Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKBRIDGE LIFESTYLE COMMUNITIES INC. and [tenant name suppressed to protect privacy]

DECISION

DISPUTE CODE OL

INTRODUCTION

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 13, 2020 seeking an additional rent increase pursuant to section 36(3) of the *Manufactured Home Park Tenancy Act* (the "*Act*") and section 33(1)(b) of the *Manufactured Home Park Tenancy Regulation* (the "*Regulations*") (the "Application").

This matter came before me December 10, 2020, January 18, 2021 and February 09, 2021. Interim Decisions were issued December 15, 2020, February 01, 2021 and February 09, 2021. This decision should be read with the Interim Decisions.

The Landlord provided a written document dated March 10, 2021 with corrections to Tenants' names and sites on the Application. The corrections have been made and are reflected in this decision.

At the June 08, 2021 hearing, Legal Counsel appeared with G.M. for the Landlord. The Landlord called S.F., M.L., B.H. and M.S. as witnesses at the hearing.

G.J. appeared at the hearing for the Tenants. G.J. called P.K. as a witness. A number of Tenants called into the hearing; however, I did not record which Tenants called in because G.J. was representing all Tenants named on the Application. Further, I asked if there were any Tenants on the line who objected to G.J. representing them and nobody objected.

I explained the purpose of the hearing and the hearing process to the parties. G.J. and all witnesses provided affirmed testimony. The witnesses were not involved in the hearing until required.

G.J. confirmed receipt of the Landlord's materials and did not raise any issues relating to service when asked.

Legal Counsel confirmed receipt of the Tenants' materials and did not raise any issues relating to service.

In relation to service of the Tenants, the Landlord submitted documentary evidence of service. As stated in the Interim Decision issued December 15, 2020, I reviewed the evidence of service and was satisfied of service of the Tenants other than in relation to the sites listed in the Interim Decision. All of the sites in relation to which I stated that I could not find the sites on the service spreadsheet have since been removed from the Application at the request of the Landlord. There were four sites in relation to which I stated that there were no registered mail receipts in evidence. The Landlord provided further evidence of service in written submissions dated January 14, 2020 in relation to these four sites. Based on the undisputed evidence of service of the Landlord, I am satisfied the Tenants named in this decision were sufficiently served pursuant to section 64(2)(b) of the *Act.*

G.J. confirmed there were no outstanding issues from the Interim Decision issued February 01, 2021 in relation to production of documents.

G.J. confirmed the Landlord allowed access to the spa as ordered in the Interim Decision issued February 09, 2021.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all materials submitted as well as all testimony and submissions of the parties and witnesses. I will only refer to the evidence I find relevant in this decision.

ISSUE TO BE DECIDED

1. Is the Landlord entitled to impose an additional rent increase?

BACKGROUND AND EVIDENCE

The Landlord seeks to impose an additional rent increase of 0.52%. The basis for the additional rent increase is repairs and renovations done to the spa in the manufactured home park. The cost of the repairs and renovations was $202,739.36; however, the Landlord has calculated the additional rent increase sought based on a lower amount of

$201,148.83. The amount of $201,148.83 has been amortized over 20 years to account for the useful life of the spa. The Landlord has divided the monthly recovery amount by the 225 sites in the manufactured home park to arrive at the 0.52% sought (see page 23 of the Landlord's evidence).

Landlord's Documentary Evidence

The Landlord did not provide written submissions as discussed and directed in the Interim Decisions. The Landlord only provided their initial evidence package, a further evidence package and a reply to the written submissions of the Tenants.

The Landlord's materials outline the following relevant points. The spa is included in the tenancy agreements between the Landlord and Tenants. The spa was at least 40 years old at the time of the repairs and renovations. The spa system's piping was collapsing which caused the spa to lose water and to malfunction. There was previously an abatement of rent while the spa was out of service which shows the Tenants wanted the spa. The Landlord hired reputable trades to repair the spa. Extensive work was required to repair the spa. Channels were dug to allow for pipe replacement. The deck was refinished. The tub was re-tiled. A new filtration system was installed to meet current building code requirements. Two vents in the wall had to be removed and replaced with a new HVAC system to bring the spa up to code.

The Landlord submitted a statement from M.S., the engineer responsible for the repairs and renovations to the spa. The statement of M.S. notes that a site review was done on November 07, 2017 which revealed the following about the spa:

- 40 year old facility
- The Landlord reported that the spa was losing water and was not being used because of the leaks
- Leaks result in a waste of water and may affect structural integrity of foundations and contaminate soil with chlorine and other chemicals
- Mechanical equipment and systems past service life due to age
- Jet pumps not operational
- Storage of chemicals not code-compliant and not safe
- Two exhaust fans in spa which resulted in large energy consumption for heating
- Back flow preventer on the make-up water not code-compliant

The statement of M.S. also sets out work done to the spa to meet current building code requirements including:

- A new HVAC system was installed
- A new ventilation system was installed in the chemical storage room
- A dedicated room for chemical storage was created and equipped with safety equipment
- All spa-related underground pipes were replaced, pressure tested and leaks were eliminated
- Water intakes were replaced
- Back flow preventer was replaced

M.S. states that the engineering company contacted four contractors and requested prices for the mechanical scope of the work needed for the spa. M.S. states that only one of the four contractors provided an estimate. M.S. states that the Landlord contracted N.T., P.P.S and G.I. to do the work on the spa. M.S. states that a seismic engineer confirmed seismic integrity of the spa on August 31, 2018. M.S. states that, on March 22, 2019, municipal permits were formally closed, and the health authority formally approved the spa for operation.

The Landlord submitted a statement from M.L. which includes the following relevant points. The spa was approximately 40 years old. The engineering company did a site review and determined that the spa was not functioning. There were leaks. Jet pumps were operational; however, the spa lost substantial amounts of water when they were turned on. The storage of chemicals was not code-compliant and was not safe. Two exhaust vents were not code-compliant. The back flow preventer was not code-compliant. It was determined that the spa was losing water and the underground pipes were broken and leaking.

The statement of M.L. includes the following further relevant points. The engineering company was retained to review the work, prepare the scope of the work and ensure the work was done properly. N.T. was hired as the contractors to do the work. The engineering company oversaw the work of N.T. Everything had to be brought up to code which required a new pipe system, new chemical system, new pump system, new ventilation system and renovation of the tub. A separate room for chemical storage was required which necessitated a change in the floor plan for the spa area of the building. The flooring had to be upgraded so that all flooring matched. The cost of $60,000.00 noted on the building permit was only an estimate of the permitted required work. The building permit covered the mechanical aspect of the project. A building permit was not

required for a large portion of the work. The useful life of the project is 20 years based on RTB Policy Guideline 40 and a chart submitted. The work started in August of 2016 and completed in September of 2018.

The Landlord submitted a statement from S.F. which includes the following relevant points. The spa was not functioning. The spa is a material term of the tenancy agreements between the Landlord and Tenants and therefore had to be repaired or replaced. The amortization period for the spa is 20 years which is in line with the RTB Policy Guideline and chart submitted. In 2016, the spa boiler was replaced at a cost of $3,203.00. The spa boiler was not changed during the project at issue.

The Landlord submitted a statement from B.H. which includes the following relevant points. B.H. monitored the spa daily. In 2016, it was discovered that the spa lost water quickly when the jets were turned on.

The Landlord submitted a written reply to the Tenants' written submissions. The written reply includes the following relevant points. The Landlord has provided the invoices for the work as well as documents showing the work performed and the associated costs. The Tenants have not provided evidence that the Landlord did not spend the amounts in question, with legitimate third parties having completed the work. The Landlord has provided evidence of the work passing all inspections. It is clear that work was required to be done to repair the spa. There is no evidence to show what the Tenants say the cost could have been if the repairs and renovations were done in a different way. There is no evidence to show the work performed was not proper. There is no basis to say the costs incurred were not fair and reasonable. All work was approved and inspected. There is no breach of the building code. The Tenants have not provided evidence that the work was not reviewed, inspected and approved. The Tenants' survey results in relation to the spa do not take away from the requirement of the Landlord to address the issues with the spa. The process for finding a company to do the work on the spa is not an issue at this hearing.

The Landlord submitted the following relevant documentary evidence:

- Written points about the repairs and renovations to the spa
- Rent information for all Tenants
- Maps
- Drawings
- Photos of the spa
- An outline of the additional rent increase calculation

- An outline of the cost of the repairs and renovations to the spa
- Invoices from N.T.
- Invoices from the engineering company
- Invoice relating to a pre-project hazardous building materials survey
- Emails about the cost of the building permit
- Documents showing amounts paid
- Site Review Reports
- Assurance of Professional Field Review and Compliance
- Documents relating to the building permit
- Backflow Assembly Test Reports
- Pressure Testing Report
- Inspection Reports by the health authority
- A sample tenancy agreement showing the spa is a service, amenity or facility included in rent
- RTB Policy Guideline 40 outlining the useful life of building elements
- ASHRAE Equipment Life Expectancy Chart
- An outline of costs from the engineering company
- Purchase Order Supplementary Conditions
- Scope Addendum
- Specification and drawings for the spa
- Statements referred to above with attachments
- Written reply to the Tenants' written submissions with attachments

Tenants' Documentary Evidence

I have reviewed the Tenants' written submissions and materials and note the following relevant points.

The Tenants challenge the cost of the project, $202,739.00, in relation to the budget for the project, $60,000.00. The Tenants take issue with the project management and financial control of the project. The Tenants submit that there were management errors and omissions in relation to the project. The Tenants take issue with the actions and role of the engineer. The Tenants raise issues about design defects. The Tenants submit that the project was not managed to best-practice standards. The Tenants submit that there was inadequate procurement control, cost control and construction quality control in relation to the project. The Tenants submit that the $202,739.00 cost is inflated and unreliable. The Tenants raise issues about the general contractor used for the work. The Tenants submit that the standards of project management and financial control "must be impeccable".

The Tenants question whether there were leaks in the spa or failure in relation to the spa such that repairs and renovations were required. The Tenants take issue with items not completed in accordance with the engineer's Specification and Drawings document submitted by the Landlord. The Tenants submit that aspects of the work done do not meet building code requirements.

The Tenants take issue with charges noted in the invoices for the work done. For example, a charge by M.S., the engineer, of $6,789.00 for review of shop drawings when M.S. had not yet obtained the shop drawings as shown in the Site Review Reports. As well, a charge by M.S. of $10,579.00 for detailed designs when there were no detailed designs completed. The Tenants also raise issues with the invoices provided by the general contractor.

In relation to the requirement in the *Regulations* that repairs and renovations be reasonable, the Tenants make the following submissions. The repairs and renovations were not reasonable. The cost claimed is not reasonable due to the issues raised about cost control, project management and construction quality control. The cost is not reasonable based on the detailed estimates presented by the Tenants in the tables provided.

In relation to the requirement in the *Regulations* that repairs and renovations be necessary, the Tenants make the following submissions. The spa is not a standard or required service under the *Act*. The spa is a luxury amenity. The spa has been inaccessible and potentially dangerous in recent years. The spa has been closed for 3.5 of the last 5 years. The Tenants do not respect, want or use the spa as shown in the survey conducted about the spa. The Landlord did not consult the Tenants about the repair or renovation of the spa.

The Tenants acknowledge in their written submissions that the spa had an agreed rent value of $20.00 per month. The Tenants acknowledge in their written submissions that the amortization period for the rent increase is 20 years.

The Tenants refer in their written submissions to a statement in Policy Guideline 37 about a rent increase not being permitted when the cost will be reimbursed or otherwise recovered.

The Tenants raise issues about the ownership of the Landlord and property.

The Tenants submitted the following relevant documentary evidence:

- Photos of the spa showing the issues that have been raised about it not complying with the engineer's Specification and Drawings document or the building code
- A list of pool and spa contractors operating in the area in 2018
- Documents showing the Landlord's evidence was redacted
- A Construction Contract Checklist
- Recommended Best Practice for Pre-Qualification for Selection of General Contractors and Professional Consulting Services which appears to be a BC Government document
- A BCCA document
- A Stipulated Price Bid Form
- An Invoice dated October 27, 2018
- A letter from G.J. to M.P. dated March 04, 2021
- An outline written by G.J. about phone conversations with M.P. The Landlord asked that the Tenants call M.P. as a witness at the hearing. The Tenants did not call M.P. as a witness at the hearing. Given this, I give no weight to this outline given it is not written by M.P. and the Tenants chose not to call M.P. as a witness at the hearing.
- Tables of information
- Questions posed to S.F. with attachments
- Spa satisfaction survey completed by the Tenants
- Documents about the ownership issue
- Questions posed to M.L.
- An email from R.J. stating that the cost of the spa repairs and renovations is high and stating that a new spa would cost $75,000.00 to $100,000.00
- Statement of P.K. noting issues with the cost of the repairs and renovations, the project management of the repairs and renovations and stating that the work was poorly carried out and fails to meet applicable building codes

Landlord's Hearing Evidence

At the June 08, 2021 hearing, Legal Counsel confirmed the following. The Landlord is a private company. There have not been any additional rent increases imposed in the last three years. The Landlord is relying on Health Inspection Reports, M.S.'s statement and the testimony of M.S. to show that all work on the spa passed inspections.

S.F. provided the following relevant testimony. The spa is an amenity in all tenancy agreements between the Landlord and Tenants. The spa is a material term of the tenancy agreements because the Tenants expected a rent discount when the spa was not available, and the spa is listed in the tenancy agreement for all Tenants. The Tenants asked for a $20.00 rent reduction when the spa was not available. There were quite a few Tenants who used the spa daily. She received emails from Tenants about the spa when it was not available. None of the Tenants said the spa should not be fixed until this hearing. The spa was repaired because it is a material term of the tenancy agreements, Tenants were using it and it was losing water when the jets were turned on.

S.F. provided the following further relevant testimony. In relation to the Tenants' submission that there are no flow indicators on the pipes, she looked at the photos and there are arrows in black marker as well as blue tape with arrows. She went and looked at the pipes and there are arrows and blue tape. Page 25 of the Landlord's evidence is an accurate outline of the invoices for the repairs and renovations to the spa. The spa has passed all health and safety requirements of the City. The spa is currently working but is closed due to the pandemic. The Tenants' spa survey does not represent the whole manufactured home park. She is not aware of any improper or inflated prices in relation to the repairs and renovations to the spa.

I had reviewed the invoices submitted for the repairs and renovations to the spa and calculated a total of $166,244.91. In relation to the N.T. invoices, I calculated them to be $134,600.00. I asked Legal Counsel at the hearing to explain the discrepancy or indicate where I am missing an invoice or cost. Legal Counsel asked S.F. to address this. S.F. testified that a certificate that was paid for is missing and referred to page 27 of the Landlord's evidence.

In response to questions from G.J., S.F. provided the following relevant testimony. She believes the spa is a material term of the tenancy agreements because it is specifically noted in the tenancy agreements as an amenity. She does not have a record of how many Tenants used the spa prior to it being unavailable. She never polled the Tenants about the spa. She cannot remember if there were valve tags on the spa system. There were several arrows and blue tape on the piping when she viewed it.

M.S. provided the following relevant testimony. He is a registered engineer in BC. He was involved in the repairs and renovations to the spa and did the work professionally. He charged the Landlord for the work in accordance with generally accepted rates. He accurately recorded his time and work on the invoices provided.

M.S. provided the following further relevant testimony. He reviewed the site and saw the state of the spa equipment in November of 2017. The state of the spa is noted in his written statement. He believed N.T. did the work on the spa professionally and would not have signed off on it otherwise. The cost of the work was in line with the proposal and generally in accordance with the scope of the work conducted. When he designed the mechanical aspect, he had to design it to the building code existing at the time. The building and infrastructure were built according to 1970s standards, so all systems had to be brought up to code in 2017. The work was done to code. The work was inspected by the City and documents were issued to close meaning the work was inspected and approved. He provided a letter of assurance which was the final confirmation that the system operates as intended. He tried to get quotes for the work from other contractors as described in his written statement.

In response to questions from G.J., M.S. provided the following relevant testimony. He was informed by the Landlord that the spa was losing water. He did not locate the leak or do further testing. His view was that underground pipes were leaking and based this on the fact that the spa was losing 25 cm of water per day and there was no visible water or leaks. Further, the spa was 40 years old and ready for replacement as pipes have a life expectancy and there was good evidence that it was time to replace the pipes. He had concerns that the leaking water was a pollutant and the action taken to address this was to fix the leaks. He did a detailed design which is included in the drawings and specifications document submitted. Shop drawings are different from the detailed design and are provided by the contractor. There were numerous shop drawings provided for the project and he reviewed the ones provided as noted in his invoices. There were some shop drawings that were not provided as noted in the Site Review Reports; however, these were specific to the equipment noted in the Site Review Reports. He did not provide any estimate to the Landlord in relation to the cost of the project.

B.H. provided the following relevant testimony. Tenants did let him know that they wanted the spa back in service. The water level in the spa was dropping daily before the repairs and renovations were done. The water level was dropping a little with the circulation pump but rapidly when the jets were turned on. There was no evidence of a leak above the spa. He saw the pipes when they were removed from the ground. The pipes were brittle and thin. The glue had been delaminated from the piping.

In response to questions from G.J., B.H. provided the following relevant testimony. Approximately nine Tenants let him know that they wanted the spa back in service. All pipes were uncovered during the excavation. He did not do tests to determine the

volume of the leakage or where it was occurring. No reports were made to the health authority about the leakage. There was no physical evidence of the leakage. The significant loss of water and absence of physical evidence of the spa leaking led him to believe the pipes were leaking. Once the excavation was done, he observed multiple cracks and glue loss at the joints of the jet and circulation pipes.

M.L. provided the following relevant testimony. The $60,000.00 value on the building permit was a rough estimate for the mechanical aspect of the project. It was only when they got into the work with the general contractor that they knew the cost of the project was going to be higher. They contacted the City and were told they did not need to change the value on the building permit. He observed the work being done on the spa. He observed the pipes which were old, made of material that would not be used today, fragile and breaking. The work done to the spa included replacement of the flooring, replacement of the piping, re-tiling, changes to bring the spa up to code, new walls, new showers, new changing rooms, work to the chemical room and a new HVAC system. He was the project coordinator. He saw N.T. and others doing the work. The work appeared to be done efficiently and effectively. He reviewed the invoices provided for the work. He reviewed the status of the work. He was satisfied with the work done. He was aware of the Landlord reaching out to companies to do the work but none of the companies produced a price. Someone else also had to approve the invoices for the work done and did approve the invoices.

In response to questions from G.J., M.L. provided the following relevant testimony. M.S., the engineer, provided a verbal cost estimate for the project. There was no excavation of foundations. He observed the pipe while it was coming out of the ground during excavation. Any determination about leaks was sorted out prior to his involvement in the project. Degradation of the glue on the piping was not an excavation issue, it was an age issue. There may have been some of the original piping left in the ground, he cannot confirm this. Most of the pipes were removed. He approved the invoices for the work done by verifying that the work in the invoices matched the work completed on site and, if it did, he approved the invoice and submitted it to someone with authority to sign off on higher amounts if necessary. He was responsible for inspecting the work with the engineering company. The invoices provided in evidence are not necessarily the final approved invoices.

In response to a further question by Legal Counsel, M.L. confirmed that invoices were reviewed before they were paid.

Legal Counsel made the following submissions at the hearing. The materials provided support the additional rent increase. P.K. took issue with how the work proceeded; however, he had incomplete and inaccurate information. P.K. was not aware that invoices were reviewed by two people as stated by M.S. and M.L. who said invoices were reviewed on an ongoing basis. The suggestion that the work was not monitored is baseless. P.K.'s experience relates to large projects which is very different than the project at issue. P.K.'s opinion clearly relates to government projects. The suggestion that bid documents were not provided is wrong. P.K. states that the cost of the project was way over budget; however, he did not have complete information or an accurate estimate of the cost. P.K. made extraordinary comments in his statement which goes to the root of whether his statement should be relied upon. The work was necessary in the opinion of the engineer and P.K.'s suggestion otherwise is based on false assumptions. G.J. also makes false assumptions.

Legal Counsel made the following further submissions. The only conclusion from the witness testimony about the pipes is that they were over 40 years old, falling apart, leaking and had to be fixed. Further testing in relation to the leak was not necessary. M.S. said that when the water levels are dropping 25 cm and there is no evidence of water on the pool top, there is a problem with the system. The problem required a proposal to be provided to the Landlord outlining the work the engineering company would do and the document produced by the engineering company was used to cause bid packages to be prepared which were given to more than one company. There was no requirement to get bids completed; however, this was done. When the Landlord could not get bids, they went with N.T. who did the work.

Legal Counsel made the following further submissions. The work was done in the approximate price range the engineering company anticipated. The $60,000.00 on the building permit was a rough estimate relating to the mechanical work. M.S. and M.L. reviewed the work done. The work was done because the system was falling apart and the pipes were cracking, old, brittle and had joints without glue. It is clear the work was reasonably necessary. The suggestion that the work was not done properly is without merit. There is no evidence of a breach of the building code. G.J. cannot comment on whether the work is up to code.

Legal Counsel made the following further submissions. The spa does not have to be a material term of the tenancy agreements for an additional rent increase to be applicable. The spa is required under the tenancy agreements. The survey of the Tenants in relation to the spa was done after the repairs and renovations were done. The tenancy

agreements state that a spa is provided, the spa was there, it broke down and it got fixed. The issue is not which Tenants wanted the spa.

Tenants' Hearing Evidence

At the June 08, 2021 hearing, G.J. confirmed the following. The Tenants acknowledge repairs and renovations were done to the spa. The Tenants' main concern is that the repairs and renovations were not done with adequate cost control. The Tenants are not wholly relying on the email from R.J. in evidence about the appropriate cost of the repairs and renovations. The Tenants are relying on the estimates provided in the tables at pages 76 to 100 of their evidence to show that the cost of the repairs and renovations was unreasonable. The Tenants' survey about the spa was done between the last hearing and June 08, 2021. The Tenants do not agree that the spa is a material term of their tenancy agreements. The position that the original estimate for the project was $60,000.00 is based on the building permit and the statement of M.L. as M.L. states that M.S., the engineer, provided the estimate. There have not been any additional rent increases imposed in the last three years.

I asked G.J. what the Tenants are relying on for the position that the Landlord was required to follow certain processes such as a formal bidding process. G.J. submitted that the Landlord is a large company, the Landlord is seeking to charge the Tenants for the cost of the repairs and renovations and therefore the documentation to support the additional rent increase should be comprehensive and the Landlord should have undertaken the project with best practice management in mind. G.J. did not point to any document or evidence to support the position that the Landlord was required to follow certain processes such as a formal bidding process.

During the hearing, I reviewed the tables at pages 76 to 100 with G.J. to clarify what the Tenants were seeking to show with these tables. G.J. clarified that the Tenants were seeking to show the inadequacies of the N.T. invoices, that N.T. charged GST when they should not have, that the final cost was more than the only document that is referred to as a bid and that the invoices from the engineer are inflated. G.J. explained that one of the tables shows the competitive prices for aspects of the project and advised that he obtained the competitive prices from the internet and contractors. G.J. advised that no source documents have been provided showing the competitive prices.

The Tenants called P.K. as a witness. Legal Counsel objected to P.K. being called as a witness and submitted as follows. P.K. does not live in the manufactured home park. P.K. has no personal knowledge of the repairs and renovations to the spa. P.K. is not a

registered engineer. The statement of P.K. is akin to an expert report with no credentials. P.K. makes editorial comments in the statement. P.K. is clearly an advocate for the Tenants. P.K. did not do an independent review of the repairs and renovations. P.K.'s expertise is from another country. Most of the report of P.K. is submissions and argument. It is not necessary for me to hear from P.K.

I allowed the Tenants to call P.K. as a witness. Section 68 of the *Act* states:

> 68 The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be
>
> (a) necessary and appropriate, and
>
> (b) relevant to the dispute resolution proceeding.

I allowed the Tenants to call P.K. as a witness for the following reasons. The rules of evidence that apply in a court proceeding do not apply in these proceedings. I would not refuse to hear from a witness in these proceedings unless their evidence was clearly irrelevant to the issues before me. P.K.'s evidence is not clearly irrelevant to the issues before me. The concerns raised by Legal Counsel more appropriately go to the issue of the weight that should be given to P.K.'s evidence versus whether the Tenants should be allowed to call P.K. as a witness.

P.K. provided the following relevant testimony. He has a degree in mechanical engineering. He has never worked professionally in Canada and therefore has not needed to join professional bodies in Canada. He has extensive experience in project management.

In response to questions from Legal Counsel, P.K. provided the following relevant testimony. He did a desk study based on the materials submitted for this matter to complete his statement and did not see the repairs and renovations done to the spa. He was not involved in how the project came to be. He is not familiar with the work completed.

P.K. provided the following further relevant testimony. His experience relates to larger companies than the Landlord; however, a project is a project and the principles of project management are the same. His opinion outlined in his statement would not necessarily change if the Landlord was a private company versus a government body.

His comments relate to any project. Not everyone follows ISO 9000 requirements. He is not aware of a legal requirement to follow ISO 9000; however, the principles of ISO 9000 are practical. He has done projects in the local market in his personal capacity.

P.K. provided the following further relevant testimony. He looked at the project to see if there is an audit trail that demonstrates that a 400% overrun has been justified and he was unable to find that audit trail. His statement is based on the suggestion that the original budget for the project was $60,000.00 and he understood this to be the total estimate for the entire project. He was surprised by the amount of the invoices for the engineer. He has seen the photos of the work done to the spa and is not impressed. He is not qualified to comment on whether the work done to the spa was done in accordance with the building code.

P.K. provided the following further relevant testimony. It is his view that the Landlord simply let the project happen and that there was overrun which he feels should not be the Tenants' responsibility to pay due to sloppiness and incompetence. He has no evidence that the invoices are incorrect. He has no evidence that there was another contractor who would have done the work. He has no evidence that the work could have been done cheaper. He has no evidence that the cost of the repairs and renovations was higher due to the errors alleged.

In answer to a further question by G.J., P.K. testified that he did not see a contract in the documents provided by the Landlord and would have expected to see one.

G.J. made the following submissions at the hearing. M.S. said he had nothing to do with estimates for the project, yet M.L. said M.S. did provide estimates. If M.S. did not provide estimates for the project, nobody did.

ANALYSIS

Section 36(3) of the *Act* states:

> 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 62 of the *Act* states:

> If the director is satisfied that circumstances prescribed for the purposes of section 36 (3) [amount of rent increase] apply, the director may order that a landlord is permitted to increase rent by an amount that is
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> (a) greater than the amount calculated under the regulations for the purpose of section 36 (1) (a), and
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> (b) not greater than the maximum rent increase authorized by the regulations prescribed for the purpose of this section.

Section 33(1) of the *Regulations* states:

> 33 (1) A landlord may apply under section 36 (3) of the Act [additional rent increase] if one or more of the following apply:
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> (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…
>
> (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).

RTB Policy Guideline 37 states:

F. ADDITIONAL RENT INCREASE UNDER THE MANUFACTURED HOME PARK TENANCY ACT

The *Manufactured Home Park Tenancy Act* allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the maximum annual allowable amount. The Manufactured Home Park Tenancy Regulation sets out the limited grounds for such an application. A landlord may apply for an additional rent increase if one or more of the following apply:

1. The landlord has completed significant repairs or renovations to the manufactured home park in which the manufactured home site is located that are reasonable and necessary, and will not recur within a time period that is reasonable for the repair or renovation…

If a landlord applies for a rent increase under any of the first three circumstances, 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 manufactured home park agree in writing to the proposed increase, the landlord must include those sites in calculating the portion of the rent increase that will apply to each site, however the tenants need not be named and served on the Application for Additional Rent Increase.

A landlord cannot carry forward any unused portion of an allowable rent increase or an approved additional increase that is not issued within 12 months of the date the increase comes into effect without an arbitrator's order.

G. APPLICATION FOR ADDITIONAL RENT INCREASE

Unless a tenant agrees to a rent increase of an amount that is greater than the prescribed amount, a landlord must apply for dispute resolution for approval to give the additional rent increase. The landlord must properly complete the application. The rent increase identified on the Application for Additional Rent Increase must be the total proposed rent increase, which is the sum of the annual rent increase + the additional rent increase:

Proposed rent increase = annual rent increase + additional rent increase

The application will be considered by the arbitrator in relation to the circumstance(s) identified as applicable to each application. Select items relevant to each circumstance are discussed below.

In order to ensure that an additional rent increase is issued in accordance with the Legislation, and cannot be disputed by a tenant, the landlord should either obtain the tenant's consent, in writing, or apply for the increase before issuing the first Notice of Rent Increase that will include the additional rent increase. If the application results from significant repairs or renovations, or a financial loss resulting from an increase in operating expenses or financing costs, the application should be made before the first Notice of Rent Increase for the calendar year is issued.

Each tenant named on the application must be served with a copy of the Application and hearing package. 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.** The tenants will have an opportunity to appear at the hearing of the application, question the landlord's evidence, and submit their own evidence. In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors and will determine which factors are relevant:

- the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;
- the rent history for the affected unit for the preceding three years;
- any change in a service or facility provided in the preceding 12 months;
- any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;
- a relevant submission from an affected tenant;
- a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation;
- whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;
- whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;
- whether an arbitrator has set aside a notice to end a tenancy within the preceding six months; and
- whether an arbitrator has found, in a previous application for an additional rent increase, that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.

An arbitrator's examination and assessment of an Application for Additional Rent Increase will be based significantly on the arbitrator's reasonable interpretation of:

- the application and supporting material;
- evidence provided that substantiates the necessity for the proposed rent increase;
- the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation8; and
- the tenant's relevant submission.

Evidence regarding lack of repair or maintenance will be considered only where it is shown to be relevant to whether an expenditure was the result of previous inadequate repair or maintenance. A tenant's claim about what a landlord has not done to repair and maintain the residential property may be addressed in an application for dispute resolution about repair and maintenance.

1. Significant repairs or renovations

In manufactured home park tenancies, a landlord's completion of a repair or renovation is a circumstance under which he or she can apply for an additional rent increase if: (1) the repair or renovation is significant; (2) the repair or renovation is reasonable and necessary; and (3) the repair or renovation will not reoccur within a time period that is reasonable for the repair or renovation.

A repair or renovation may be considered "significant" when (i) the expected benefit of the repair or renovation can reasonably be expected to extend for at least one year, and (ii) the repair or renovation is notable or conspicuous in effect or scope, or the expenditure incurred on the repair or renovation is of a noticeably or measurably large amount…

In order for a capital expense for a significant repair or renovation to be allowed in an Application for Additional Rent Increase for a manufactured home park tenancy, the landlord must show that the repair or renovation was reasonable and necessary, and will not reoccur within a time period that is reasonable for the repair or renovation. A repair or renovation may be considered "reasonable" when (i) the repair or renovation, (ii) the work performed to complete the repair or renovation, and (iii) the associated cost of the repair or renovation, are suitable and fair under the circumstances of the repair or renovation. A repair or renovation may be considered "necessary" when the repair or renovation is required to (i) protect or restore the physical integrity of the manufactured home park, (ii) comply with municipal or provincial health, safety or housing standards, (iii) maintain water, sewage, electrical, lighting, roadway or other facilities, (iv) provide access for persons with disabilities, or (v) promote the efficient use of energy or water.

Where an expenditure incurred on the repair or renovation has been, is anticipated to be, or will be reimbursed or otherwise recovered (e.g., by grant or other assistance from a government, by an insurance claim), a rent increase will not be ordered. In considering a landlord's capital expense for a significant repair or renovation, the arbitrator will consider only those expenditures which have not been included in full or in part in a previous rent increase given to the tenant before the subject proposed rent increase.

An application can be made at any time after the landlord has made the repairs or renovations and is able to provide proof of their cost. The landlord does not have to have completed paying for the repairs or renovations. A landlord could complete

a major renovation project in phases, and seek an additional rent increase at the completion of each phase. However, the additional rent increase must apply equally to all rental units in the building.

The landlord must provide documentary evidence (e.g. invoices) of the costs of those repairs or renovations, and must also be prepared to show why those costs could not have been foreseen (residential tenancy) or are reasonable and necessary (manufactured home park tenancy), and that they will not recur within a reasonable time period….

H. ARBITRATOR'S POWERS ON AN APPLICATION FOR ADDITIONAL RENT INCREASE

In considering an application for additional rent increase, an arbitrator may:

- grant the application, in whole or in part;
- refuse the application;
- order that the increase granted be phased in over a period of time; or,
- order that the effective date of the increase is conditional on the landlord's compliance with an arbitrator's order respecting the residential property.

An arbitrator may order the landlord to supply any financial records the arbitrator considers necessary to properly consider the application, may issue a summons for such records, or may refuse the application if inadequately supported.

The arbitrator's order will set out the amount of the maximum allowed increase. That amount includes the annual rent increase and any additional amount granted and, if applicable, the amount to be phased in over multiple years. An arbitrator's refusal of the application will result in an order for the amount of the Annual Rent Increase.

Pursuant to rule 6.6 of the Rules, and Policy Guideline 37, the Landlord, as applicant, has the onus to prove they are entitled to impose an additional rent increase. Pursuant to rule 6.6 of the Rules, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Tenants raise issues about the ownership of the Landlord and property. The ownership of the Landlord and property is not an issue properly before me. I accept the Landlord's position that they are a private company.

I make the following findings about the requirements set out in the *Regulations* and Policy Guideline 37.

Has the Landlord completed significant repairs or renovations?

In determining what work was done to the spa, I rely on the evidence of M.S., M.L. and S.F. as well as the documentary evidence submitted. I am not satisfied based on the evidence provided that there are reliability or credibility issues with the evidence of M.S., M.L., S.F. or the documentary evidence submitted. In relation to M.S., I note that he is a registered professional engineer. I am satisfied M.S. is an independent professional whose connection to the Landlord is that he completed the work at issue as I do not find that there is compelling evidence to show otherwise. It is not clear what motivation M.S. would have to provide false or inaccurate information. Further, I find the evidence of M.S. and M.L. in relation to the work done on the spa reliable because both were involved in the work and oversaw the work.

Based on the evidence of M.S., I am satisfied the following repairs and renovations were done to the spa. A new HVAC system was installed. A new ventilation system was installed in the chemical storage room. A dedicated room for chemical storage was created and equipped with safety equipment. All spa-related underground pipes were replaced, pressure tested and leaks were eliminated. Water intakes were replaced. The back flow preventer was replaced.

Based on the evidence of M.L., I am satisfied of the following. The spa had to be brought up to code which required a new pipe system, new chemical system, new pump system, new ventilation system and renovation of the tub. A separate room for chemical storage was required which necessitated a change in the floor plan for the spa area of the building. The flooring had to be upgraded so that all flooring matched. The work to the spa included re-tiling and installing new walls, new showers and new changing rooms.

I find that the Site Review Reports, photos, invoices and Scope Addendum dated April 11, 2018 outline the work done to the spa.

I am satisfied based on the evidence of M.L. that the work on the spa started in August of 2016 and completed in September of 2018.

Based on the above, I am satisfied the repairs and renovations to the spa were notable or conspicuous in scope given the extent of the work done.

I am satisfied that the useful life of the repairs and renovations to the spa is 20 years based on the evidence of S.F. and M.L. as well as RTB Policy Guideline 40 and the ASHRAE Equipment Life Expectancy Chart submitted. I note that RTB Policy Guideline 40 states that the useful life of a whirlpool or jacuzzi is 15 years; however, it is my understanding that the parties agree the useful life should be 20 years. In any event, whether 15 years or 20 years, this is well over one year and therefore I am satisfied the expected benefit of the repairs and renovations to the spa can reasonably be expected to extend for at least one year.

I am satisfied based on the invoices provided that the repairs and renovations to the spa cost at least $166,244.91 which is the total of the invoices before me. Given this, I am satisfied that the expenditure incurred is of a noticeably or measurably large amount.

Given the above, I am satisfied the Landlord has completed significant repairs or renovations to the spa as contemplated and defined in the *Regulations.*

Were the repairs and renovations reasonable?

I find that the two main issues raised in relation to whether the repairs and renovations were reasonable are (1) whether the work performed was reasonable and (2) whether the cost was reasonable.

The work performed is outlined in the photos, invoices, Site Review Reports, drawings, Scope Addendum, Specification and Drawings document, evidence of M.S., evidence of M.L., evidence of B.H. and evidence of S.F.

I am satisfied based on the evidence provided that the work performed was suitable and fair under the circumstances of the repairs and renovations, and therefore reasonable, for the following reasons.

As stated, M.S. is a registered professional engineer. The Site Review Reports show that M.S. oversaw the work being done on the spa. M.S. provided evidence that the work done on the spa by N.T. was done professionally and pointed out that he would not have signed off on it otherwise. M.S. provided evidence that the work was done in accordance with the building code. M.S. provided evidence that the work was inspected by the City and documents were issued to close meaning the work was inspected and approved. M.S. provided evidence that he provided a letter of assurance which was the final confirmation that the system operated as intended. M.S. provided evidence that the spa passed inspections and was approved for operation.

I find the evidence of M.S. compelling. As stated, I accept that M.S. is an independent professional. I note that M.S. provided documentary evidence and appeared at the hearing to provide affirmed testimony. I had no concerns about the reliability or credibility of M.S.'s testimony. As stated, it is not clear what motivation M.S. would have to provide false or inaccurate information. I acknowledge that G.J. disagreed with M.S. about certain aspects of M.S.'s testimony. However, I do not find that the Tenants have provided compelling evidence to call into question the reliability or credibility of M.S. Further, I place more weight on the evidence of M.S. than on the testimony and submissions of G.J. and P.K. because M.S. is an independent professional who was involved in the repairs and renovations of the spa at all stages and therefore is in a better position to comment on the work completed.

I also rely on the evidence of M.L. to find that the work done was suitable and fair under the circumstances. M.L. provided evidence that the work on the spa was done efficiently and effectively. M.L. provided evidence that he reviewed the invoices provided for the work done. M.L. provided evidence that he reviewed the status of the work done. M.L. provided evidence that he was satisfied with the work done.

I find the evidence of M.L. about the work done on the spa to be compelling given M.L. was the project coordinator and observed the work being done. I am satisfied M.L. has first-hand knowledge of the work done on the spa. I note that M.L. provided a written statement and appeared at the hearing to provide affirmed testimony. I had no concerns about the reliability or credibility of M.L.'s testimony.

I also rely on the evidence of S.F who provided evidence that the spa passed all health and safety requirements of the City and is working. I am satisfied S.F. would be aware of this information given she is an employee of the Landlord. I had no concerns about the reliability or credibility of S.F.'s testimony.

The documentary evidence provided shows that the work done to the spa passed inspections. For example, the Inspection Reports show that the spa was approved to open September 13, 2018.

I am satisfied based on the evidence noted above that the work done to the spa was suitable and fair under the circumstances and therefore reasonable.

I find that the Tenants have failed to provide compelling evidence that the work done to the spa was not suitable and fair under the circumstances or not reasonable.

I find G.J. and P.K. have asserted that the work done to the spa was not reasonable or done in accordance with the building code without providing documentary evidence to support this. Given the documentary evidence provided showing the work passed inspections, I would expect to see documentary evidence showing otherwise from a third-party who is familiar with the work and qualified to determine whether the work passed inspections and accorded with the building code. The Tenants have not submitted such evidence.

The Tenants have not provided evidence that the spa is not working as intended or that the repairs and renovations did not address the problems with the spa.

I find the Tenants are seeking a step-by-step review of the minutiae of the project and seeking to hold the Landlord to a standard of perfection. It is not my role on the Application to review every step and aspect of the repairs and renovations in great detail to determine whether any of these were sub-par. It is my role to look at the project and results as a whole to determine whether the work done was reasonable. I emphasize that the standard is one of reasonableness, not one of perfection.

I do not find that there is compelling evidence before me to call into question the evidence of M.S., M.L. and the documentary evidence provided or to support the position that the work performed was not reasonable.

In relation to the cost of the repairs and renovations, the cost is set out in the invoices submitted which add up to $166,244.91. I accept that the invoices provided are adequate to account for the amounts claimed in them as they do outline the basis for the amounts claimed.

M.S. testified that the cost of the work done on the spa was in line with the proposal and generally in accordance with the scope of the work conducted.

The Tenants take issue with the bidding process for the repairs and renovations. I am not satisfied based on the evidence provided that the Landlord was required to follow the specific processes outlined by the Tenants. I am satisfied based on the evidence of M.S. that he, or his company, contacted four contractors and requested pricing for the mechanical aspect of the work on the spa and I find this sufficient.

I acknowledge that the building permit valued the work at $60,000.00. However, M.L. explained the reason for this and I am not satisfied based on the evidence provided that the reason given is false. Nor is it obvious from the evidence provided that $60,000.00

was the original estimate for all of the work to be done to the spa and that this estimate was provided at a time when the Landlord was fully aware of all aspects of the work to be done to the spa. Further, there is no compelling evidence before me showing that all of the work done to the spa could have been done for $60,000.00.

I acknowledge that the Tenants take issue with some of the specific charges in the invoices; however, I am not satisfied based on the evidence provided that specific charges are an issue. For example, the Tenants submitted that M.S. charged for reviewing shop drawings when M.S. did not have shop drawings. However, at the hearing, M.S. explained that there were numerous shop drawings provided during the project and that only some shop drawings in relation to specific items were not provided. I found M.S.'s explanation about shop drawings reasonable. Again, I did not have any concerns about the reliability or credibility of M.S. Again, it is not clear what motivation M.S. would have to provide false or inaccurate information. I acknowledge that G.J. disagreed with M.S. about shop drawings; however, there is no compelling evidence before me to show that M.S. was not telling the truth about the shop drawings.

Further, I am satisfied based on the evidence of M.L. that he reviewed the invoices and ensured the work noted on them had been completed. Again, I had no concerns about the reliability or credibility of M.L.

I am satisfied based on the evidence of M.S. and M.L. that the cost of the repairs and renovations was reasonable.

I do not find that the Tenants have submitted compelling evidence to call into question the evidence of M.S. and M.L. or to show the cost was not reasonable.

In relation to the tables showing competitive pricing for aspects of the project, I find that these are G.J.'s own statements about competitive pricing as the Tenants have not provided the source documents showing where the competitive prices were obtained.

The Tenants have submitted an email from R.J. about the cost of the repairs and renovations. I do not find this email particularly compelling because R.J. was not adequately identified and there is insufficient evidence before me as to why this individual is qualified to comment on the cost of the repairs and renovations. Further, R.J. did not appear at the hearing to provide affirmed testimony. As well, it is not clear what information R.J. was relying on for their opinion.

In relation to the statement of P.K., I am not satisfied P.K.'s opinion about the cost of the repairs and renovations calls into question the evidence of M.S. and M.L. given P.K. was not involved in the repairs and renovations.

Importantly, the Tenants have not provided compelling evidence from third-party companies showing that they could have done the repairs and renovations for less. Although G.J. and P.K. have again focused on a step-by-step analysis and review of the minutiae of the project, the Tenants have not provided clear evidence that the project could have been done for substantially less than the amount claimed.

In the circumstances, I am satisfied the cost of the repairs and renovations was reasonable. In relation to the cost, the Landlord has only provided invoices totalling $166,244.91 and therefore I am only satisfied that this is the amount that can be approved for an additional rent increase. I do not find the testimony of S.F. that the total cost was $202,739.36 to be sufficient. As stated in Policy Guideline 37, "the landlord **must** provide documentary evidence (e.g. invoices) of the costs of those repairs or renovations" (emphasis added). I find that providing all the invoices for the repairs and renovations was a basic requirement on the Application and it is not reasonable to allow the Landlord to claim for amounts not shown in the invoices.

Were the repairs and renovations necessary?

I accept the evidence of S.F. that the tenancy agreements between the Landlord and Tenants state that the spa is an amenity or facility included in rent. I am satisfied S.F. would be aware of this information given she is the community manager of the manufactured home park. I did not understand the Tenants to dispute that the spa is an amenity or facility included in their rent. Given the spa is included in the tenancy agreements, I find it reasonable that the Landlord repaired the spa.

I am satisfied the spa was at least 40 years old prior to the repairs and renovations based on the evidence of M.S. and M.L. I did not understand the Tenants to dispute this point.

I am satisfied based on the evidence of M.S. that the spa mechanical equipment and systems were past their useful life due to their age. I am satisfied M.S. is qualified to make this determination given he is a qualified engineer. Further, this accords with RTB Policy Guideline 40 which states that the useful life of a whirlpool or jacuzzi is 15 years. According to RTB Policy Guideline 40, the spa was 25 years past its useful life.

I am satisfied based on the evidence of M.S. that the spa building and infrastructure were built according to 1970s standards and therefore all systems had to be brought up to code in 2017. This accords with the age of the spa. I am also satisfied based on the evidence of M.S. that aspects of the spa were not code-compliant and were unsafe. Again, this accords with the age of the spa.

I am satisfied based on the evidence of M.S. and B.H. that the spa was losing water at the rate of approximately 25 cm per day prior to the repairs and renovations. I did not have concerns about the reliability or credibility of B.H. I am satisfied B.H. would have been aware of the condition of the spa given he is the community maintenance technician for the manufactured home park and monitored the spa daily. I am satisfied M.S. was made aware of the spa losing water in his site review as this is noted in his November 22, 2017 letter to M.L. Further, in the Tenants' own evidence for their request for documents, there is a letter from the "LGE HOA Steering Committee" which states, "reports from Tenants confirm the Spa waters were draining into the soil due to cracks."

I am satisfied based on the evidence of M.S. that the leaks in the spa system resulted in a waste of water and that this is a reasonable concern which can impact environmental and financial considerations I am also satisfied based on the evidence of M.S. that the leaks may have affected the structural integrity of foundations and contaminated soil with chlorine and other chemicals.

I do not find it relevant that M.S. or others did not locate the leak or do further testing. I accept that the spa was losing water at a rate of 25 cm per day. I accept that the spa was 40 years old and therefore twice as old as its useful life. I accept that aspects of the spa did not comply with the building code and were unsafe. In the circumstances, I accept that it was reasonable to conclude that the spa needed to be repaired and renovated.

I do not find it relevant that the spa is not a standard or required service under the *Act* or that it is a "luxury" amenity. The spa is included in the tenancy agreements. The spa has been in the manufactured home park for 40 years. The spa was operational and then required repairs and renovations. I am satisfied the Landlord was entitled to repair and renovate the spa.

I do not find that the Landlord was required to ask the Tenants if they wanted the spa repaired. The spa is the Landlord's property and part of the manufactured home park,

which is the Landlord's property. The Landlord had both a duty and a right to maintain the spa pursuant to their obligations under the *Act*.

I do not accept the position of the Tenants that the spa had no value given the Tenants previously argued or accepted that it had a value of $20.00 per month. I note that the Tenants sought or accepted a $10.00 then $20.00 rent reduction while the spa was not operational. A rent reduction is only appropriate when the value of a tenancy has been reduced by the absence of a service or facility. If the Tenants felt the spa had no value, the Tenants should not have received any rent reduction as the absence of the spa would not have had any impact on the value of their tenancies.

In relation to the survey about the spa completed by the Tenants, I note that it appears to only have been completed by 121 people which is just over half of the number of sites in the manufactured home park. Further, the survey was done after the Landlord sought an additional rent increase. As well, the survey shows that some Tenants do value the spa.

Given the above, I am satisfied the repairs and renovations were necessary and required to maintain a facility provided for in the tenancy agreements between the Landlord and Tenants.

Has the Landlord completed repairs or renovations that will not recur within a time period that is reasonable for the repair or renovation?

It is my understanding that the parties agree that the useful life of the repairs and renovations is 20 years and this accords with RTB Policy Guideline 40 and the ASHRAE Equipment Life Expectancy Chart submitted. In the circumstances, I am satisfied the repairs and renovations will not recur within the next 20 years and I find this time period to be reasonable.

Further factors to consider

As stated in the *Regulations* and Policy Guideline 37, I must consider the following factors:

- the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;
- the rent history for the affected unit for the preceding three years;
- any change in a service or facility provided in the preceding 12 months;

- any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;
- a relevant submission from an affected tenant;
- a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation;
- whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;
- whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;
- whether an arbitrator has set aside a notice to end a tenancy within the preceding six months; and
- whether an arbitrator has found, in a previous application for an additional rent increase, that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.

I have considered the above. I find the most relevant point to be that there has not been an additional rent increase imposed in the past three years. I do not find that the parties have provided further or compelling arguments about the above factors or how they should impact the decision. I do note that the Tenants refer to the last point and make submissions about the ownership of the Landlord and property. I do not find that the Landlord has submitted false or misleading evidence in a previous application for an additional rent increase or that this factor should impact the decision.

I note that the Tenants refer in their written submissions to a statement in Policy Guideline 37 about a rent increase not being permitted when the cost will be reimbursed or otherwise recovered. The Policy Guideline gives examples of what this means including that the cost is reimbursed or recovered through a grant or assistance from government or through an insurance claim. There is no evidence before me that this applies here.

Summary

In summary, I am satisfied based on the evidence provided that the Landlord has completed significant repairs or renovations that were reasonable and necessary and will not recur within a time period that is reasonable for the repairs or renovations.

Therefore, I am satisfied the Landlord is entitled to impose an additional rent increase pursuant to section 33(1)(b) of the *Regulations* and section 36(3) of the *Act*.

Pursuant to section 33(4) of the *Regulations*, I grant the Application in part. I find the calculation used to determine the additional rent increase sought is reasonable given it amortizes the cost of the repairs and renovations over 20 years and accounts for all sites in the manufactured home park. However, as stated, I find the calculation should be based on the amount of $166,244.91 shown in the invoices submitted. Therefore, I find the permitted additional rent increase to be as follows:

Cost Permitted: $166,244.91
Useful life: 20 years (240 months)
Monthly recovery: $692.68
$692.68 divided by 225 sites: $3.07/site
307 divided by 692.68 = .44%

The Landlord is permitted to impose an additional rent increase of .44%; however, the Landlord must comply with all other requirements under the *Act* and *Regulations* in relation to rent increases. Further, the rent increase freeze currently in effect applies and therefore the Landlord cannot impose any rent increase, including the additional rent increase, until the rent increase freeze has expired.

As discussed at the hearing, this decision will only be sent to G.J. and Legal Counsel for the Landlord. However, if any of the Tenants named on the decision want a copy of the decision sent directly to them, they can contact the RTB at the phone numbers provided on the last page of this decision and the RTB will send a copy of the decision to them.

CONCLUSION

The Application is granted in part. The Landlord is permitted to impose an additional rent increase of .44%. The Landlord must comply with all requirements under the *Act* and *Regulations* in relation to rent increases. The rent increase freeze currently in effect applies and therefore the Landlord cannot impose any rent increase, including the additional rent increase, until the rent increase freeze has expired.

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

Dated: July 07, 2021

Residential Tenancy Branch