

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the Act) for an additional rent increase due to significant repairs or renovations to the manufactured home park site and/or an extraordinary increase in operating expenses of the manufactured home park site, pursuant to section 36(3) of the Act and section 33 of the *Manufactured Home Park Tenancy Regulation* (the Regulation).

Landlord V.M.H.P.L. was represented by its owner N.C. at the hearing.

Tenant W.Z., Tenant R.G., Tenant S.W., Tenant C.R. and Tenant M.S. attended the hearing.

Service of Documents

The Landlord's representative N.C. affirmed that on January 18, 2025, each tenant was either personally served of the application and supporting documents provided to the RTB. The Landlord provided completed Proof of Service forms to confirm service to each Tenant. I find the Landlord served the documents in accordance with section 82(1) of the Act.

No Tenant submitted documentary evidence for this proceeding.

Issues for Decision

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

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

Background and Evidence

The Landlord's owner N.C. stated he purchased the manufactured home park in 1985 and the septic tanks and systems that are the subject of this application were pre-existing at the time of his purchase of the park. N.C. testified that the park is subject to a ministry of health order to replace the septic systems throughout the park. A licensed and registered design and installation expert has been retained by the Landlord to

conduct and oversee the work, as required by the ministry of health order. The Landlord's application requests reimbursement for this work as required by the ministry's order and as overseen and managed by the licensed septic professional.

The Landlord N.C. testified the application for the additional rent increase for the cost to replace certain septic fields and septic systems, including the engineering necessary for design of the system and upgrading a water line as determined by the septic professional. N.C. testified the septic system consists of several septic systems and fields for the 83 sites in the manufactured home park. Currently, one pad site in the park is not occupied. The manufactured home park is divided into 5 sections, A through E, with units designated by section using the letter.

The representative N.C. stated the septic system is original to the park which was constructed in the 1960's. In a prior related proceeding (file number on the cover page to this Decision), and again at this hearing, the Landlord's owner N.C. stated the Ministry of Health issued an order for replacement of the septic systems based upon its determination that the septic system had failed. A copy of the Ministry of Health order, dated October 13, 2022, was provided in evidence at the prior hearing on application ending -222. During that previous proceeding, N.C. stated that additional septic systems would require replacement in the manufactured park as the ministerial order applied to the entire park and work would proceed in phases.

The Landlord submitted copies of invoices from the licensed and registered designer of the septic system who conducted the site assessment and oversaw the septic tank replacements and septic field construction as required by provincial regulation. N.C. explained during the hearing the province requires all septic systems to be designed by a licensed and registered individual and this individual is further charged with assuring the work is completed according to health and safety standards. Copies of the invoices for this work were provided in evidence by the Landlord.

The Landlord also provided invoices for the preparation and installation of septic systems, including water and sewer hook-ups, for the D section of the park. The invoices were for the period March 15, 2024, to August 26, 2024. The invoices also included preparatory excavation work and a pump alarm for the B section, issued February 14, 2024, and April 28, 2024, respectively. N.C. noted that the design professional made determinations on which units would have their own septic tank and field as opposed to those units which would share a septic system. He stated that most shared a common septic field.

The Landlord's application provides the total cost for the design, engineering and management of the project is \$33,440.00; for the installation of 18 septic systems in the B and D sections of the park, the total cost is \$455,040.43; and, the cost for the replacement of a water line is \$25,745.18. N.C. testified the replacement of this water line was a determination made by the design professional and was required because the line was broken.

The Landlord confirmed the cost for the design and replacement of the septic systems for the B and D sections of the manufactured home park did not include any cost associated with the prior application for the E section of the park.

The Landlord also testified that rent for the units is below market value and he has financed the replacement of the septic systems to date by mortgage financing of the park. N.C. testified that other than the previous application for additional rent increase, he had not increased rent in the park for approximately 5 years. The Landlord's application sets out the rental income and operating costs in the current and two prior years of park operation:

	<u>Last Fiscal Year</u>	<u>Prior Fiscal Year</u>	<u>Two Fiscal Years Prior</u>
Rental Income	\$ 342,744.00	\$ 323,436.00	\$ 312,874.00
Other Income	\$ 8,564.00	-	-
Total Operating Costs			
	\$ 883,486.43	\$ 573,936.91	\$ 263,243.32
Other Costs			
-mortgage interest	\$ 117,683.20	\$ 11,519.79	\$ 18,384.26

The Landlord provided in evidence rent rolls from 2022, 2023 and 2024 to confirm rental increases and income as well as profit and loss statements for the park to confirm both income as well as itemized expenses. The profit and loss statements were for the period December 2021 through November 2022, and December 2023 through November 2024.

Tenant W.Z. testified that other parks in urban areas are on municipal or town sewer systems and are not subject to these rent increases. He stated the Landlord is "reactive" to repair work needed and does not take a proactive stance. For instance, he stated the Landlord had not made any improvements to the streets in the area. With regard to the septic system replacement, Tenant W.Z. testified the prior park manager was not qualified to maintain the septic system in the park and as a result of the allegedly negligent maintenance now required replacement. The Tenant stated the septic tanks were pumped out when needed, usually every year. He further stated there was no proper top to his tank and that it had been covered only with plywood.

Tenant S.W. stated that she has been a resident in the park for more than 30 years. During her residence, maintenance was never done to the septic system.

Tenant R.G. also testified it was his opinion the Landlord had neglected the park and but for the provincial health order requiring the septic systems to be replaced, the work would not otherwise be done. He stated that the septic field was now placed in his front yard, devaluing his property. Tenant R.G. stated generally the park required work as there was no fire suppression, and "plowing [of snow] was terrible." His general opinion

was the park had been neglected for an extended period but rent levels were close to those charged by parks in urban areas.

Tenant M.S. stated that he moved into the park in 1972 with his parents and has resided in the park ever since (53 years). He testified the current park owner N.C. “has done nothing” and there have been no upgrades. He stated the prior park manager (who has since passed away) was not qualified as licensed by the province to maintain the septic systems.

Tenant C.R. stated the park was in “a time capsule” and nothing has changed over the years and maintenance has been less than satisfactory.

N.C. stated the prior park manager may not have been licensed but was well-qualified to maintain the septic system based on his years of experience. He also stated that the rules regarding licensure for maintenance personnel of septic systems was within the last 10 years. N.C. also stated that rents were low in the park and had not been increased during a 5 year period and noted the Tenants had the benefit of larger lot sizes as the park was rural. He stated parks in urban areas charged much more in pad rent than he did and with a rent increase the Tenants were still well below a city average of \$700.00 to \$800.00 per month.

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.

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 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 aspects of the Landlord's claim and my findings.

Has the Landlord completed significant repairs or renovations?

I find the septic system replacement for the designated units in this application was a reasonable and necessary expense, per Regulation 33(1)(b)(i) and (ii), and were required by government order. I further find the Landlord's position that the replacement of septic systems throughout the manufactured home park be accomplished in phases to be reasonable. It is noted that Policy Guideline 37D provides: "A landlord could complete a major project in phases and seek an additional

rent increase at the completion of each phase.” As each system is replaced in accordance with the ministerial order, all tenants benefit as septic leaks pose health, safety and environmental issues to all tenants.

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

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 3.0% for all tenants as well as the annual rent increase under the Regulation for this year of 3.0%.

Based on the Landlord's application and evidence, 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/tenants in the 3 years preceding the date of the application

The Landlord's application indicates the respondents/tenants' monthly rent as of the date of filing the application on January 15, 2025, ranged from \$361.00 to \$566.00, which includes the prior approved additional rent increase. The Landlord's representative stated the rent paid by park tenants is similar to or less than rent for comparable sites in other parks in the area. He testified the park is in a rural area and the lot sizes are larger than in urban area manufactured home parks. As noted above, the Landlord had previously applied for an additional rent increase in January 2024, and that rent increase was subsequently approved.

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

I find there was no evidence presented of any changes to 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 increased operating costs from the prior fiscal year to this year is attributable to the financing costs necessary in order to pay for the septic system engineering and replacement as mandated by the government order. I find the change in operating expenses is directly attributable to the capital expenditure in replacing the septic systems in the park and the additional rent increase is for payment of the septic systems.

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's owner stated that with regard to the park's septic systems the Landlord employed a maintenance worker who had several years' experience with septic systems. The Landlord conceded the maintenance individual was not certified but was knowledgeable and had performed work on the septic systems that was comparable to that of a licensed repair person. I find the RTB has not issued a decision that the Landlord contravened section 26 of the Act or ordering the Landlord to complete repairs.

The Tenants' testimony regarding the lack of licensure of the prior park manager with respect to maintenance of the septic system throughout the park is not fatal to the Landlord's application. In this case, the evidence is uncontested that the septic system was in existence at the time the Landlord purchased the park in approximately 1985, and as such had exceeded its useful life. Moreover, the Landlord is mandated by government order to replace the septic system as it has failed based upon their inspection. There is no evidence to substantiate a claim, under these circumstances, that the prior park manager's maintenance of the system led to its failure, particularly given the age of the septic system as beyond its useful life.

Prior rent increase under Regulation 33?

I find the Landlord has previously requested and obtained an order for an additional rent increase under Regulation 33. That application was subject to a prior proceeding, the file number appearing on the cover page to this Decision, and referenced herein.

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

I find the RTB has not set aside a notice to end tenancy issued by the Landlord in the six months before the application's date. N.C. testified that there were no compliance and enforcement orders regarding the park. He stated two tenants were served notices to end their tenancies, and the tenants moved out.

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

There was no evidence to substantiate a claim the Landlord had previously submitted false or misleading evidence or failed to comply with an order for the disclosure of documents.

Summary and Findings

I have considered all the relevant submissions from the Landlord and those submissions made by the individual Tenants during the hearing. I find the Landlord has submitted sufficient probative evidence to establish the elements required to impose an additional rent increase under Regulation 33(1)(b) and 33(3) for the design, engineering and replacement of the septic system as well as a water line at issue in the total amount of \$514,225.61 as provided in the detailed invoices and supporting documents submitted by the Landlord.

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 the Landlord's requested additional rent increase of 3.0% together with the annual rent increase under the Regulation of 3.0% for a total of 6% per site as set forth in detail in the Landlord's application, as I find this a reasonable percentage of additional rent increase for the replacement of the septic system. 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.

I order the Landlord to provide each Tenant a copy of this Decision within two weeks of the date of this Decision in a manner authorized by section 88 of the Act. The rent increase must be done in accordance with Part 4 of the Act and the Regulations thereto.

Conclusion

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

Dated: April 27, 2025

Residential Tenancy Branch