



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

On June 21, 2024 (the “Application date”) the Landlord applied for an additional rent increase for significant repairs or renovations, under s. 36(3) of the *Manufactured Home Park Tenancy Act* (the “Act”) and s. 33(1)(b) of the *Manufactured Home Park Tenancy Regulation* (the “Regulation”).

The Landlord with their representative attended the hearing. A number of Tenants along with their representative (hereinafter, the “Tenant”) attended the hearing. I provided all parties the opportunity to be heard and to provide evidence.

Service of Documents

After adjourning the hearing in this matter, I find all parties served materials top the other as required, in accordance with s. 82(1) of the *Act*.

Issue to be Decided

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

Application for Additional Rent Increase

I have reviewed the evidence and testimony of the attending parties. I am not reproducing all the details of the submissions and arguments here. The relevant and necessary elements of the Landlord’s Application, any relevant Tenant responses, and my findings, are set out below.

The Landlord presented that the manufactured home park (the “Park”) has 81 manufactured home sites. The Tenant maintained the Park has 83 sites. The Landlord provided records of the sites rent paid in terms of a base rent, then calculated each successive year’s rent based on their proposed rent increase percentage of 2.71%.

The Landlord submitted this Application seeking an additional rent increase because they repaired/renovated two septic fields, the main water meter, and a privacy fence. The total cost to the Landlord was \$184,506.

The Landlord provided the following invoices:

	work completed	invoice date	cost
1.	septic system	Dec 15/2022	\$67,326.00
2.	septic system	Mar 20/2023	\$52,290.00
3.	supply/install new water meter	Aug 1/2023	\$14,490.00
4.	new center fence (privacy fence)	Apr 19/2023	\$50,400.50
			\$184,506.00

With their Application, the Landlord provided the following information:

- requested rent increases and resulting total rent for all applicable rental units
- reference to 2075 for the “estimated year work next required”
- reasonable and necessary rationale: “septic system and privacy fence at end of useful life; water meter ordered by Regional District”
- a list of Park sites to whom this Application applies
- a rent history for the past three years for all sites
- agreements from four tenants who agreed to a “project recovery rent increase”, taking them out of the Landlord’s count of applicable Park sites.

A “project description” containing the following:

- The septic system had not been upgraded or replaced since the park was built. The two septic fields had deteriorated over the years to the point where regular maintenance was not sufficient, their useful life was ending, and replacement was the only alternative. With regular maintenance, the new fields should not require replacement for several decades.
- The water meter measuring water consumption by the park had failed and the Regional District required it to be replaced . . . The new meter should not require replacement for at least 20 years.
- There was a “privacy fence” through the middle of the park that was over 40 years old, and past the point where repairs were efficient; replacement was the appropriate cost effective decision to ensure it continues to meet its original objective. The new fence should not require replacement for over 30 years.

A December 5, 2023 letter from the local municipality set out that the meter was no longer providing water usage readings. The local bylaw sets out that a land owner must purchase the water meter from the Regional District, to be installed and maintained at the owner’s expense. The note also advised of a substantial annual charge per site should the water meter not be installed – “an amount of not less than \$26,477 for the annual water consumption.”

The Landlord set out that they received a quote from a local contractor. They “felt the cost was reasonable and . . . trust this contractor as he has done most of the work in the park since we bought it and even before we became owners,.”

Specifically on grounds for consideration in s. 33(3) of the *Regulation*, the Landlord provided the following information:

- the Application is for the same percentage increase for all sites – rents range from \$313.70 to \$450
- there have been no changes in the past 12 months in services or facilities
- no relevant changes in operating/capital expenses in the past 3 years
- this is the only application ever submitted by the Landlord
- “Normal and regular maintenance of the services and facilities in the park is ongoing.”

The Tenant raised the following points in a written submission entitled “comprehensive strategy”:

- as per the *Residential Tenancy Act*, a landlord can only include expenses incurred within the 18-month timeframe prior to the Landlord's Application to the Residential Tenancy Branch – this point is not set out in the *Act*; therefore, "we can look to the RTA for guidance"
- being part of a regular maintenance schedule, such costs should be planned for and included in ongoing maintenance budgets
- septic systems, water meters, and fence replacements are anticipated maintenance tasks, and should be considered 'foreseeable repairs' as per Residential Tenancy Branch policy guideline¹.
- the privacy fence benefits only a specific portion of the trailers in the park
- other maintenance concerns, not addressed by the Landlord, are indicative of "minimal upkeep or maintenance"
- the Landlord replaced the water meter 4 months prior to the regional district's request – the dates don't sequence logically.

The Tenant presented statements in the hearing and then provided a copy of their working document that set out points they raised:

- the Landlord provided no video/photo record of work, no permits, no maintenance records or service logs, and other documents the Tenant attempted to tender from the Landlord through a summons/disclosure request process
- the Landlord's evidence "does not meet the standard required to sufficiently analyze the eligibility of the application and lift their burden of proof" – this amounts to "selective disclosure" and as such a decision maker can draw an adverse inference
- septic system work did not have proper permits, and no records of maintenance or other significant work since 1977
- the privacy fence involves only a minor number of sites in the Park – approximately 20 sites out of the total would receive some benefit – therefore this cost is not reasonable or necessary

¹ specifically, *Residential Tenancy Branch Policy Guideline 40. Useful Life of Building Elements*

- a water meter typically sells for around \$4,000; however the “cost of labour [is] a staggering \$10,000”
- the Landlord provided a “vague estimate” of the beneficial lifetime of completed work
- 2 of the sites named as not eligible by the Landlord should be eligible; even though vacant, they still were rented out previously and use the septic system
- notable under the *Regulation* s. 33(3), the Tenant submits that:
 - “general maintenance in the park has not met obligatory standards under the Act”,
 - regular maintenance would have extended the useful life of the claimed items and lowered the total replacement cost,
 - the Landlord submitted false/misleading evidence regarding the dates of the water meter communication.

Analysis

The *Regulation* s. 33 sets out the following:

- (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) . . . 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.

I have considered the Landlord's submissions and evidence, as well as those of the Tenant. I assess whether the reasonableness and necessity of each expenditure.

On a balance of probabilities, I find that there are 83 sites in the Park. The *Regulation* s. 33(2) specifies that all sites in the Park are factored into an equation to determine an equal percentage.

In general, there is no 18-month timeline involved in the Landlord's Application with reference to timing of invoice payments. That is in the *Residential Tenancy Act*, and not the *Act*, which is the applicable legislation in this Application. I exclude no invoice from the Landlord arbitrarily for this reason.

Additionally, I find these are not repairs or renovations that were foreseen under reasonable circumstances as the Tenant submitted with reference to the Residential Tenancy Branch policy guideline.² I find this septic system replacement did not occur within a time period in which it would be reasonable for a repair or renovation – in contrast to an entire system replacement based on age – to recur. I find there is no evidence in place to show that the entire system replacement became necessary because of inadequate repairs and maintenance over the years.

I find the septic system replacements, amounting to \$119,616, were reasonable and necessary in these circumstances. While the Tenant mentioned the Landlord's lack of maintenance records specific to the septic system, I find it more likely than not that the system was not upgraded or replaced since the park was built. This is not a maintenance or repair issue; rather, I find the two septic fields, as presented by the Landlord, deteriorated over many years and required replacement. The Tenant pointed to 1977 as the year when major work was completed in the septic system; therefore, the age of the components/system carries more weight than the Tenant's submissions on the lack of service/maintenance records.

I find the work for septic system replacements will not recur in a period that is relatively soon concerning the overall life cycle of a septic system. This is with reference to the policy guideline.

In sum, I grant the Landlord recovery of the amount of \$119,616, for the septic system replacements.

I find the Landlord did not provide sufficient evidence to show the water meter replacement was reasonable and necessary. There is insufficient information in place to justify the cost of the component, versus its rather high cost of installation. The Landlord only provided that the water meter had failed, with no further information. Though the Landlord provided a record of the district's bylaw need for this replacement, its legitimacy is undermined where the order from the municipality appears to be in place after the Landlord completed the work.

² Residential Tenancy Branch Policy Guideline 40. Useful Life of Building Elements

In sum, I find the Landlord did not provide sufficient information on whether the water meter replacement was reasonable and necessary in the circumstances. I dismiss this piece from the Landlord's Application for this reason.

I find the Landlord did not provide sufficient evidence to show the replacement of a privacy fence in the Park was reasonable and necessary. There is insufficient information in place to justify this expense; I accept the Tenant's submission that this fence has a minimal impact to the Park as a whole. The Landlord stated "replacement was the appropriate cost effective decision to ensure it continues to meet its original objective"; however, there is no information on that original objective.

In sum, I dismiss this piece from the Landlord's Application for this reason.

I find other considerations in s. 33(3) of the *Regulation* are not applicable in this present Application.

In conclusion, as per s. 36(3) of the *Act* and s. 33(1)(b) of the *Regulation*, I find the Landlord established the basis to implement an additional rent increase for significant repairs or renovations.

The *Regulation* s. 33(4) authorizes me to grant the Landlord's Application in full or in part. On this basis, I grant the Landlord's Application in part concerning the septic system replacements.

I order the Landlord is permitted to impose an additional rent increase of 1.71% to the 83 sites in the Park, making the overall cost per site \$1,441.16. This is an increment of \$5.86 per monthly rent per site, per year, based on the average monthly rent of \$333.63. The Landlord may impose the rent increase on the sites that are part of their Application; however, all sites at the manufactured home park are included when calculating the percentages of the rent increase. This is based on the expense amount of \$119,616. All other requirements and obligations with respect to rent increases under the *Act* and the *Regulation* apply to this situation.

Conclusion

I grant the Landlord's Application in part. I authorize the Landlord to impose an additional rent increase of 1.71% based on 83 sites in the Park. This 1.71% is the

additional rent increase amount for significant repairs or renovations *only*; the Landlord may impose an additional permitted annual rent increase as set out in the legislation.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 81 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each Tenant by sending it to Tenants via email where possible. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a printed copy in person.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 19, 2024

Residential Tenancy Branch