Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding GREEN ACRES MANUFACTURED HOME PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-E

Introduction

On February 14, 2023, the Landlord applied for a Dispute Resolution proceeding seeking an additional rent increase pursuant to Sections 36(1)(b) and 36(3) of the *Manufactured Home Park Tenancy Act* (the "*Act*") and Section 33 of the *Manufactured Home Park Tenancy Regulation* (the "*Regulation*"), B.C. Reg. 481/2003.

A hearing in respect of this Application was convened on July 7, 2023, at 1:30 PM. D.H. attended the hearing as the owner of the property, and J.H. attended the hearing as an agent for the Landlord. They advised of the correct name of the Landlord and that the one person listed as an Applicant was not the Landlord. As such, the Style of Cause on the first page of this Decision has been amended accordingly. Multiple Tenants attended the hearing as well.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

Service of the Landlord's Notice of Hearing and evidence packages were discussed, and there were no issues concerning service. As such, all of the Landlord's evidence was accepted and considered when rendering this Decision.

Tenant K.G. advised that she served her evidence to the Landlord on June 29, 2023, by registered mail. J.H. confirmed that this evidence was received, that they had reviewed it, and that they were prepared to respond to it. As such, this evidence was accepted and considered when rendering this Decision. Tenants K.H. and C.N. advised that they did not serve their evidence to the Landlord. As such, this evidence was excluded and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to impose an additional rent increase for an extraordinary increase in operating expenses?

Background and Evidence

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

J.H. advised that the manufactured home park was built in 1973 with paved roads, and that the park consists of 47 sites, of which 44 were occupied at the time this Application was made. He testified that the asphalt has not been replaced in 50 years, and in reference to the scope of the work submitted, "The roads had developed many cracks and potholes in almost 20 years." As the roads were determined to be beyond repair, repaving was the alternative to repairing these ongoing issues, and three quotes were obtained in June 2022.

He referenced the quote that was accepted to complete the work, totalling $78,000.00 + GST and the invoice paid for this work that was completed in August 2022. He detailed the calculation of the average rent increase to be $13.97 per month, and indicated that 14 sites had already mutually agreed to the rent increase. He cited the documentary evidence submitted to support this rent increase, and stated that it was reasonable and

necessary to recover the project cost over the next four years. As well, he stated that there had been numerous complaints from residents that the roads were “bumpy”.

D.H. advised that there had been continual patching of the roads over the years, but this was not a permanent solution. He testified that the project consisted of tearing everything up and laying down a new road. He stated that with the cold weather, the moisture could not escape, causing the old road to heave. He submitted that the big potholes were impossible to patch, and he noted that due to COVID, rent was not raised for the last three years. He acknowledged that they did not submit any documentary evidence to substantiate their efforts to conduct ongoing maintenance of the roads over the years.

K.G. advised that aerial views of the park were not submitted, as suggested by J.H. She testified that approximately eight years ago, new water lines were installed in the park where the roadway in multiple areas were cut into, and these areas were approximately two feet in width. These giant breaks in the pavement were not repaired by the Landlord, but were only filled with gravel, and this was the main reason the roadway eventually needed repairing. She submitted that the Landlord willfully failed in their duty to maintain the roads. As well, she testified that there is an area at the top of the park that has had a 20-foot pool of water, since approximately 23 years ago, that was never maintained. She suggested that water would soak into the pavement and eventually freeze, causing the majority of the cracks in the roadway. Moreover, she claimed that there was a general lack of maintenance of the roads by the Landlord.

J.H. confirmed that water lines were installed, that the roadway was cut into at that time, and that the Landlord did not make this Application to recover the cost of that project.

D.H. acknowledged that the old water lines were a problem, so new lines were required to be installed. He stated that the areas of the roadway that were cut into were “hot patched”. Regarding the pooling, he submitted that if the sump pumps would fail, water would pool. He testified that there were sump pumps there since the park was purchased in 1990, but the problem has been ongoing and getting worse recently, and he is tired of buying new pumps.

K.H. stated that the new roadway is cracking now and that there is still pooling of water.

C.N. advised that there is a child in the park who is in a wheelchair, and this person “face planted” due to the condition of the roads. She stated that children would routinely trip and fall.

J.H. confirmed that the tripping hazard was the exact reason why the roadway replacement was completed as the patching and repair of the roadway was not sufficient.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

The starting point in assessing this Application is Section 36(3) of the *Act*, which states the following:

> 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 Section 33 of the *Regulation* which states the following:

> ***Additional rent increase other than for eligible capital expenditures***
>
> ***33*** *(1) A landlord may apply under section 36 (3) [additional rent increase] of the Act for an additional rent increase, other than for eligible capital expenditures, if one or more of the following apply:*
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> *(a)Repealed. [B.C. Reg. 225/2017, App. 1.]*
>
> *(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;*
>
> *(c)the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the manufactured home park;*
>
> *(d)the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the manufactured home park, if the*

financing costs could not have been foreseen under reasonable circumstances;

(e)the landlord, as a tenant, has received an additional rent increase under this section for the same manufactured home site.

This is the specific Section of the *Regulation* that applies to the Landlord's Application. Moreover, this Section indicates the following regarding what must be considered to grant an additional rent increase:

(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*
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> *(i)submitted false or misleading evidence, or*
>
> *(ii)failed to comply with an order of the director for the disclosure of documents.*

When reviewing the totality of the evidence presented before me, I am satisfied that the paving completed in August 2022 was a significant repair that was both reasonable and necessary. However, Subsection 33(3)(f) of the *Regulation* requires that the Arbitrator consider "a relevant submission from an affected tenant."

I note that the consistent and undisputed evidence is that new water lines were installed approximately eight years ago, and that significant parts of the roadway were affected due to this construction. While the roadway was allegedly "hot patched", it was not made clear what this repair was, nor was there any documentary evidence submitted to demonstrate that this was an adequate repair of the roadway.

Moreover, the consistent and undisputed evidence is that there has been substantial pooling of water in at least one area of the park that has been ongoing for an extensive length of time. While steps were taken to address this amount of water, I can reasonably infer that this constant exposure to moisture could have had a detrimental effect on the roadway.

Based on the doubts that were raised about the past repair or maintenance of the roadway, I am satisfied that there may have been a historical lack of mitigation of any problems that would have caused the roadway to fall into disrepair, necessitating the complete repaving of it. In summary, it is my finding, based on the reasons above, that the proposed request for an additional rent increase for expenses is unfair and unreasonable. For these reasons, 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 any remaining factor enumerated under Section 33(3) of the *Regulation*.

Conclusion

The Landlord's 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: August 5, 2023

Residential Tenancy Branch