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 Codes OL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 14, 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").

There have been two earlier preliminary hearings on April 16, 2021 and September 14, 2021. Interim Decisions were issued dated May 10, 2021, and September 15, 2021. This decision should be read with those earlier decisions.

The corporate landlord was represented by legal counsel and an agent. Two representatives of the respondent tenants attended and all tenants were represented by an advocate. The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. All parties affirmed that they were not recording the hearing.

Orders regarding service and exchange of evidence was made in the Interim Decision of September 15, 2021 and the parties confirmed receipt of the respective materials.

Issue(s) to be Decided

Is the landlord entitled to apply an additional rent increase for the

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on much of the factual background. The manufactured home park contains 345 home sites. There are 281 sites located on the Southern part of the park and 64 sites on the Northern part. The two areas of the park have different electrical distribution systems. The South has an electrical grid constructed in the 1970s which provides power to the home sites and common areas. Electricity is included in the monthly site rents for the Southern residents. Residents of the North have individual accounts with BC Hydro and pay their utilities directly to the utility company. The common facilities of the park including a club house and street lights are powered by the Southern electrical grid.

The landlord undertook major repairs and upgrades to the electrical system of the park from 2017 to 2019. The cost of the work claimed by the landlord is $1,206,966.77. The landlord now seeks authorization to implement a 2.47% rent increase consisting of the permitted amount of 1.4% and an additional 1.07% arising from significant repairs or renovations to the manufactured home park's electrical systems. Pursuant to section 33(2) of the Regulations the landlord has applied for a rent increase to all of the sites in the park.

The landlord submits that expected useful life of the major upgrades is 25 years and provides the following calculations.

Cost of Work:	$1,206,966.77
Useful life:	25 years (300 months)
Monthly Recovery :	$4,023.22
Number of Sites:	345
Percentage increase per resident:	1.07%

The parties agree on the scope of the work performed and that the work was reasonable and necessary based on the age and condition of the system. There are no issues with the quality of the work, or the qualifications of the trades retained to perform the work. The landlord notes in their application and materials that work was last done 25 years ago and they estimate the useful life of the present work to be an additional 25 years.

The landlord called as witnesses the current park manager, the previous park manager and a representative of the company retained to perform the electrical system upgrades. They provided testimony on the scope of the work performed, the reasons the work was required and the condition of the park prior to the work.

The agreed upon facts are that the electrical system for the park was significantly outdated and incapable of meeting the need for the electrical consumption of the residents. The landlord commissioned and had the upgrade and repair work performed from 2017.

The landlord submits that over the past three years any rent increases to the residents of the park have been in the amount allowable under the guidelines.

Prior to this hearing many of the residents of the home park have entered agreements with the landlord consenting to the rent increase proposal.

The tenants submit that the repairs to the electrical system in the park was necessitated due to the landlord's failure to maintain the home park during the years prior to the work. The tenants submit that the landlord and previous owners of the park failed to maintain the electrical system in a reasonable state of repair and that the need for significant repairs was foreseen since 2011.

The tenants submit that the landlord was aware of the limits of the electrical system and updated the rules of the park to prevent the use of electrical equipment such as hot tubs and air conditioning that would increase the demands on the system. The tenants submit that reports from the landlord's electrical service provider dated 2013 states that equipment was found to be in extremely dirty condition with signs of rust and corroded connections.

The parties agree that there were incidents of power failure in the park in 2011 and 2012 for which the affected tenants filed an application with the Branch for a monetary award for damages and loss. The tenants submit that the landlord was aware of the need for repairs at that time and the cost of the current work is due, in part, to the landlord's failure to take appropriate actions at an earlier date.

The tenants submit that the residents of the Northern portion of the park will have limited benefit from the electrical system upgrades as they contract with BC Hydro for

their electrical utilities. The use of the common areas are included in the list of services and amenities for tenants of both the North and South areas of the park.

The tenants submit that some of the residents of the park have received rent increases over the past three years for amounts including an increase due to inflation and proportionate increase in utilities. The tenants note in these previous rent increases the number of sites in the park provided by the landlord are clearly the number of sites in either the North or South portion.

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 33 of the Regulations provides in relevant parts:

> **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;
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> …
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> (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.
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> (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.

The issue is further expanded upon in Residential Tenancy Policy Guideline 37 which states:

> A manufactured home park landlord may apply to the director for an additional rent increase if they complete 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.
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> A repair or renovation may be significant if the expected benefit of the repair or renovation can reasonably be expected to extend for at least one year, and the repair or renovation is notable or conspicuous in effect or scope, or the expenditure incurred on the repair or renovation is of a measurably large amount.
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> A repair or renovation may be reasonable and necessary if the repair or renovation is required to protect or restore the physical integrity of the manufactured home park; comply with municipal or provincial health, safety or housing standards; maintain water, sewage, electrical, lighting, roadway or other facilities; or promote the efficient use of energy or water.

…

In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors and will determine how much weight to give to each of the factors:

- the rent payable for similar rental units or similar sites in the property or park immediately before the proposed increase is intended to come into effect;
- the rent history for the affected rental unit or site for the three years preceding the date of the application;
- any change in a service or facility that the landlord has provided in the 12 months preceding the date of the application;
- any relevant and reasonable change in operating expenses and capital expenditures in the 3 years preceding the date of the application, and the relationship between that change and the additional rent increase applied for;

- 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 for the repair or maintenance of the property results from inadequate repair or maintenance in the past;
- whether a previously approved rent increase, or a portion of a rent increase, that is reasonably attributable to the costs of performing a landlord's obligation under the Legislation has not been fulfilled;
- whether an arbitrator has set aside a notice to end a tenancy within the six months preceding the date of the application; 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 may also consider any other factors that they determine are relevant to the application before them.

Viewed in its entirety I find the landlord has met their evidentiary onus to establish on a balance of probabilities that there is a basis for an additional rent increase. There is little dispute that the landlord performed work that would properly be characterized as significant. The repairs undertaken have upgraded the electrical system for the park for the first time in several decades. The work took several years to complete, and it is not expected to recur over the next 25 years. I find that the repairs are reasonable and necessary and not expected to recur for a reasonable period of time.

I have reviewed the documentary evidence of the cost of the work and I am satisfied that they are reasonable and commensurate with the scope of the project. The landlord has submitted comprehensive invoices, receipts and reports of their work and I am satisfied that the total cost of the repairs and renovation is $1,206,966.77.

In their written and oral submissions, the tenants object to the additional rent increase. The tenants first submit that the root cause of the significant repairs and upgrades to the electrical system was necessitated due to the landlord's previous failure to maintain the park in a reasonable state of repair.

The tenants submit that the need for upgrades to the electrical system was known or ought to have been known since 2011 and submit correspondence from the landlord's witness dated September 19, 2013 where it is recommended that planning for replacement and upgrade begin as soon as possible.

I find insufficient evidence that there has been inadequate maintenance and repairs in the past that has caused the need for the present system upgrades. Based on the evidence of the parties I find the primary factor that has caused the degradation of the electrical system is simply the march of time. I accept the evidence of the landlord that a project of this scope and nature takes time to plan and implement. I am satisfied that the landlord commenced this major system upgrade in a reasonable timeframe based on the recommendations of professionals. The landlord was aware of the age and condition of the electrical system from 2011. I find the measures they undertook prior to commencing with the full system upgrades to be reasonable and adequate to address issues discovered at the time.

I find insufficient evidence that earlier intervention would have reduced the scope of the upgrades. There is little evidence to support the suggestion that had the landlord taken undertaken more repairs or maintenance in the past there would not be the need for the current upgrades to the electrical system. The repairs and maintenance can only delay the need for total system upgrades to the electrical system for a time until age requires significant work to replace the existing, outdated system.

I find that the present repairs and renovations to the work is a result of the age of the system and that there is insufficient evidence that there has inadequate repairs or maintenance that has materially contributed to the scope or cost of repairs.

I find that the previous decisions of the Branch submitted into evidence by the tenants makes some reference to loss of quiet enjoyment and value of the tenancy due to some electrical system failures. I find that the landlord took reasonable steps to rectify any prior breaches until circumstances allowed them to undertake the significant repairs now claimed.

I take note of the parties' evidence of previous rent increases for the sites in the park during the preceding years. Each of the previous increases provides the number of sites located in the Northern or Southern portion of the park as the total number of sites. The parties acknowledge that the park is divided into a North and South section with the Northern residents on a separate electrical system supplied by BC Hydro and paid directly to the utility company.

The *Act* and Regulation requires a landlord to issue a rent increase to all of the residents of the park in equal percentages. While I find it would be reasonable and fair

to apply a rent increase to all residents where the repairs or renovations to the manufactured home park is for amenities or facilities that are accessible to all residents, in the present case the evidence is that the primary benefactors are the residents of the South.

I note that this is distinct from a situation where there has been repairs or renovations made to an element of the park that is accessible to all residents but simply not used such as a hot tub or a particular access road. In the present circumstances the residents of the Northern part of the park will see little benefit beyond the park clubhouse and streetlamps.

In previous notices of rent increases it is evident that the landlord calculated the proportionate increases based on the number of sites located in each portion of the park. The legislation requires the landlord to make an application increase the rent for all sites in the park by an equal percentage but I find this would be inequitable and unfair for the residents of the North portion of the park.

Based on the foregoing and in accordance with section 36(3) of the Act and 33(1)(b) of the Regulations I am satisfied that the landlord has established on a balance of probabilities the basis to implement an additional rent increase.

Pursuant to section 33(4) of the Regulations, I grant the application in part. I find that the Northern residents of the park are distinct as they are not on the same electrical distribution system as the other portion of the park, pay electrical utilities directly to BC Hydro and have tenancy agreements that do not include the electricity in their monthly site rent. I find it would be unreasonable and inequitable to implement an additional rent increase to those residents who gain limited benefit from the upgrades.

I find it would be similarly unreasonable to recalculate the percentage increase for the Southern residents based on the total cost and the number of sites. I find that it would be contrary to the principles of procedural fairness and Residential Tenancy Rule of Procedure 4.6 to amend the application by recalculating a higher amount of rent increase for the residents of the Southern portion of the park. I find that my statutory authority pursuant to section 33(4)(a) is to grant the application in full or in part and does not grant me the ability to recalculate a new higher amount of rent increase not indicated on the original application.

I therefore order that the landlord is permitted to impose an additional rent increase of 1.07% to the 281 sites located in the Southern portion of the park. The landlord must comply with all other requirements under the Act and Regulations in regards to rent increases. I further note that the current emergency measures restricting rent increases stands and any rent increases must be issued in compliance with whatever emergency measures are in place at that time.

Conclusion

The application is granted in part. The Landlord is permitted to impose an additional rent increase of 1.07% on the 281 sites identified as being located in the Southern portion of the manufactured home park. The Landlord must comply with all requirements under the Act and Regulations in relation to rent increases and any emergency measures in place.

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

Dated: December 24, 2021

Residential Tenancy Branch