Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RI

Introduction

This hearing dealt with an application by the landlord for an order permitting him to increase the rent beyond what is permitted under the Manufactured Home Park Tenancy Act and Manufactured Home Park Tenancy Regulations (respectively, the "Act" and "Regulations").

The tenants did not all appear at the hearing, but all save the occupants of site #10 had agreed to be represented by an advocate. At the time scheduled for the hearing to begin, the advocate had not telephoned into the conference call hearing or arrived at the location from which the tenants in attendance were gathered to call into the hearing. I asked the tenants whether they were prepared to proceed without the advocate and they confirmed that they were. The hearing therefore proceeded in her absence.

I accepted that all of the respondents listed in the landlord's application for dispute resolution were properly served with the application for dispute resolution and notice of hearing.

By way of a letter dated June 12, 2012, the tenants advised the Residential Tenancy Branch and the landlord that they would be represented by their advocate, G.A. The landlord submitted evidence to the Branch and to G.A. on or about June 21, 2012. The tenants in attendance at the hearing stated that they had not received this evidence. I have determined that it is appropriate for me to consider the evidence. I find that the landlord properly served G.A. with the evidence and the fact that she did not share this evidence with the tenants should not prejudice the landlord, who relies on the evidence.

After the hearing, the landlord's counsel submitted evidence to the Branch. I have not considered this evidence as it was not presented in advance of the hearing and the tenants had no opportunity to respond to it.

Issue to be Decided

Should the landlord be permitted to raise the rent beyond what is permitted under the Act and Regulations?

Background and Evidence

The subject manufactured home park (the "Park") houses a total of 18 manufactured home sites. The landlord named just 17 of the sites as respondents and the landlord's counsel confirmed that the manufactured home on the 18th site is owned by the landlord and rented to tenants.

Pursuant to section 36(3) of the Act, the landlord seeks an additional rent increase based on section 33(1)(b) of the Regulations:

33(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

At issue is a water filtration and purification system in the Park. The parties agreed that the drinking water source is a well. In 2001, the landlord was required by an order of Vancouver Coastal Health Authority ("VCHA") to install a UV treatment device. The device remained in place from 2001 – 2011 and during that time, a letter from VCHA shows that the Park was placed under 4 boil water advisories.

The landlord submitted a letter from VCHA dated June 20, 2012 in which a drinking water officer advised that provincial legislation implemented in 2001 raised the standard of water treatment which required that water supply systems provide 2 barriers to harmful infiltrants. Properties using certain types of water supply systems were gradually ordered to be brought into compliance during a phasing in period which was based on the population supplied by each system with compliance ordered earlier for smaller water supply systems which had frequent high E. Coli or coliform counts.

The subject Park showed E. Coli positive results in June 2011 and as a result were advanced to the top of the priority list for compliance with the new legislation. The landlord was ordered to install a new water system.

The landlord provided evidence showing that he paid a total of $23,924.99 to install the new water system. He also claimed that he will incur $12,415.98 in financing costs for borrowing this sum at 6% over 15 years and will incur a further $13,500.00 over the next 15 years to pay $75.00 each month for chlorine testing by a certified operator. Based on these figures, the landlord claims he has a total expenditure of $49,840.97 which he seeks to recover by way of the imposition of an additional rent increase.

The landlord is a corporation whose principal, R.R., has some involvement with or connection to a number of other companies. The tenants appeared to have no dispute with invoices from companies at arm's length, such as that of the electrician, miscellaneous supplies for construction and plumbing and from the company that provided the actual system and assisted with acquiring and complying with the permit. The tenants do dispute the costs billed by companies and family members connected with the landlord, which include supplies obtained to alter an existing shed to allow it to accommodate the new system, the time for a bobcat, delivery of gravel, sand and a water tank, and labour charges from R.R. and various family members at rates which range from $25.00 to $30.00 per hour.

The tenants argued that the R.R. and his family members exaggerated their hours for labour invoices and suggested that they should not be able to charge at all for labour. The tenants further argued that the costs of building the shed were exaggerated as the shed was pre-existing and was simply enlarged to accommodate the new system.

The tenants argued that they should not have to bear the cost of capital improvements as they only had the benefit of those improvements as long as their tenancies lasted. They argued that because the landlord was obligated to provide potable water as a term of their tenancy agreements and pursuant to the *Drinking Water Protection Act*, they should not bear the cost of upgrades to the system used to provide that water.

The tenants complained that they had been subject to far more than just 4 boil water advisories since 2001 and alleged that the only reason the water system had to be put in place was because R.R. had been negligent in treating the well water. The tenants complained that since the new system was installed, the odour of chlorine was so strong, they were unable to drink the water.

The tenants also took issue with the cost of hiring a professional to conduct chlorine testing over the next 15 years. They questioned why, if R.R. had performed testing in

the past, he could not continue to perform water testing and eliminate this cost. They also took issue with the fact that it was R.R.'s nephew who was the proposed operator.

Analysis

Pursuant to section 33(1) of the Regulations, in order to be successful in his claim, the landlord must prove that (a) he has completed significant repairs or renovations to the Park; (b) the repairs are reasonable and necessary; and (c) they will not recur within a time period that is reasonable for the repair or renovation.

Based on the evidence before me, I find that the installation of the new water system may be characterized as a repair and that it was significant. As the landlord was acting pursuant to an order of VCHA, I find that the repairs were both reasonable and necessary and there is no evidence before me that it is likely that the need for repairs will recur in the foreseeable future.

I do not accept the tenants' assertion that the new water system was ordered because of the landlord's failure to adequately treat the water. It may be true, and I make no finding on this issue, that the need to replace the water system could have been delayed for a time, but I accept the statement of the drinking water officer with VCHA who stated that at some point, the Park would have been required to come into compliance with the 2001 legislation. Any negligence of the landlord in testing the water merely hastened the inevitable.

While I can appreciate the tenants' frustration at being asked to shoulder the cost of capital improvements, the Act and Regulations specifically provide that a landlord may pass on this cost to tenants if he meets the aforementioned requirements.

The tenants provided no evidence showing that the companies associated with R.R. were overcharging for their services and as the costs appear to be reasonable, I accept them as legitimate. I find the cost of supplies to be reasonable and find that it was necessary for the landlord to purchase supplies to expand the existing shed. However, I do not accept the charges for HST, which total $142.00, representing $94.00 for supplies, $48.00 for the use of the bobcat and delivery of items. The landlord did not provide invoices issued by those companies associated with R.R. and I find insufficient evidence to show that HST was charged by the companies and remitted pursuant to the applicable taxation laws.

I also accept the charges for labour. I find it highly likely that the work required to install the water system would require significant labour and I find the rates charged to be reasonable and less than what it would have cost the landlord to hire an unrelated

labourer. I do not accept the $1,009.20 in HST charges for the labour for the same reasons identified in the preceding paragraph.

I find the costs of the arm's length suppliers and service providers to be reasonable.

The landlord did not provide documentary evidence to corroborate his claim for financing costs, but I accept that financing would have been required. However, the landlord claimed to have borrowed $23,924.99 at a rate of 6% amortized over 15 years. This is well in excess of current lending rates and in the absence of proof that the landlord borrowed at this rate, I find it likely that significantly lower rates would have been available to him. I find that a prudent borrower could have borrowed at 3-4%. As the landlord failed to provide evidence to the contrary, I find it appropriate to use a 3% interest rate applied to a loan of $22,773.79, which represents expenses less the HST charges which I have disallowed, and I find that the landlord is entitled to recover $5,535.10 as his borrowing costs.

I am not satisfied that the cost of retaining a certified operator can be characterized as the cost of repair. Rather, it is the cost of maintaining the system and is therefore not recoverable under the Regulations.

In total, I find that the landlord should be permitted to recover $28,308.89 through the implementation of an additional rent increase. This sum represents the $49,840.97 claimed less the $13,500.00 cost of the certified operator, the $1,151.20 in HST which was not documented and a significant reduction of his borrowing costs.

Section 33(2) of the Regulations provides as follows:

33(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.

Although the landlord owns site #18, the Regulations require that the increase be applied to all sites.

There are 180 months in a 15 year period. Dividing $28,308.89 by 180 months results in a monthly payment of $157.27 to be divided between the 18 sites. Dividing $157.27 by 18 sites results in an $8.74 monthly payment due from each site.

The Regulations require that the rent increase be expressed as an equal percentage rather than an equal dollar amount for each site. I have determined that the most accurate means of determining an equal percentage is to base the percentage on the mean rent of the sites in question.

The tenants did not dispute that the current rent as recorded by the landlord in his application for dispute resolution is accurate. The landlord's records show that the lowest rent paid is $228.35 per month while the highest paid is $285.00 per month. Using those figures, the mean rent is $256.68 per month. 3.4% of $256.68 is $8.73. I find that the monthly rent for each of the 18 sites in the Park should be increased by 3.4% beyond what is permitted under the Regulations and I authorize the landlord to implement this additional rent increase. This means that when the landlord gives a legal notice of rent increase, he may increase the rent by what is permitted under the Regulations, which is 4.3% plus a proportional amount for 2012, and an additional 3.4% to reflect this decision.

The landlord's records show that the last rent increase visited on the tenants varies for each site. The landlord may not increase rent prior to the one year anniversary of the last rent increase for each site or before June 1, 2013 in the case of site #10 where the tenancy began in June 2012. In order to implement the rent increase, the landlord must serve on each site a legal notice of rent increase 3 months prior to the effective date of the increase. The rent increase document will show the amount calculated pursuant to the Regulations and will include the additional 3.4% granted by this decision.

Conclusion

The landlord is permitted to increase the rent for each site by 3.4% more than what is authorized by the Regulations.

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

Dated: July 3, 2012

Residential Tenancy Branch