Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding Bel-Aire Estates Ltd.
and [tenant name ppressed to protect privacy]

DECISION

Dispute Code ARI-E

Introduction

Landlord Bel-Aire Estates 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).

This decision should be read in conjunction with the interim decision dated August 4, 2022 (the interim decision).

On April 24, 2023 the applicant was represented by agents MIB and ALK (the landlord). Tenants DIG (site 69) and GEM (site 77) also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing.

Preliminary Issue – Amendment

At the outset of the hearing MIB and ALM correct the name of the applicant.

Pursuant to section 57(3)(c) of the Act, I have amended the application to correct the applicant's name to the name listed on the cover page of this decision.

Service of Documents

The landlord affirmed that he served all the tenants the written submissions, the evidence and the interim decision (the materials) in accordance with the interim decision.

Tenants DIG and GEM confirmed receipt of the materials and that they had enough time to review them.

Tenant DIG did not serve response evidence. Tenant GEM served response evidence to the landlord but did not submit a copy to the Residential Tenancy Branch (RTB).

Rule of Procedure 3.15 states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Based on the undisputed testimony, I find the landlord served the materials in accordance with section 82(1) of the Act and the interim decision.

Per Rule of Procedure 3.15, I excluded GEM's evidence, as GEM did not submit a copy to the RTB. I note that Rule of Procedure 11 applies to claims for an additional rent increase under the Residential Tenancy Regulation only.

Prior application

The landlord submitted a prior application seeking the same rent increase on September 02, 2021. The prior application decision dated February 09, 2022 was submitted into evidence. It states: "The application is refused. The landlord is at liberty

to make another application under sections 36(1)(b) and 36(3) of the Act, and section 33 of Regulation, taking into consideration my findings above."

Although the landlord may take into consideration the findings of the previous decision to submit another application, I am not bound by any other decisions, per section 57(2) of the Act.

Application for Additional Rent Increase

The landlord submitted this application on February 25, 2022 seeking an additional rent increase because he repaved the roads in the manufactured home park (the park).

The landlord stated the park contains 46 sites and all of them benefit from the repaved roads. The landlord named 24 respondents that occupy 18 sites: 57, 61, 64, 65, 67, 69, 72, 73, 74, 77, 84, 86, 87, 89, 92, 93, 94 and 95 (the respondent sites). The remaining sites are rented under the Residential Tenancy Act, not rented or the tenants agreed in writing with the rent increase requested by the landlord.

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)

RTB 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

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.

[…]

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 testified that the park was built in the early 1970s and the landlord purchased it in 1989. The landlord started repaving the original internal roads in 2016, as they were in a state of disrepair, cracking and beyond their useful life. The landlord said the useful life of the new roads is 20 years or longer.

The landlord repaved all the internal roads in 2016, 2017 and 2020, except for one of them. The landlord does not know when he will repave the missing road.

The landlord submitted three invoices into evidence dated:

- July 19, 2016 in the total amount of $37,861.95: for repaving the driveway of sites 87 and 77 ($1,570.00), resurfacing the existing asphalt driveway ($4,690.00) and laneway surface ($29,799.00), plus 5% GST.
- September 15, 2017 in the total amount of $11,581.50: for the driveways of sites 71, 72 and 94.
- September 09, 2020 in the total amount of $44,756.25: for sites 83 and 78 (total of $9,800.00), resurface of east and west roadway ($31,750.00) and mobilization ($1,075.00), plus 5% GST.

The landlord affirmed that the repaving happened in the weeks before the invoices were issued and that he paid for the invoices when they were issued. The landlord repaved the roads in three years because of financial reasons and if he had repaved all the roads at the same time the cost would have been higher.

The landlord paid the total amount of $94,199.70 for repaving the roads. The landlord is seeking a rent increase in the amount of $2,047.82 per unit, as he divided the total amount spent by 46 units.

The landlord's submission (document L-9, page 42) states the current rent of the respondents ranges from $333.61 to $358.48. The landlord is requesting a temporary average additional rent increase of 5.08% per site for 48 months in order to recoup the cost of the repaving, considering the average rent of $336.34 (document L-8, page 40).

Tenant DIG stated the repaving was necessary because there was a major water leak and the landlord had to damage the pavement to repair the pipes.

Tenant GEM testified the repaving is a regular repair, as the prior pavement was sinking.

I find the testimony offered by tenant DIG about the water leak vague, as DIG did not indicate when the water leak happened. I find the testimony offered by tenant GEM is in accordance with the landlord's testimony, as it indicates the prior pavement was sinking.

Tenants DIG and GEM did not dispute the landlord's convincing testimony that the prior road was from the 1970s.

Based on the landlord's undisputed testimony, I find the useful life of the new roads is 20 years.

I accept the landlord's convincing testimony and invoices that the landlord repaved the park's road in 2016, 2017 and 2020 because the original roads from the early 1970s were in a state of disrepair, cracking and beyond their useful life. Based on the landlord's convincing testimony, I find that repaving the roads was a reasonable and necessary renovation for the park and that it will not recur within a time period that is reasonable.

The invoices submitted contain expenses related to repairing specific units' driveways. The landlord said the driveways repair was also important for the park, as someone could fall in the driveways and sue the park for hazardous conditions.

Regulation 33(1)(b) states the landlord may seek an additional rent increase for repairs or renovations “to the manufactured home park”, not a specific site. I find that repairs to a specific site do not qualify for an additional rent increase under Regulation 33, as these repairs benefit the specific occupants of the sites, not the park as a whole.

Excluding the driveway repair expenses, I find the landlord proved expenses for repaving the roads in the amount of:

- July 19, 2016: $36,213.45 (expenses of $4,690.00 + 29,799.00 + 5% GST). I excluded the amounts for repaving driveways.
- September 15, 2017: $0.00, as the totality of the expenses listed are for driveways.
- September 09, 2020: $34,466.25 (expenses of $31,750.00 + $1,075.00 + 5% GST).

In sum, I find the landlord proved an expense of $70,679.70 for repaving the roads.

I accept the landlord’s uncontested testimony that the 46 sites benefit from the repaved roads.

Is there a single application to increase the rent for all sites by an equal percentage?
I accept the landlord’s convincing testimony that repaved roads benefit all the occupants and that all the tenants that did not agree in writing to the requested rent increase are respondents.

The landlord’s submission (document L-9, page 42) states the landlord is seeking a rent increase divided equally by the 46 sites over four years to recover the amount spent to repave the roads.

Based on the landlord’s uncontested testimony and written submissions, I find the landlord submitted a single application to increase the rent for all the sites by an equal percentage considering the rent amount of $336.34, in accordance with Regulation 33(2).

Rent payable for similar sites and history for the respondents in the 3 years preceding the date of the application
The landlord submitted this application in February 2022.

The landlord affirmed that the rent paid by the respondents is similar to rent for similar sites in other parks in the area.

I accept the landlord's submission (L-10_rent rolls_2022) indicating the amount of monthly rent paid by the respondents from 2019 to 2022. The submission indicates the sites rent ranged from $307.50 in August 2019 to $358.48 in February 2022.

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 since January 2021.

Changes in operating expenses and capital expenditures in the 3 years preceding the date of the application and the relationship of the changes and the requested rent increase
I accept the landlord's testimony that there were no changes in the operating expenses related to the rent increase requested.

Tenant GEM stated the repaving expenses incurred in 2016 and 2017 should not be considered because they happened more than 3 years before the landlord submitted the application.

The legislation does not require the landlord to submit the application for an additional rent increase in the 3 years after the repairs or renovation are completed.

Has the landlord contravened section 26 of the Act?
I accept the landlord's undisputed and convincing testimony that he never contravened section 26 of the Act, he always complied with his obligations to provide, maintain, and repair the park, 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.

As referenced in the topic "Has the landlord completed significant repair or renovations?", I found that the tenant's testimony about a water leak in the road was vague.

Prior rent increase under Regulation 33?
I accept the landlord's undisputed and convincing testimony that he 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 regarding 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 since 2012.

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) for the expenses of $70,679.70 for the respondents. The amount per site is $1,536.51, as I divided the expenses of $70,679.70 for the 46 sites in the park.

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 do not find that it is reasonable to amortize the cost of the rent increase during 48 months, as I find there is no rational for amortizing the rent increase during 48 months. I find that it is reasonable to amortize the cost of the rent increase during the 20 year-

useful life of the new roads. Thus, I authorize the landlord to impose a rent increase based on the amount of $6.40 per month per site ($1,536.51 / 240 months). This amount equals a monthly rent increase of 1.9%, considering the average rent amount of $336.34.

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 do not find that granting a rent increase in part, per Regulation 34(4)(a), means that I can grant it temporarily, as opposed to permanently. The landlord is at liberty to, voluntarily, cancel the allowed rent increase anytime he wishes by reducing the rent.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase of 1.9% 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 *Manufactured Home Park Tenancy Act*.

Dated: May 18, 2023

Residential Tenancy Branch