Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-E

Introduction

Landlord Daniela Bodman and Eric Bodman, applied for an additional rent increase due to significant repairs or renovations under section 36(3) of the *Manufactured Home Park Tenancy Act* (the Act) and section 33(1)(b) of the *Manufactured Home Park Tenancy Regulation* (the Regulation).

Service of Documents

The Landlord affirmed that on March 22, 2024, each tenant was personally served with a copy of the application and supporting documents provided to the RTB. I find the Landlord served the documents in accordance with section 82(1) of the Act. The Landlord submitted a completed proof of service form to confirm service.

Several Tenants objected to the application and provided a copy of their written submissions to the Landlord on May 27, 2024.

The Landlord replied to the Tenants' evidence by correspondence. The Landlord affirmed that on May 31, 2024, each tenant was personally served with the additional letter from the Landlord in response to the evidence submitted by those Tenants on May 27, 2024. The Landlord submitted a completed Proof of Service form to confirm this method of service.

Issue for Determination

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

Background and Evidence

The Landlord testified that they purchased the manufactured home park on January 1, 2022. The park is approximately 45 to 50 years old. There are 33 units in the park (the Landlord owns four: two units they occupy, and the remainder are rented). The Landlord notes in its application that one pad currently is empty. At the time of purchase, the seller disclosed no issues with respect to the water pumps, lines or water pressure in the park. Additionally, the seller provided no maintenance records regarding the water line system.

After purchasing the park, the Landlord stated there was a loss in water pressure to park residences. It was determined that there was a leak in the water main that caused the decreased water pressure. Landlord E.B. explained that there are two wells which provide water to park residents: a main well and a back-up well. There is one pump for the water system, which is activated upon user demand. The pump moves excess water that is held in a tank through the water main that furnishes water to homes in the park. The Landlord stated the leak was found at the connection with the main line and required a new brass fitting.

The Landlord initially undertook repair of the water main. They rented an excavator and to expose the water main. At a seven-inch depth, the Landlord determined that it could not safely proceed with the excavation given the saturation of the soil caused by the water leak resulting in instability to the excavated area.

On September 15, 2022, the Landlord retained the services of an excavation and repair company to complete the work. The company dug the remaining two feet to expose the water main, repaired the water main leak on September 16, 2022, and completed restoration of the excavated area the following day, September 17, 2022.

Landlord E.B. stated that the pump was not an issue in the repair work. He further testified that since the repair was completed the water pressure in the park has been restored, although some adjustments were made. Furthermore, the Landlord stated that at the time of purchase maintenance records were requested but the seller had none.

The Landlord submitted the following invoices for the repair work totaling $13,206.47:

- Landlord rental of excavator (no labor) - $609.47 (invoice dated September 10, 2022); and,
- Invoice for completion of excavation work, repair of water main connection and return to original condition - $12,597.00 (invoice dated October 11, 2022).

The Landlord E.B. testified that the repair is expected to last more than five years.

The Tenants in attendance at the hearing were each given an opportunity to make submissions in objection to the Landlord's application. Several Tenants stated that the Landlord could have, or should have, determined the condition of the water lines prior to purchase of the park as part of the Landlord's due diligence. Tenant I.S. stated that the issue of plumbing problems in the park had been a persistent issue. Tenant R.S. recounted that the toilet in his unit plugged and was snaked 50 feet before the blockage was encountered, indicating that there were problems with the plumbing system in the park. Tenants also voiced concern that the approval of an additional rent increase will place their rent at a higher level than those comparable to other area parks. In their written submissions, the Tenants had listed other manufactured home parks and the general rate of rent charged. Tenant R.C. and E.B. each noted that pad rentals had been increased when new purchasers bought their homes after the Landlord took over the park.

Tenant E.B. stated that the work on the water main connection was maintenance and not repair. Tenant W.S. agreed with E.B. that tenants should not be responsible for maintenance issues; and further questioned the Landlord's position that the work was done at the main junction for the water line; she stated that the work appeared to have been done by pad no. 34. In written submissions, Tenants noted that the invoices submitted by the Landlord did not appear to correlate with work done on the main water supply line, questioning whether the connection that was repaired was solely for pad no. 34.

Landlord D.B. stated that since their purchase of the park, rent has been increased only one time pursuant to regulations. Additionally, she testified that the location of the water main connection (9 feet underground) would not permit an inspection prior to their purchase of the park.

Several Tenants provided written submissions objecting to the rent increase. The common themes of these written submissions were: (a) the Landlord had previously attempted a rent increase prior to purchasing the park; (b) the Landlord later initiated a rent increase which was later dismissed by the RTB on tenant application; and, (c) the Landlord failed to provide the financial information necessary to evaluate the present application. The Tenants' written submissions also note, without corroborating evidence, that rent in several other parks is relatively comparable to what the Tenants pay, absent units that have recently sold where rent is increased and those parks that charge more rent as reflecting the modern amenities of the park.

The Tenants' written submissions also noted the Landlord's prior attempts to raise the rent, including several Tenants disputing one rent increase. (Prior arbitration file numbers are listed on the cover page to this Decision).

Analysis

Standards for Application for Additional Rent Increase

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 burden to provide evidence in support of the claim is on the party 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 [] 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 have reviewed the evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision. Set forth below are those relevant and probative aspects of the Landlord's claim and my findings.

While I accept that the invoice from the repair company states the company rendered service to repair the water line; that the repair company notes on the invoice that repair was necessary as the lines were old; and, that the repair could not have been ascertained by inspection alone prior to purchase of the park, there remain several items of evidence the Landlord has failed to provide that warrant dismissal of the Landlord's application for additional rent increase.

As noted above, Regulation 33(3) requires the director to consider several items of evidence deemed relevant and necessary when determining an application under the Act for an additional rent increase due to significant repairs. In this case, the Landlord's application did not provide:

- the rent history for the affected manufactured home site in the 3 years preceding the date of the application (Reg. 33(3)(b));
- 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 (Reg. 33(3)(d));
- the relationship between the change described in paragraph (d) and the rent increase applied for (Reg. 33(3)(e); and,
- 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 (Reg. 33(3)(h));

Although the Landlord stated they had purchased the park in January 2022, and did not have maintenance records from the prior landlord-seller, subsection (h) refers to the prior year's maintenance and/or repair, which the Landlord would have had in their records. More importantly, the Landlord provided no profit and loss or operating statements at least for the time they have owned the park and, any due diligence at time of purchase would have included receipt of the prior landlord-seller's financial records (such as profit and loss statements, rent history and the like) for the park.

Summary and Findings

I have considered all relevant submissions from the Landlord and those submissions made by the individual Tenants during the hearing and the Tenants' written submissions. I find the Landlord has not provided sufficient probative evidence to establish the elements required to impose an additional rent increase under Regulation 33(1)(b) and 33(3) for the repair of the water main system at issue in the amount of $13,206.47 as provided in the detailed invoices and supporting documents submitted by the Landlord.

Regulation 34(4) states:

> 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.

In accordance with Regulation 34(4), I refuse the Landlord's application.

Conclusion

The Landlord's application for an additional rent increase of 3.0% as set forth in the application is dismissed without leave to reapply. The Landlord must serve each Tenant with a copy of this decision in accordance with section 81 of the Act.

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

Dated: June 24, 2024

Residential Tenancy Branch