



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Code      ARI-E

### Introduction

Landlord 1344553 BC LTD applied for an additional rent increase for significant repairs or renovations under sections 36(3) of the Manufactured Home Park Tenancy Act (the Act) and 33(1)(b) of the Manufactured Home Park Tenancy Regulation (the Regulation).

Both parties attended the hearing. The applicant was represented by agents QS (the Landlord) and HZ and assisted by interpreter ZW. Tenants LB (site 1), JH (site 16), RS (site 27) and MG (site 28) also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I will refer collectively to tenants LB, JH, RS and MG as the attending tenants.

### Service of Documents

The notice of hearing is dated October 26, 2023.

The Landlord affirmed she registered mailed the notice of hearing and evidence (the materials) on December 22, 2023 to all the tenants.

The attending tenants confirmed receipt of the materials.

The tracking numbers for tenants TV and LH are recorded on the cover page of this decision.

The Landlord stated he did not serve the materials earlier because she was obtaining information about this application before serving the materials.

Based on the parties' testimony and the tracking numbers, I find the Landlord served the materials to all the tenants in accordance with section 82(1) of the Act.

I deem tenants TV and LH received the materials on December 27, 2023, per section 83(a) of the Act.

The Landlord confirmed receipt of response evidence from Tenant JH and that she had enough time to review it.

I find Tenant JH served the response evidence in accordance with section 82(1) of the Act.

### Issue to be Decided

Is the Landlord entitled to an additional rent increase for significant renovations?

### Application for Additional Rent Increase

The Landlord submitted this application on October 18, 2023 seeking an additional rent increase because she installed two new septic tanks in the manufactured home park (the park).

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Regulation 33 sets out the framework for determining if a landlord is entitled to impose an additional rent increase:

(1) A landlord may apply under section 36 (3) of the Act [additional rent increase] if one or more of the following apply:

[...]

**(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;**

[...]

**(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.**

**(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.

(emphasis added)

Policy Guideline 37D states:

A 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 determining whether to exercise their discretion to grant the landlord's application, an arbitrator may consider whether the costs of the repairs or renovation were recovered by previous rent increases or whether they can or will be reimbursed by

other means. If these circumstances apply, an additional rent increase will usually not be granted.

An application can be made at any time after the landlord has made the repairs or renovations and is able to provide proof of their cost. The landlord does not have to have completed paying for the repairs or renovations. A landlord could complete a major project in phases and seek an additional rent increase at the completion of each phase.

The landlord must provide evidence (e.g., invoices) of the costs of the repairs or renovations and must also provide evidence that demonstrates that the repairs or renovations were reasonable and necessary and will not recur within a time period that is reasonable for that particular repair or renovation.

[...]

#### C. APPLYING FOR AN ADDITIONAL RENT INCREASE FOR EXPENDITURES

[...]

Each tenant named on the application must be served with a copy of the Application and hearing package. Any evidence used in support of the Application for Additional Rent Increase must be given to each of the named tenants.

[...]

As an arbitrator must consider all of these factors, a landlord applying for an additional rent increase should submit evidence or make submissions that addresses each of these. Arbitrators may also review the Residential Tenancy Branch's records in relation to those factors that relate to previous applications heard and determined by an arbitrator. If an arbitrator does not have sufficient evidence or submissions to consider a required factor, the application for an additional rent increase may be adjourned or dismissed. In some circumstances, an arbitrator may order the landlord to provide any records the arbitrator considers necessary to properly consider the application or may issue a summons to any person for such records.

An arbitrator may also consider any other factors that they determine are relevant to the application before them. Relevant submissions and evidence from affected tenants will also be considered by the arbitrator before making their decision.

I will address each of the legal requirements.

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

Has the landlord completed significant repairs or renovations?

The Landlord stated the park contains 28 sites and all of them benefit from the new septic tanks installed on June 30, 2022.

The Landlord submitted an invoice dated May 26, 2022 indicating a charge of \$40,215.00 for installing the new septic system. The Landlord testified he paid the invoice amount in full.

Tenant RS said the septic system only benefits 5 sites and the tenants that occupy these sites are not respondents.

The Landlord stated the old replaced tanks, located by the park's entrance, were from 1955 and were leaking and causing an unpleasant smell. The Landlord testified the replaced tanks were causing environmental hazards for all the park occupants, and these issues were addressed by installing the new tanks.

The Landlord said the new tanks will last at least 10 years. RS affirmed the new tanks should last 30 years or more.

RS stated he has been maintaining the park since 2018 and the park has been well maintained since then.

Based on the Landlord's uncontested and convincing testimony and the invoice, I find the Landlord replaced two septic tanks in June 2022, paid \$40,215.00 for this expenditure and that the previous tanks were leaking and causing an unpleasant smell. I find the Landlord is not likely to recur this expense for a reasonable time period, as the Landlord and tenant RS affirmed the new tanks are expected to last at least 10 years.

Thus, I find the tank replacement was a reasonable and necessary expense, per Regulation 33(1)(b)(i) and (ii).

I find the Landlord's testimony about the septic tanks benefiting all the tenants more convincing than the tenants' testimony, as septic tanks that leak are likely to cause environmental harm to all the tenants in the park. Thus, I find the Landlord proved that replacing the two tanks benefits the respondent tenants.

Is there a single application to increase the rent for all sites by an equal percentage?

The Landlord testified she only named 6 respondents because all the other tenants agreed in writing with the additional rent increase requested by the Landlord.

Policy Guideline 37D states:

The landlord must make a single application to increase the rent for all rental units in the residential property or sites in the manufactured home park by an equal percentage. The only exception is when the applicant is a landlord who, as a tenant, has received an additional rent increase for the rental unit or site that they have sublet to another tenant.

As noted in Policy Guideline 37B, a tenant may voluntarily agree in writing to a rent increase greater than the maximum annual rent increase. Tenants that have agreed to a rent increase do not need to be named and served with the Application for Additional Rent Increase if a condition of the mutual agreement to increase rent was that the landlord will not seek to impose an additional rent increase on the tenant. Agreements must be in writing, must clearly set out the rent increase (e.g., the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

The Landlord's application indicates the Landlord is seeking an additional rent increase of 3% for all the respondents.

Based on the Landlord's uncontested testimony, I find the Landlord submitted a single application to increase the rent for all the sites that did not agree in writing to the additional rent increase by an equal percentage, in accordance with Regulation 33(2) and policy guideline 37D.

Rent payable for similar sites and history for the respondents in the 3 years preceding the date of the application

The application indicates the respondents' monthly rent in October 2023 ranged from \$358.25 to \$429.40.

The Landlord said that the rent paid by the respondents is similar to rent for similar sites in other parks in the area and that she never applied for an additional rent increase.

Changes in the sites in the 12 months preceding the date of the application

I accept the Landlord's undisputed and convincing testimony that there were no changes in a service or facility that the Landlord has provided for the manufactured home park in the 12 months preceding the date the Landlord applied for this additional rent increase.

Changes in operating expenses and capital expenditures in the 3 years preceding the date of the application and the relationship between the changes and the requested rent increase

I accept the Landlord's testimony that the park's operating expenses have been increasing in the 3 years preceding the date of the application, as the Landlord cleaned other septic tanks frequently.

The Landlord affirmed he did not pursue an additional rent increase for any other expenditures.

Has the landlord contravened section 26 of the Act?

Section 26(1) of the Act states a Landlord must:

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
- (b) comply with housing, health and safety standards required by law.

The Landlord stated that she never contravened section 26 of the Act, as she always complied with her obligations to provide, maintain, and repair the park.

The Landlord testified the RTB did not issue a decision finding the landlord contravened section 26 of the Act or ordering the landlord to complete repairs and that the repaving is not related to inadequate repair or maintenance.

The Landlord submitted a maintenance plan issued by a registered onsite wastewater practitioner (the plan). It states the precautions necessary for upkeeping the septic tanks.

Tenant RS said the Landlord that some tenants do not follow the park rules, as they leave the water running during the winter.

Tenant LB affirmed that she asked the Landlord to remove damaged trees from the site and they did not do that, but the Landlords have been cleaning the septic tanks once per year.

The Landlord stated that the park manager quit her job in August 2023, as some tenants were ignoring her requests to follow the park rules. The Landlord has been trying to hire a new park manager, the Landlord sent letters to all the tenants asking them to follow the park rules and is trying to identify the Tenants that do not follow the park rules.

I find that cleaning the septic tank is a Landlord's obligation under section 26 of the Act. I accept the uncontested testimony that the Landlord has been cleaning the septic tanks and that the Landlord is trying to identify Tenants who do not follow the park rules.

Based on the Landlord's more convincing and detailed testimony and the plan, I find the Landlord proved, on a balance of probabilities, that she provides and maintains the park, per section 26 of the Act.

Prior rent increase under Regulation 33?

I accept the landlord's undisputed and convincing testimony that she never requested or obtained an order for an additional rent increase under Regulation 33.

Has the RTB set aside a notice to end tenancy within the six months preceding the date of the application?

I accept the Landlord's undisputed and convincing testimony that the RTB has not set aside a notice to end tenancy issued by the Landlord in the six months before the application's date.

Has the RTB found that the landlord submitted false or misleading evidence or failed to comply with an order for the disclosure of documents?

I accept the Landlord's undisputed and convincing testimony that the RTB has not found that the Landlord submitted false or misleading evidence or failed to comply with an order for the disclosure of documents.



### Outcome

Both parties confirmed they had enough time to present their evidence.

I considered all the relevant submissions from the respondents.

The Landlord has been successful in this application, as the Landlord proved all the elements required to impose an additional rent increase under Regulation 33(1)(b) and 33(3) for the expenses of \$40,215.00.

Regulation 34(4) states:

- (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.

I authorize the Landlord to impose a rent increase of 3% per site, as I find that this a reasonable percentage of additional rent increase.

The parties may refer to RTB Policy Guidelines 37A and D, sections 34, 35 and 36 of the Act and Regulations 32 and 33 for further guidance regarding how this rent increase may be imposed.

### Conclusion

The Landlord has been successful. I grant the application for an additional rent increase of 3% per month per site. The Landlord must impose this increase in accordance with the Act and the Regulation.

The Landlord must serve the Tenants with a copy of this decision in accordance with section 81 of the Act.

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

Dated: February 16, 2024

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Residential Tenancy Branch