



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MARCS' PROPERTIES and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      ARI-C

### Introduction

This hearing dealt with the Landlord's Application for an additional rent increase, pursuant to section 36(3) of the *Manufactured Home Park Tenancy Act* (the "Act") and Manufactured Home Park Regulation (the "Regulation") 33.

The agent of the corporate landlord (the "landlord") and 2 of the respondent tenants attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The parties who were in attendance testified that they were served with the respective materials and based on their testimonies I find them each duly served in accordance with sections 81 and 82 of the *Act*.

The landlord testified that they served the other named respondents in person or by posting on their rental unit door on June 25, 2022. The landlord provided a document

showing signatures from the tenant confirming service or noting that the hearing package was posted. Based on the evidence I am satisfied that the other respondents are deemed served on June 28, 2022, three days after the materials were posted in accordance with sections 81, 82 and 83 of the *Act*.

This application was filed under the *Residential Tenancy Act*. The landlord submits this was an error as the rental property is a manufactured home park with the tenants owning their manufactured homes. The original application was made under section 33.1 of the *Residential Tenancy Act* for an additional rent increase on the basis of capital expenditures. I note that there is no equivalent provision under the *Manufactured Home Park Tenancy Act* and Regulations. The closest provision is found in section 33(1)(b) of the Regulations which provides that a landlord may apply for an additional rent increase where they have completed significant repairs or renovation to the park that are reasonable and necessary and will not recur within a reasonable period.

Based on the submissions of the parties I find the landlord's intent was to seek an additional rent increase based on their expenditures for repairs as contemplated in Regulation 33(1)(b). Accordingly, I amend the present application pursuant to my powers under section 57(3)(c) of the *Act* and Rule of Procedure 4.2 to be under the under the appropriate *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to impose an additional rent increase?

#### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental property is a manufactured home park with 9 total pads. There are 7 pads currently occupied by tenants with monthly rent ranging between \$252.00 to \$572.00.

The parties submit that the landlord has previously imposed an additional rent increase for the cost of water utilities and property taxes effective January 1, 2021 for all occupied units. The landlord calculated the proportional increase for each pad based

on the number of occupants. Submitted into evidence was the typewritten letter from the landlord dated September 26, 2021 which outlines the basis for the increase and sets out the amount. The landlord submits that the rent increase was done in accordance with the Act as it provided the tenants with at least 3 months before the effective date. The parties agree that the tenants have each been paying the amount demanded in the letter from January 1, 2021 thereafter.

The landlord testified that they are seeking to impose an additional rent increase for a capital expenditure incurred to pay for work done to the park's water system. The landlord gave evidence that a leak was detected in the water system in December 2021 and after some investigation the source was determined to be in the waterline of the park. The landlord says that the waterline project commenced in April 2022 when the ground had thawed and was completed that same month.

The landlord submits that the project also necessitated some electrical work to ensure power lines were not disrupted and landscaping after the underground water pipes had been replaced.

The landlord testified that the work is intended to last for several decades.

The landlord submits the following breakdown of the work and amounts of expenditures:

<b>Description</b>	<b>Invoice Date</b>	<b>Amount</b>
Landscaping	April 30, 2022	\$620.00
Landscaping	May 24, 2022	\$1,329.44
Landscaping	May 9, 2022	\$1,446.25
Landscaping	May 17, 2022	\$556.50
Electrical	January 7, 2022	\$423.11
Electrical	April 22, 2022	\$399.42
Plumbing	January 27, 2022	\$1,475.68
Plumbing	February 25, 2022	\$778.58
Plumbing	April 19, 2022	\$3,000.00
Plumbing	May 1, 2022	\$15,225.00
Permit	April 14, 2022	\$354.50
Septic Tank Services	February 10, 2022	\$918.75
Septic Tank Services	February 10, 2022	\$446.25
Materials/Safety	April 18, 2022	\$181.14
Excavation	April 27, 2022	\$3,165.00

Excavation	April 8, 2022	\$141.75
Portable Toilet	April 11, 2022	\$496.83
<b>TOTAL</b>		<b>\$30,958.20</b>

The landlord submitted copies of invoices supporting the amounts sought.

The tenants question some of the expenditures claimed. They submit that some of the claimed expenditures such as septic tank services were performed months prior to the actual work and would have been done in any event. They also submit that the cost of excavation is excessive as the landlord hired a service from another community.

The tenants in attendance testified, and a tenant provided written submissions, about the frequency of rent increases, with the most recent increase imposed by the typewritten letters dated September 26, 2021 and implemented on January 1, 2022. The tenants also made reference to previous disagreements with the landlord and threats made by the landlord to withhold services or facilities.

### Analysis

Section 36(3) of the Act provides 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.

Section 33(1)(b) of the Regulations provides that a landlord may apply for a greater 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.

Section 33(2) of the Regulations provides that the application to raise the rent for all sites must be for an equal percentage.

Section 33(3) of the Regulation sets out the criteria by which this application is considered. The section states:

(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.

The issue is further elaborated on in Policy Guideline 37 which provides in relevant part:

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.

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.

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 the present circumstances I accept the undisputed evidence of the parties that the landlord has performed work that would reasonably be described as major repairs and upgrades to the water system of the manufactured home park.

I am satisfied that the scope of the work performed was reasonable, necessary and proportional to the degradation of the water systems due to their age. I am further satisfied that the work is not reasonably expected to recur within the next year and will endure for several decades as the landlord submits.

The landlord provided little information about the rent payable for similar sites, the rent history in the park or changes in the services or facilities prior to the present application. I accept the undisputed evidence of the parties that rent ranges from \$252.00 to \$572.00 and that the landlord issued a typewritten letter requesting a rent increase effective January 1, 2022.

I find little evidence that the reason for repairs and work done in the park is attributable to inadequate repairs or maintenance by the landlord in past years. The landlord submits they acquired the park in 2017 and believe the water system to simply have been at the end of its useful life of several decades.

I have reviewed the Branch records and find no previous applications where a notice to end tenancy issued by the landlord was set aside within the previous 6 months or at all. I find no history of the landlord being found to have submitted false or misleading evidence or failing to comply with orders of this Branch.

I make no finding on the validity of the previous rent increase on January 1, 2022. I note parenthetically that section 35(3) provides that a notice of rent increase must be in the approved form and the only documentary evidence that has been submitted on this point is a typewritten letter which does not appear to meet the form and content requirements of the *Act*.

I have reviewed the invoices submitted by the landlord and while I find many pertain to the scope of work performed others are distinct and only peripherally related to the actual repairs and work in the park. The electrical invoice of January 7, 2022 describes the work performed as connecting a manufactured home to the electrical system of the park. I find that this is not a repair or renovation that would be recoverable as a portion of a rent increase. Similarly, I find the plumbing invoice of January 27, 2022 to be more in the nature of investigative work attempting to obtain information to determine whether repairs and work are required. I do not find the amount of \$1,475.68 claimed for that invoice is reasonably considered a part of the repair or renovation. I find the cost of septic tank services to be unrelated to the work and, as the tenants submit, is simply work that would have been performed during the course of operating the park. I therefore find the amount of \$1,365.00 should not be included in a calculation of the cost of repairs and renovation.

I find the work described in the other invoices and materials submitted are sufficiently related to the scope of work performed. I accept the landlord's submissions that they retained local professionals who were available to perform the work. While the tenants raise the issue of why the landlord retained excavation services from another municipality I accept the landlord's explanation that the manufactured home park is located in a rural community with little services available and they found a professional in a neighboring municipality.

Based on the foregoing I find that the total cost of eligible work is \$27,694.41.

Regulation 33(4) grants me the authority to either:

- (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.

I find that based on a total of 9 rental units in the park the cost of work proportionately distributed among the units is \$3,077.16 ( $\$27,694.41/9=\$3,077.16$ ).

The landlord testified that the work is expected to endure for decades. I note that Policy Guideline provides that the expected useful life of water systems is 20 years.

Based on the expected life of the repairs, I find it appropriate to amortize that amount over a period of 240 months. ( $\$3,077.16/240=\$12.82$ )

The landlord provides that the current rents range from \$252.00 to \$572.00 but was unable to provide the actual monthly amount paid by the 7 occupied units. Based on the limited figures provided I find the median monthly rent is \$412.00.

I calculate that the total cost of work distributed among the units of the park is an increase of 3.11% above the allowable rent increase. ( $\$12.82/\$412.00=3.11\%$ )

Therefore, I allow the landlord a one-time annual rent increase for the monthly rent at a rate of 3.11% above the allowed amount. The landlord must serve each of the tenants with the notice of the allowed rent increases as required by the *Act*. The landlord must also provide a copy of this Decision with the Notice of Rent Increase.



Conclusion

The landlord is entitled to an additional rent increase based on the cost of the work as set out above in the amount of 3.11% above the annual allowable amount.

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: October 28, 2022

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Residential Tenancy Branch