-amp breakers. The Tenants state that since then there have been no breaker problems and that there are no safety issues. The Tenants state that there were no breaker problems on a 60-amp system. The Tenants state that it conducted a survey of the Tenants and provides the outcome on the existence of any electrical issues or testing done by the Landlord on their lines. The Tenants argue that the 60-amp system was perfectly fine, is legal and was reasonable for the Tenants. The Tenants state that is not sure about when the code was changed to require 100-amp systems. The Tenants state that a 60-amp system provides plenty of electricity and that their newer appliances are more efficient creating a lesser demand on the system. The Tenants states that the Tenant who occupies one of the sites stated by the Landlord to have had breaker issues has been at this site for 10 years and never had a breaker issue. The Tenants states that this Tenant has several appliances and devices and has never had an electrical problem. The Tenants state that the fact that they were given a choice to connect to the 100-amp system is evidence that the system was not and is not necessary. Further, the Tenants state that they incur increased costs to hook into the new system. The Tenants state that they never needed the service as they already had it. The Tenants state that after the electrical work was done the Landlord told them they had to connect to the 100-amp system and had to pay the electrician costs of \$500.00 where payable by cash or costs of \$700.00 where payable by cheque. The Tenants state that safety was not an issue and that if it was then the Landlord should have completed full hookups to the system. The Tenants state that one Tenant is still on 60 amps and has no safety issues. The Tenants argue that the Landlord upgraded the system to expand its business.

The Landlord confirms that 10 years ago the hubs were upgraded to provide 100-amp service. The Landlord confirms that Tenants can choose to be connected for a cost and that they could have been hooked up with the old cable. The Landlord states that it

never said that the one Tenant had any problems. The Landlord was asked if there were any safety issues with using the old service. The Landlord replies that those who are still on the old code can operate as is and that the code now requires a new standard. The Landlord states that it cannot bring in new tenants with only 60-amp service.

The Landlord states that the repairs to the electrical system was reasonable as it is necessary to meet the new requirements and part of the Landlord's obligation to maintain the sites. The Landlord states that the past owner was forced by the city to upgrade the two hubs. The Landlord states that one unit still trips on the 100-amp breaker and the Landlord believes that this unit was requiring too much power for the system. The Landlord states that in the spring of 2020 it found this Tenant resetting the breakers and was informed that this Tenant was there once before.

The Landlord argues that the repairs were done to aging equipment and that the issue is not about whether there is 60 or 100 amps. The Landlord states that past repairs were done to upgrade the equipment and that while the repairs done by the Landlord to upgrade to 100 amps was not necessary but was done because of "modern demand". The Landlord states that the siding costs done to the hub was not cosmetic as it was the hub was previously only covered with painted plywood. The Landlord states that the replacement with metal siding was necessary to keep the electrical equipment out of the weather. The Landlord states that the hub could have been repainted but that this would not protect the plywood from the risk of water damage and would only have been a short-term fix.

The Tenants states that while one Tenant does have 100 amps it is a complete fabrication that it requires more power and that this Tenant has not popped any breakers. The Tenants state that one Tenant got a new furnace in March 202, has 100-amp service and has had no issues since. The Tenants states that between 2016 and 2018 during a period when one Tenant had issues with its furnace this Tenant was

using 3 to 4 heaters during the winter and its 60-amp service was fine with the demand. The Tenants argue that the repairs were not necessarily due to demand of existing tenants and that in order for the Landlord to obtain new tenants it had to upgrade. The Tenants argue that it should not be stuck with a cost to benefit the Landlord's business income.

The Landlord argues that the evidence from one Tenant is not direct evidence as this person was not there 10 years ago and that this Tenant's evidence of information from the electrical person is not reliable or credible as it is 3rd hand information. The Landlord argues that the repairs were not to accommodate a new market as if that was the case the Landlord would only have brought the 100-amp service to new sites. The Landlord states that the delivery to all sites will sustain all sites for the long-term.

The Tenants ask how one Tenant has 100 amps if the old hub was only 60 amps. The Landlord states that that hub was upgraded around 1998 and the 100-amp service went to those who wanted it.

Water System

The Landlord states that the pre-existing water system was new in 1970 and used galvanized pipe that had outlived its useful life, was leaking and had low pressure. The Landlord states that the underground stop drains were seeping, substandard and not able to be maintained. The Landlord states that it incurred repair costs of \$149,224.21 as set out in the invoice provided as evidence for this hearing.

The Landlord's Witness who worked on the installation of the new water system states that from 2001 and forward it did a few repairs for leaks from water main valves to each site. The Witness clarifies that between 2011 and 2015 it replaced lines for three sites, made repairs to the system once in 2015 and twice in 2016. The Witness states that there were multiple problems throughout the whole system with rust and leaking joints and pipes. The Witness states that taking the cost of the water repairs over 20 years is

more or less than the cost of replacement but that after that the damage would be worse. The Witness states that it is difficult to estimate maintenance costs. The Witness states that the Landlord took steps to reduce costs by entering into a joint deal with a telecom company for the excavation work. The Witness states that the Landlord also negotiated previous years rate for its work and obtained a 10 % discount by making early payment. The Witness states that the Landlord also saved money by taking on the management of the project that otherwise would have cost the Landlord an hourly rate of \$75.00. The Witness states that the Landlord saved money and reduced future repair costs by installing the water lines to the road at the front of each site as opposed to bringing them to the under-ground middle of each mobile home. The Witness estimates that the Landlord saved about \$120,000.00. The Witness clarifies that only three repairs were done prior to the replacement of the system and that once the work on that replacement started, they found greater repair requirements. The Witness states that the new pipes would not affect water pressure as the pressure is determined from the city water source.

The Tenants question the water costs noting the invoice includes work on speed bumps and other items not related to the water system. The Witness confirms that other costs are included in its invoice. The Tenants state that \$40,253.63 makes up the costs not related to the water lines. The Witness confirms that costs on the water invoice for drainage and crushing and compacting for paving are not costs related to the water system. The Landlord states that it had to dig up roads to put in the water lines and that the costs for paving and the costs for filling in ditches was all one thing. The Landlord states that the trenches dug for the installation to the under-ground water lines had to be prepared for the repaving of the road. The Landlord confirms that the asphalt costs for paving the road were considered in the previous Decision. The Witness states that it does not know the details of the asphalt costs. The Witness states that when it digs water lines it stop-backfills with old material and then puts on new material for road-based construction so its bill for backfill and compaction is in relation to the existing material. Additional material is then needed for a roadway. The Witness states that this

work also addressed the grade of the old road. The Witness agrees that it included costs for the preparation of the road for paving but that this work would have been done whether or not it was paved because it went to fixing the road.

The Landlord states that the water line will be good for 50 years as a superior product was used. The Landlord states that it has not supporting evidence of this.

The Tenants state that the water lines were not a problem as indicated in the survey it submitted for evidence. The Tenants state that the Landlord did not do any testing of the water lines prior to the project and that the problems were mostly found once the project started. The Tenants states that the new water lines have caused problems for one Tenant that it never had with the old system. The Tenants state that since the repairs there have been more problems than before and that the costs to upgrade are not reasonable. The Tenants states that the new system does not benefit the Tenants as the line was not brought right up to the site. The Tenants state that since it is now a longer path to their homes there is an increased problem with freezing and that it is now required to tape the above ground length of pipe to prevent freeze with these costs being placed on the Tenants. The Tenants state that they had to pay for the material and labour costs to hook their homes up to the new system.

The Landlord states that there is no more risk due to the length of the pipe than before. The Landlord states that their plumber would not assume the risks with hooking up the water lines.

Project Management Costs

The Parties agree that related project costs may be considered for the rent increase at 7.19 % of the water and electrical costs that are considered as the basis for the increase.

Analysis.

Section 36(3) of the Act provides 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) (a) by making an application for dispute resolution. Section 31(1)(b) of the Regulations provides that a landlord may apply for a greater rent increase if 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.

Section 33(3) of the Regulations provides that the director must consider the following in deciding whether to approve an application for a rent increase:

- 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; and
- a relevant submission from an affected tenant.

Financing Costs

It is noted that the consideration of financing costs is only available by an application made under section 33(d) where 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.

The Previous Decision considers the Landlord's evidence of financing interest costs of \$266,838.88 for the construction. I note that the Landlord's original application set out global construction costs at \$288,931.12. The Previous Decision notes that there was no allocation of costs for the various repairs and, for additional reasons, declines to consider this evidence as a basis for an additional rent increase. The Landlord now

seeks consideration of financing costs of \$267,232.95 in relation to the water system alone with repair costs of that water system noted to be \$149,224.21. I consider the Landlord's request to seek nearly the same financing costs as was previously sought and now for less costly repairs than before to be inconsistent. As the Parties are the same, and as subject matter is the same, I also consider the Previous Decision to be final and binding on the Parties. Further interest costs are not operating or capital expenses that must be considered for the rent increase request. For these reasons I again decline to consider financing costs.

Electrical Repairs

The Landlord's submissions in its application sets out that the electrical system was original from 1970. The Landlord then gave evidence that the hubs were upgraded 10 years previous to the repairs done in 2019. The Landlord gave evidence that the two hubs were insufficient to meet demands and then gave evidence that those tenants on the old amps could operate as is. I find this part of the Landlord's evidence to be inconsistent and difficult to understand. For this reason, and given the Landlord's evidence that the repairs done by the Landlord to upgrade to 100 amps were not necessary but were done because of "modern demand" supported by the Tenants' evidence that the upgrades were not necessary I find on a balance of probabilities that the repairs to the electrical system were not necessary. As the Act requires that repairs must be necessary to support a rent increase, I find that the Landlord is not entitled to seek a rent increase based on the electrical repairs. I note that while a Landlord is free to make any repairs or renovations it deems necessary or simply wants, where a landlord seeks an additional rent increase to that otherwise provided for under the Act based on those repairs made, the landlord has the burden to show it is entitled to an increase based on, inter alia, the necessity and reasonable of those repairs. A party may choose to submit any evidence it wishes to advance its claims.

Water repairs

The Landlord gave undisputed evidence of the water system being past its useful life. On this basis I could accept that the repairs were necessary and reasonable. However, the Landlord's Witness evidence supports a finding that the costs presented for the repair of the water system are not as high as claimed as it included costs related to other repairs. Neither the Witness nor the Landlord gave clarifying evidence of the amount of unrelated costs included in the total water repairs costs. I therefore I accept the Tenants' estimation of those unrelated costs to be \$40,253.63. For these reasons I find on a balance of probabilities that the Landlord's related costs for the reasonable and necessary water repairs are **\$108,970.58** (149,224.21 - 40,253.63).

Project Management Costs

Given the agreement of the Parties that project management costs of 7.19% to be considered for the additional rent increase claims, I find that the Landlord has substantiated management costs for the water repairs to be **\$7,834.98**. (108,970.58 x 7.19%)

Calculation of Allowable Rental Increase

The water repairs costs of \$108,970.58 and the related management costs of \$7,834.98 total \$116,805.56. As the rent increase amounts sought were based on total costs of \$496,914.86 as set out in the Landlord's submitted costs for the water and electrical system (\$213,912.91), financing costs (\$267,232.95) and project management costs (\$15,769.00), I calculate that the Landlord has only substantiated a proportional allowable increase of 23.5% ($\$116,805.56 \div \$496,914.86 = 0.2350$) of its additional rent increase claims as follows:

- For those units the Landlord has sought an increase of **\$23.89** the Landlord is entitled to an additional monthly increase of **\$5.61** (23.5% of 23.89);
- For those units the Landlord has sought an increase of **\$26.80** the Landlord is entitled to an additional monthly increase of **\$6.30** (23.5% of 26.80);

- For those units the Landlord has sought an increase of **\$29.15** the Landlord is entitled to an additional monthly increase of **\$6.85** (23.5% of 29.15);
- For those units the Landlord has sought an increase of **\$30.48** the Landlord is entitled to an additional monthly increase of **\$7.16** (23.5% of 30.48); and
- For those units the Landlord has sought an increase of **\$41.20** the Landlord is entitled to an additional monthly increase of **\$9.68** (23.5% of 41.20).

The Landlord is entitled to the above additional rent increase for a period of 10 years or 120 months and must serve the Tenants with the notice of the above allowed additional rent increases as required by the Act.

Conclusion

The Landlord is entitled to an additional rent increase based on the costs of repairs to the water system and related project management costs as set out above.

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: October 7, 2020

Residential Tenancy Branch