



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OL (ARI)

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Landlords filed under the *Manufactured Home Park Act* (the “Act”) requesting approval for an additional rent increase pursuant to section 36 of the *Act*. The matter was set for a conference call.

Five Tenants (the “Tenants”), both Landlords and the Landlord’s son (the Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord submitted a list of Canada Post Registered mailed and signed confirmations for the receipt of the service of the Notice of Hearing Documents for each rental site in the park. Both Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both the Landlords and the Tenants were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

An Interim Decision was issued on June 29, 2021, ordering the landlord to amend their application to include all rental pads located on the rental property and to provide additional evidence and documentation in support of their Application for an Additional Rent Increase. This final decision must be read in conjunction with the Interim Decisions of June 29, 2021.

I find that the requirements and orders set out in the Interim Decisions have not been met, as the Landlord submitted their amendment application through the evidence submission portal and not through the Residential Tenancy Branch (RTB) application submission system. As the Landlord did not submit their amendment correctly, I find

that the Landlord amendment must be dismissed and that the additional rental pads and tenancy listed on the amendment application are not respondents to this application. However, as the Landlord did include a list of all rental pads in the park, and the rent amounts for those sites in their evidence submission, I find that I am able to continue in these proceedings as I have the needed information to render a decision on the original application.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

- Are the Landlords entitled to an additional rent increase?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord submits that as a requirement from the local municipality and health authority (the “municipality”), they were required to install a wastewater system in this manufactured home park. The Landlord submitted this work was completed in March 2021. The Landlord testified that there are 37 pad sites in the park and that 8 of the sites are either unoccupied or have new renters and that their rents already included the rent increase requested in this application for the older pad rentals. The Landlord is requesting an additional 27.3% increase on the remaining 29 sites in the park to cover their cost for the capital expenditure to install the wastewater system.

The Landlord seeks the approval of an additional rent increase on 29 of the 37 pad sites in the amount of 27.3, based on their costs of \$763.700 to purchase and install the wastewater system. The annual allowable amount of rent increase for 2022 is 1.5% as determined by the regulations and was posted on the Residential Tenancy Branch website on September 8, 2021, 16 days after the date of these proceedings. As such, the Landlord is seeking to increase the rent by 28.8% based on the rents payable at the

time the Landlord submitted their Application for an Additional Rent Increase. A copy of the municipal order and 39 pages of invoices were submitted into evidence by the Landlord.

The Landlord testified that the new wastewater system has a life expectancy of 50-years and will not require anything more than normal maintenance during its 50-year life expectancy.

The Tenants agreed that the Landlord had installed a new wastewater system, that the system was ordered installed by local municipal authorities, and they did not dispute the Landlord's stated cost of the installation. However, the Tenant's testified that they feel a 27.3% rent increase is unreasonable and completely unaffordable to most of the renters living in the park. The Tenants submitted three written statements into documentary evidence.

The Landlord testified that many of the rents in the park are below market value and that they feel that rent in the amount of \$675.00 a month is what each renter should be paying. The Landlord testified that they approached each renter before applying for the additional rent increase to negotiate that the rents in the park all be the same set amount, of \$675.00 per month, but that they were not successful in getting agreement from everyone for the requested increase.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 36 of the *Act* states a landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations; ordered by the director on an application approving an amount greater than allowed under the regulations; or agreed to by the tenant in writing.

Section 33(1)(b) of the Manufactured Home Park Tenancy Regulation states a landlord may apply under section 36(3) of the *Act* for an additional 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 the repairs or renovations are

reasonable and necessary, and will not recur within a time period that is reasonable for the repair or renovation.

Based on the evidence of the Landlord, I find that the Landlord has completed significant renovations to the manufactured home park that were reasonable and necessary to comply with local municipal government requirements. I further find, based on the nature of the renovation, these will not recur within a time period that is reasonable, if at all.

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

- (a) The rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect;*
- (b) The rent history for the affected manufactured home site in the 3 years preceding the date of the application;*
- (c) A change in a service or facility that the landlord has provided for the manufactured home park in which the site is located in the 12 months preceding the date of the application;*
- (d) A change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;*
- (e) The relationship between the change described in paragraph (d) and the rent increase applied for;*
- (f) A relevant submission from an affected tenant;*
- (g) A finding by the director that the landlord has contravened section 26 of the Act [obligation to repair and maintain];*
- (h) Whether, and to what extent, an increase in costs with respect to repair or maintenance of the manufactured home park results from inadequate repair or maintenance in a previous year;*
- (i) A rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;*
- (j) Whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;*
- (k) Whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has
 - (i) Submitted false or misleading evidence, or**

(ii) Failed to comply with an order of the director for the disclosure of documents.

Pursuant to Section 33(3)(f), I have considered all relevant submissions presented by the Tenants.

Upon consideration of the evidence of both parties, I find that there has been no evidence presented to me that there has been a finding by the Director that the Landlord has failed to comply with Section 26 of the Act; the increase in costs resulted from inadequate maintenance or repair from a previous year; a rent increase previously approved that is reasonably attributed to the costs of fulfilling a landlord's obligation has not been fulfilled; the Director has set aside a notice to end tenancy within the 6 months preceding this Application; or that the Director has found, in similar applications, that the landlord has submitted false or misleading evidence or failed to comply with an order of the Director for the disclosure of documents.

Section 33(3)(a) requires that I consider the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect. The Landlord is seeking a rent increase on 29 of the 37 sites and has provided base rents for all sites in the park to be considered in this application.

As per Section 33(3)(b), there is no evidence before me of any concerns of the parties related to the rent history for the affected manufactured home site in the 3 years preceding the date of the application.

I also find that neither party has provided any evidence, pursuant to Section 33(3)(c), that there has been a change in a service or facility that the landlord has been provided for the manufactured home park in the 12 months preceding the date of the application. While I recognize there has been a change in the way the service of wastewater is provided, there is no evidence presented by either party that this change represents a termination or restriction in the service provided.

Section 33(3)(d) requires that I consider changes in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable. In essence, this is the primary consideration for the Landlord's Application.

I accept the Landlord's testimony that the new wastewater system has an operational life expectancy of 50 years and that they incurred \$763,700.25 worth of expenses to purchase and install this system in the manufactured home park. I have reviewed the receipts submitted into evidence by the Landlord, and I find that the Landlord has proven the value of the cost they incurred to install the wastewater system.

However, I find that the Landlord's requested amount of 27.3% to be an unreasonable increase in the rent for the installation of this wastewater system. As a 27.3% increase would have the Landlord recovering the full requested costs of this expenditure in 11.2 years, within the first quarter of the life expectancy of this wastewater system.

As this wastewater system has a life expectancy of 50 years, I find it appropriate to award the Landlord the recovery of their cost to install this wastewater system over the system's life expectancy and spread between all 37 of the rental pads in this park. In order for the Landlord to recover their requested cost over the 50-year life expectancy of this wastewater system, I find that the Landlord needs to increase the monthly rent by \$34.40 per pad. As each rental pad in this park is at different monthly rates of rent, based on when their individual tenancy began, I must determine the increase based on the average pad rental rate for the park, which I determine to be \$561.43 per month. Consequently, I find that an additional rent increase of 6.2% will recover the Landlord's capital expenditure of this wastewater system over its 50-year life expectancy.

Therefore, I grant the Landlord's request for an additional rent increase in part, awarding the Landlord a 6.2% additional rent increase per rental pad listed in their original application to recover the cost of this capital expenditure of this manufactured home park.

Conclusion

The Landlord's application is hereby allowed in part.

I find that the Landlord is entitled to an additional rent increase of 6.2% for this capital expenditure in addition to the yearly allowable rent increase set by the Residential Tenancy Branch. The Landlord must attach a copy of this decision and act in accordance with the regulations when implementing the increase.

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

Dated: September 16, 2021

Residential Tenancy Branch