Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bel-Aire Estates
and [tenant name suppresed to protect privacy]

DECISION

Dispute Code: ARI-E

Introduction

The landlord seeks a rent increase pursuant to sections 36(1)(b), 36(3) of the *Manufactured Home Park Tenancy Act* (the "Act") and section 33 of the *Manufactured Home Park Tenancy Regulation,* B.C. Reg. 481/2003, (the "Regulation).

A hearing in respect of this application was convened on February 7, 2022. Attending the hearing were the park owner, his agent/advocate, two tenants, and an advocate for one of those tenants. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Whether the application may be granted.

Background, Evidence, and Facts

The manufactured home park was built in the early 1970s. It consists of 47 sites, of which the landlord seeks rent increases on 35 of those sites. The landlord has excluded the remaining sites from this application on the basis that they are either park- or landlord-owned, are vacant sites on which no tenancy currently exists, or are permanent ("stick built") properties to which the Act does not apply.

The landlord purchased the park in 1989. At that time the roads in the park had some repairing done by the previous landlord. And, in 1995, the landlord repaved a section of the road. However, as time went on the paving deteriorated and the landlord found it necessary to start a repaving project.

In 2016 the landlord started the project. He anticipated and expected to complete the project in phases; he had portions of the paving done as he could afford them and wanted to avoid having to finance the cost through a bank. The first phase, which included the entrance to the park, was completed in 2016. This phase cost $37,861.95.

In 2017, another section, which included some driveways into various sites, was completed. This phase cost $11,581.50. And three years later, the third and final phase was completed at a cost of $44,756.25. The total cost of the project – and for which this application for a rent increase pertains – was $98,199.70.

Regarding costs, the landlord testified that there is only one paving company in the town, and so there was limited choice in terms of paving company options. Invoices for the above-noted costs were provided into evidence.

The landlord testified that he is confident that most of the roadways are repaired and replaced such that they should last at least 20 to 25 years before needing further work.

In respect of recouping the costs, the landlord proposed mutual agreements with the affected tenants to pay back the cost over a five-year period. He deliberately stretched the cost over five years because he felt that this was the fairest option. A spreadsheet covering the proposed rent increases was provided into evidence. It is the landlord's position that the recouping of this expense is reasonable and warranted. And it is the landlord's position that the rent increases sought are fair and reasonable.

Tenant G.M., speaking for himself and on behalf of 21 tenants in the park, opposes the application in its entirety for a variety of reasons. The first objection is that the invoices, most notably those from 2016 and 2017 ought to be "disqualified" and not considered on the basis that a significant amount of time has since passed. Any claims for a rent increase to cover those expenditures ought not be considered.

Moreover, he submitted that by the time any rent increase would go into effect, the last of the payments would be made in 2029 – a full thirteen years after the first invoice was paid. He exclaimed, "do you want me to pay for the roads built by the Romans too!!!!!!"

G.M. also objected to the landlord's goal of recouping the cost for the third and final phase of the project, which he called "strictly a maintenance" issue and not a major expenditure. Further, the tenant spoke about the general confusion experienced by the many tenants of the park, many of whom thought the rent increase would be a fixed $16.25 increase per month for five years, versus a compounding increase.

(B.L. spoke about the age of many of the tenants in the park. While he considers himself an “old geezer,” there are some tenants who “are 12,000 years older than me.” He spoke of dementia being prevalent amongst many of the tenants, that they perhaps lacked capacity to enter into signing any sort of mutual agreement, and that a lot of what is happening is quite confusing to them.)

The tenant’s advocate and tenant B.L. also spoke of the confusion caused by what he described as dishonest conduct of the landlord. There was “a lot of misunderstanding” and the landlord was attempting to make money from that misunderstanding.

B.L. argued that a landlord is responsible for maintaining a park in a reasonable state of repair as per section 26(1) of the Act. Tenants should not, he submitted, be responsible for paying for what is reasonable wear and tear. The landlord’s repaving is, he argued, for reasonable wear and tear and for which a landlord is responsible. He also referred to section 33(1)(b) of the Regulation in respect of a landlord’s expenditures on repairs that are reasonable and necessary.

A third objection raised was in respect of the number of sites affected by the rent increase. While there are 47 sites (including the landlord-owned, several on which permanent duplexes are constructed, and the vacant sites) in the park, what troubles the tenants is that only 35 of those sites are being asked to pay for the entire project. The tenants argued that all sites in the park ought to be included in any such application for a rent increase, “not just those with open wallets and open purses”. The repaving is the landlord’s investment in the landlord’s park, and it is not up to the tenants to pay.

G.M. noted that an application such as this must include all sites in the park so that an equal percentage of rent increase applies to all. In addition, if the landlord owns one or two of those sites then he, too, must share in the percentage of the cost. Further, he argued that it is unfair to pass along the 13 excluded sites’ “share” of the costs to the remaining 34 sites. And he argued that everyone who lives in the park drive on, shares, and uses the road. Everyone benefits.

In response, the landlord explained that if there is no rent being paid (such as that on a vacant site) then there cannot be a rent increase. The landlord’s advocate A.K. noted that you can only increase rent on rent that is being paid. He further testified that three of the sites are vacant. No rent is being paid on those. One of the sites (58) is owned by the landlord himself, site 75 is a garage owned by the park and cannot be rented out, site 76 is owned by the landlord and not rented out or available to be rented out, sites 101 to 104 are duplexes built on slab (and fall under the *Residential Tenancy Act),* and

sites 105 and 106 have stick built houses built atop. These are owned by the park, are permanent, and also fall under the *Residential Tenancy Act).*

B.L. also briefly argued that what must also be considered in this application is whether section 33(3)(g) and (k) of the Regulation would apply in denying the application. He argued that the landlord contravened section 26 of the Act and that the landlord has submitted false or misleading evidence. The invoices, for example, are highly questionable, the tenant argued. Last, the tenant briefly remarked about an investigation being required under the Act. (Section 80.1 of the Act falls outside my jurisdiction and as such no further reference to this submission by the tenant shall be considered.)

In response to a few of the objections raise, the landlord M.B. noted that one option was to have all of the paving done at one, rather than piecemeal. However, he wanted to avoid unnecessary financing in going that route, and instead chose to have it paved in phases for which he could afford each phase. Further, he was not operating under any assumption that the project would have to be done within a certain time period.

Analysis

The starting point in assessing this application is section 36(3) of the Act, which 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.

We must now turn to sections 33(1) and 33(1)(b) of the Regulation which states that 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
>
> (i) are reasonable and necessary, and
> (ii) will not recur within a time period that is reasonable for the repair or renovation;

This is the specific subsection of the Regulation indicated on the landlord’s application. Based on the evidence before me, it is my finding that the paving completed in 2016, 2017, and 2020 are significant repairs.

Indeed, even the most recent phase of paving, which the tenants called “strictly maintenance,” cannot reasonably called anything but significant. The cost of the final phase was $44,756.25.

It is also my finding that, based on the evidence before me, that the paving was both reasonable and necessary. The road was last paved, partially, in 1995. It deteriorated over the next 21 years, at which point in 2016 the landlord undertook to have repaving done. While there were no photographs in evidence portraying the condition of the road as it was before 2016, the tenants did not raise any issue with whether the paving itself was reasonable or necessary.

Last, it is my finding that, based on the oral evidence of the landlord, repaving will not recur within a time period that is reasonable for the repair. That is, for at least another 20 to 25 years, which is consistent with the length of time between when the road was last partly paved in 1995 and then paved in 2016.

Thus, prima facie, the landlord has met the criteria under section 33(1) of the Regulation by which they may make this application.

Next, section 33(3) of the Regulation states that the arbitrator “must consider the following in deciding whether to approve an application for a rent increase under subsection (1) [. . .]” There are eleven subsections covering a range of matters that must be considered. For the reasons given below, only a few will be addressed, however. The remaining subsections were either not addressed in the hearing, or, the consideration of the remaining subsections leads to neither a positive or adverse finding in respect of the landlord’s application.

Subsection 33(3)(f) of the Regulation requires that the arbitrator consider “a relevant submission from an affected tenant.”

At the outset, while I found G.I.’s written submissions to be occasionally overwrought, the objection raised pertaining to the fact that only 34 sites are ultimately subject to rent increases whereas the remaining 12 sites are excluded, is particularly concerning.

The repaving project clearly benefits everyone who resides in the park, including the landlord himself and those residents residing in the stick-built properties and in the duplexes. The project cost almost $100,000. Yet, 74% of the tenants (or sites) are being asked to bear 100% of the cost. It is my finding that this imbalance is both unreasonable and unfair.

In respect of the landlord's comment about not being able to implement a rent increase on a vacant site, his comment makes sense at first blush. It is worth noting, however, that an application of this nature must include all manufactured home sites, not just those that are currently tenanted. "Manufactured home site" is defined in section 1 of the Act to mean "a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home." (emphasis added).

Thus, in the absence of any evidence to the contrary, it follows that the vacant sites must be considered to be intended to be rented at some point. And it therefore follows that the three vacant sites must be included in any future application. It is worth noting, too, that section 33(2) of the Regulation requires that a landlord "must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage."

In respect of the six sites on which non-manufactured home duplexes and stick-built homes sit atop, while they do not fall under the jurisdiction of the Act or the Regulation, they nevertheless are located within the park. Any benefit enjoyed from a major paving project is shared by the tenants on those six sites, and it is, again, my finding that passing the cost of those derived benefits onto the tenants in only 34 of the sites is both unreasonable and unfair.

While any future application made under this section of the Act or Regulation cannot directly apply or cover the properties which likely fall under the *Residential Tenancy Act,* the proportionate cost of recovery must take into account the indirect benefit enjoyed by those tenants.

In summary, it is my finding, based on the reasons above, that the proposed allocation of the costs of the paving project is unfair and unreasonable. And for this reason, pursuant to section 33(4)(b) of the Regulation, the landlord's application under section 33(1) of the Regulation is refused.

Given the above, I make no findings in respect of whether it has been too long since the costs were incurred for which this application is made. Nor do I make any findings in respect of any remaining factor enumerated under section 33(3) of the Regulation.

Conclusion

The application is refused.

The landlord is at liberty to make another application under sections 36(1)(b) and 36(3) of the Act, and section 33 of Regulation, taking into consideration my findings above.

This decision is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to grounds provided under section 72 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: February 9, 2022

Residential Tenancy Branch