Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 21 Pines MHP Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: ARI-E

Introduction

This matter is in respect of an application submitted by the landlord in which they seek a rent increase pursuant to subsections 36(1)(b) and 36(3) of the *Manufactured Home Park Tenancy Act* ("Act") and pursuant to subsection 33(1)(b) of the *Manufactured Home Park Tenancy Regulation,* B.C. Reg. 260/2007 (the "Regulation").

Three representatives for the landlord and three of the four respondent tenants attended the hearing. No service issues were raised, the landlord's representative J.R. was affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

It is noted that this application is for only four of the 32 sites in the manufactured home park. The tenants on the remaining 28 sites have signed mutual agreements to the landlord's proposed rent increases. Section 33(2) of the Regulation requires that an application for an additional rent increase propose the same percentage increase for all sites. As such, the landlord's application proposes the same 35.5% increase to be implemented in phases over the next six years, commencing January 1, 2023.

Issue

Is the landlord entitled to a rent increase?

Background, Evidence, and Facts

Relevant oral and documentary evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only the evidence needed to consider the landlord's application and explain the decision is reproduced below.

The manufactured home park (hereafter the “park”) was built approximately forty years ago. The present landlord purchased the park in July 2016. A few years earlier, in October 2014, Nelson Hydro advised the then-park owner that a mandatory electrical upgrade to the park’s electrical systems was required. This was part of the province’s policy of requiring electrical distribution systems to be up to Code. And as long as there was in place an upgrade plan and the park owner intended in good faith to execute that plan, it would be “business as usual.” Initial planning took place in December 2016. Given the cost and scope of the work, the plan would be phased in. In March 2018, Nelson Hydro sent further correspondence to the park, reiterating that an upgrade was required to ensure safer, more reliable power.

The electrical upgrades were commenced in May 2017, delayed for one year because of the pandemic, and then completed in April 2021. The electrical system is now a much higher quality of electrical system and is expected to have a useful operating life of 40 to 50 years or more (the year 2071 was included in the application as the estimated year that an upgrade would next be required).

More specifically, the project included centrally located electrical supply points, buildings housing individual home meters, an underground primary system, removal of existing infrastructure, and disconnection and reconnection of all individual homes. In summary, the landlord submitted that the project was both reasonable and necessary, and, that it was required by Nelson Hydro.

The cost of the project was $179,953.38. Direct project financing costs were (or are) $15,561.16. This cost will be passed along with a rent increase on all units except for those sites where the rent is $450.00 or more, on the basis that all sites paying less than $450.00 will gradually see their rent increase over the six years.

Submitted into documentary evidence by the landlord are the landlord’s application for additional rent increase, a memorandum explaining the rent increase plans, the 2014 and 2018 Nelson Hydro letters requiring the major renovations, a project description, the CIBC loan agreement, a loan amortization schedule, a project invoice summary along with various project invoices, copies of mutual agreements of the 28 tenants, a “100% Project Cost Recovery per Regulation Calculation – all Sites” document, a “Proposed phased rent increases – Respondents only” document, the current and past three years’ worth of rent rolls, and, a sample tenancy agreement.

I have reviewed the landlord’s documentary evidence in considering this application.

Two of the three respondents indicated that they did not wish to testify or otherwise make any oral submissions during the hearing. One respondent, however, asked the landlord two questions. First, why are not all tenants being asked for a rent increase, and second, what third party oversight body is involved in this application.

The landlord explained that a fair offer was made to everyone, and that the landlord is deferring costs over a six-year period; it is a “very fair offer,” he remarked. The landlord further explained that some tenants are already paying $450.00 or $475.00, which is the maximum amount that the landlord seeks from any site.

In respect of the tenant’s oversight question, it was at first a bit unclear as to what he was referring. However, I explained to the other parties that while landlords and tenants are generally free to operate on their own under the legislation, certain applications (such as the one before me) must be resolved under the Act and the Regulation before an arbitrator with the Residential Tenancy Branch.

In other words, the professional third party to which the tenant may have been wondering about, is the Residential Tenancy Branch. I further explained that an arbitrator considering a landlord’s application for an additional rent increase must consider all of the evidence, make findings of fact and law, and then decide whether or not to approve the landlord’s application.

Two respondents (T.M. and S.R.) provided written submissions and statements, all of which I have reviewed and considered in making this decision; relevant portions and content of those submissions are reproduced below in the Analysis portion of this decision.

Analysis

To begin, it is necessary to recognize section 34 of the Act, which states that a landlord must not increase rent except in accordance with the Act. From there, I note that section 36(1)(b) of the Act states that a landlord “may impose a rent increase only up to the amount [. . .] (b) ordered by the director on an application under subsection [36](3)”.

Subsection 36(3) of the Act states that “In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.”

Here, the relevant circumstance prescribed in the Regulation is that which is contained within subsection 33(1)(b), and which states that a landlord may apply for an additional rent increase under section 36(3) of the Act 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;

In this dispute, the landlord's evidence persuades me, on a balance of probabilities, that the electrical upgrade was both reasonable and necessary. The upgrade was "to ensure safety and service reliability" of electricity provided by Nelson Hydro. More specifically, the complete upgrade was made to both the primary and secondary electrical distribution systems to, in the words of Nelson Hydro, provide "safer and more reliable power to" the tenants.

Moreover, Nelson Hydro makes it evident in their letter of March 1, 2018 that "Until this plan is in place, no new services, service upgrades, or repairs can be made to your system by Nelson Hydro." However, Nelson Hydro recognized that "this plan could be a major financial burden, so we are prepared to work with MHP owners in order to implement the plan(s) in phases to help spread the costs out over a period of time."

Second, the evidence before me, which is not contradicted by any opposing evidence or submissions from the respondents, leads me to find that another electrical upgrade of this nature will not recur within a time period that is reasonable for such a repair. By all accounts, a similar upgrade to the system will not be required until approximately 2071.

Next, I am required to consider the eleven factors enumerated under subsection 33(3) of the Regulation in deciding whether to approve the landlord's application for a rent increase under subsection 33(1) of the Regulation. These factors (which are, to be clear, subsections under 33(3) of the Regulation) are as follows:

> (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.

In respect of this application, while I have considered factors (a) through (e), inclusive, and factors (i) and (j), there is nothing of particular note that leads me to make any adverse findings of fact or law in respect of the landlord’s application. Similarly, in respect of factors (g) and (k), there is also no evidence before me to find that the landlord previously contravened section 26 of the Act or that the landlord met the conditions in subsections (k)(i) and (ii).

Regarding subsection 33(3)(f) of the Regulation, relevant submissions of the affected tenants must be considered. To these written submissions I now turn.

Two written submissions from two of the respondents notes that the landlord was aware of the electrical upgrade before purchasing the park. According to the respondents, the previous landlord told her that “there was an amount taken off the purchase price for the electrical upgrade.”

However – and this is largely admitted in the written submissions – there is no sworn statement or documentary evidence before me which might lead to a conclusion that the landlord was previously compensated in some manner. I am unable to find that the landlord was "double-dipping," as alleged by one of the respondents.

In respect of the submission that, while "Not once, before or during those four years, was it mentioned that the tenants would be responsible for paying the bill for the upgrade," it is not lost me that an additional rent increase is not particularly positive news. However, the landlord was not under any legal obligation under the Act or the Regulation to give the tenants any sort of head's up or prior notification. The tenants were lawfully advised of the proposed and requested rent increase by way of the mutual agreements, and, for the respondents in this application, also by way of a Notice of Dispute Resolution Proceeding. The landlord complied with required notice provisions.

Finally, while the park owners may hold occupations as a "portfolio manager" and as chartered accountants, I do not find that this leads me to find that the landlord made a false statement in declaring that they have no other source of revenue to pay for the project. There is no counter, documentary evidence submitted that establishes that the landlord has another source of revenue other than rent fees from the park.

Regardless, it should be noted that whether a landlord has "another source of revenue" to pay for a significant repair or renovation, or not, is not a requirement under the Regulation nor is it a factor in determining whether to approve an application of this nature.

I have also reviewed and considered the written submission from tenant R.S., and the lengthier written submission from legal advocate B.Q. (B.Q. did not attend the hearing.) The costs are, upon review, valid and reasonable. Nor do I find that the various costs, supported by invoices, to be vague or unreasonable. In totality, it is my finding that the electrical system upgrade is both reasonable and necessary, and that the costs are reasonable and supported by evidence.

As a brief aside, while a copy of another Residential Tenancy Branch decision was referenced in a submission and commented upon by the landlord during the hearing, I find that decision to be distinguishable from the application before me and I place no significance on that decision. Further, it is important to note that I am required to make each decision on the merits of the case before me and am not bound to follow other decisions (section 57 of the Act).

All of this said, I am baffled as to why the landlord submitted BC Liquor Store receipts into evidence as part of this application. While “drinks for diggers” was undoubtedly a welcome treat to the hardworking contractors, this type of expense is wholly inappropriate in respect of an application for a rent increase. It is my order that the landlord amend – that is, remove – all liquor expenses from the total project cost.

Last, regarding subsection 33(3)(h) of the Regulation, while the landlord was aware of the required electrical upgrade prior to purchasing the park, this does not lead me to find that the landlord’s costs in respect of the upgrade resulted from inadequate repair or maintenance in a previous year. There is also no other evidence leading me to conclude that the electrical upgrade – which was in fact ordered to be done by Nelson Hydro – was a result of any landlord negligence in inadequately repairing or maintaining that electrical system.

To conclude, while I have carefully considered all eleven factors contained within subsection 33(3) of the Regulation, it is my finding that no factor leads me to deny the landlord’s application for an additional rent increase. Therefore, it is my finding that the landlord’s application for an additional rent increase pursuant to subsections 36(1)(b) and 36(3) of the Act and subsection 33(1)(b) of the Regulation is hereby approved.

Conclusion

The landlord’s application is approved.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: March 18, 2022

Residential Tenancy Branch