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 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*").

Landlord A.G.K.&.A. was represented by A.K. and both owners B.B. and D.B. were in attendance on behalf of Landlord A.P.P.L. Contractor for the project K.H. of P.P. testified as an expert witness.

As a preliminary matter, the Landlord re-submitted its application on April 10, 2025, to provide for the addition of Landlord A.P.P.L. I find it appropriate to add this Landlord to the proceeding as it is the owner of the subject manufactured home park.

Tenant H.E.S., Tenant J.M., Tenant L.T.M.M., Tenant M.J.K., Tenant D.P., Tenant J.K., Tenant S.Y.-.W.S., Tenant R.S., Tenant T.M., Tenant S.R. and Tenant C.H. attended the hearing.

Service of Documents

The Landlord confirmed service of the notice of hearing together with copies of its evidence to each Tenant by registered mail. The Landlord stated they received no written submissions from any Tenant.

The Landlord was advised that Tenant K.D. and T.M. had made written submissions to this tribunal for consideration. Tenant T.M. was in attendance at the hearing and could provide his testimony as to the contents of his written submissions.

Issue for Decision

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

Background and Evidence

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants attending the hearing. However, not all details of the respective submissions are reproduced in this Decision. Only relevant and material

evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The manufactured home park has 34 sites and was constructed in 1994. The current Landlord purchased the park in 2012. The park is located on a steep slope with manufactured home sites on each side of a main road through the park that winds from side to side. The Landlord provided a copy of the park's layout showing the road traversing through the middle of the property. Weather conditions, principally snow and precipitation, have caused deterioration to the road that is constructed of asphalt. The road had potholes and cracks throughout, in some areas the asphalt is missing in large pieces. The Landlord submitted photographs of the condition of the road prior to repair. Landlord D.B. stated she and Landlord B.B. believed the asphalt was original to the construction of the park which occurred in approximately 1994. She stated that since their purchase of the park they had made several upgrades, adding additional parking in 2016 as well as installing new curbs. She stated the road had been patched in 2017, that drainage was corrected in 2018, and further repairs to the road were made in 2020. As the road is privately owned, the Landlord has ploughed and sanded it during the winter season. She noted the steepness of the road contributed to the water accumulating and running down the road.

The Landlord states in its written submissions it was informed that future patch repair was no longer a viable option and the damage to the road was sufficiently extensive to require resurfacing. The road which is the subject of this application is approximately one kilometer long. The Landlord obtained two quotes from area contractors for the resurfacing project and selected the lowest bid. The Landlord provided a copy of each bid it received from the paving contractors. The cost of the repaving project totaled $171,780.00. The Landlord provided proof of payment to the contractor by submitting a copy of the canceled check in the amount of $166,425.00 made by the Landlord on October 9, 2024, as well as an electronic transfer to the contractor in the amount of $5,355.00 that same date. The Landlord's application also included a financing cost of $57,534.48 which the Landlord stated it incurred to pay for the repair work.

The contractor K.H. testified during the proceeding. K.H. stated he is the general manager of the contracting company for the past 6 years and has been in the resurfacing and paving industry for 43 years. He stated he had inspected the road in the manufactured home park two months and one month prior to commencing the repair work. The witness explained that asphalt deteriorates and cracks over time. He said sometimes the cracks can be "healed" with rubber compound and seal. However, when the cracks reach the "gatoring" stage, as in this case, it is a result of water seeping in below the asphalt and never evaporating. He explained this water will freeze during the winter and worsen the cracking. The photographs submitted in evidence by the Landlord depict "gatoring" of the asphalt described by the witness. He explained the asphalt was in such a deteriorated condition that if the repair work was not undertaken now, the Landlord would be forced to complete remove and replace the asphalt at four times the price in the next year or two years. K.H. stated the repair work consisted of

grinding out the “bad spots,” leveling the course and then rolling and tamping new asphalt. He testified the work repairing the road was expected to last 15 to 20 years.

The Landlord submitted copies of correspondence sent to Tenants regarding the additional rent increase and requesting their written consent. Thirteen Tenants provided their written consent to the additional rent increase described in the letter. The Landlord’s letter sets forth the calculation and how the Landlord will impose the 1.9 percent additional rent increase on a Tenant’s “base rent” (that is, their rent at the time the application was made) over a 10-year period. The letter notes that in the event the additional rent increase requested in the Landlord’s application is not granted, the consenting Tenant will be informed and the agreed-upon rent increase will be re-calculated.

Tenant C.H. inquired why, when the contractor was paving, there was no overlap into the driveways for the pad sites. The contractor stated the driveways are not considered part of the road, and to extend the overlap into a pad driveway would push water onto the property. Tenant D.K. inquired of the witness whether the repair work was necessitated due to lack of maintenance by the Landlord. The witness replied the issue with the road was not related to maintenance but rather the road lay over soil conditions of clay (predominant in that area) on rock and this allowed for water to come up and seep through. He stated water is the “worst enemy” for an asphalt road. Some cracks can be repaired with rubber and sealant, but he found the Landlord had not provided inadequate maintenance but rather water and overall soil conditions led to the road requiring resurfacing.

Tenant T.M. agreed with the witness, stating water is “the worst enemy” for asphalt. Tenant T.M. testified that a water leak has persisted for years on the property causing the “gatoring” condition of the asphalt. He stated previously there had been a water line break between two units and there was also an underground spring that runs across the road from which the water emanates.

Tenant L.M. objected to the Landlord’s statement that all tenants agreed with the resurfacing project as indicated in the Landlord’s written submissions.

Tenant S.S. testified she has lived in the park for approximately a year and is the first driveway in the park. She stated there was a large hole in the road at the turn-in to her driveway and she had spoken with the Landlord. She provided photographs to the Landlord on August 11, 2024, and the Tenant purchased at her own expense asphalt for fixing the hole. Thereafter, the Landlord stated there would be repair of the asphalt. Tenant S.S. expressed frustration with making a repair of the road at her own expense and effort when the Landlord knew it would be undertaking repair in any event.

Tenant J.M. stated they have resided in their home at the “top of the cul de sac” for 16 years. They were not informed the entire road would be repaved. They stated it should have been wider. The Landlord replied the road was repaired to the same footprint as the original.

Tenant S.R. stated she has resided in the park since 1996 and also had received no notice of the repaving until the Landlord's January 22, 2025, letter but tenants were expected to pay for the improvement.

Tenants R.S. and D.S. expressed concern they had a limited income and could not afford the requested rent increase. Tenant D.S. stated the Act provides the Landlord is responsible for repair arising from wear and tear. Tenant D.S. takes the position that wear and tear is the responsibility of the landlord, not tenants. Tenant H.S. concurred, stating she considered the paving repair to be maintenance and thus the Landlord's responsibility. Tenant C.H. also stated the Landlord bore responsibility for maintaining the roadway.

Tenant M.K. testified she moved to the park in 2007, and the tenancy agreement did not provide for rent increases of this nature. Rather, the Tenant's position is the Landlord is to bear the cost of maintaining the common property which includes the road.

Tenant J.K. concurred with other Tenants comments regarding the Landlord's responsibility for the repair of the road. She noted the damage depicted in one of the Landlord's submitted photographs was caused by maintenance when the Landlord used a bobcat.

Tenant K.D. made written submissions for consideration. Tenant K.D. submits the water damage to the asphalt was caused by a water main leak in the park. She further objected to the design of the road as too steep and this alleged design flaw caused water run-off to traverse the entire roadway, rather than being diverted to the side. Additionally, Tenant K.D. questioned the Landlord's request for reimbursement of the finance charge.

Upon inquiry regarding the Landlord's inclusion of financing costs as part of the additional rent increase application, Landlord representative A.K. acknowledged the Act and regulations are silent on this issue but noted that decisions in the past had provided for the inclusion of financing costs. The Landlord had submitted a letter from a bank official providing "solely" an estimate of financing costs (interest payments) on $175,000.00 at an assumed prime rate of 5.45 percent as of December 12, 2024.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not the facts occurred as claimed. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord bears the burden of proof in support of its application.

Section 36 of the Act provides for a landlord to impose a rent increase only up to the amount:

- calculated in accordance with the regulations ("annual rent increase"),

- agreed to by the tenant in writing (“agreed rent increase”), or
- ordered by the director on an application pursuant to the regulations (“additional rent increase”).

Section 33 of the Regulation provides for the circumstances for a landlord’s application for 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:
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> […]
>
> (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 Tenants.

I find the park has 34 sites all of which are to be included for purposes of an additional rent increase. The Landlord presented evidence the asphalt had been failing for several years, despite repair efforts they had undertaken since approximately 2017 to patch the roadway. Landlord D.B. testified they believed the asphalt was original to the park when constructed in 1994. Policy Guideline 40 provides the useful life for asphalt is 20 years. The Landlord introduced the testimony of the contractor, who held himself out as an expert based upon his 43 years of experience in the field, the asphalt on the road had reached a point that further patch repair could not be made and surface replacement was necessary. Based upon the evidence presented, I find on a balance of probabilities, the asphalt road was at the end of its useful life.

Additionally, the Landlord's witness provided testimony the asphalt surface had deteriorated due to water that was present under the surface. The evidence suggests this was the result of an underground spring. Although it was suggested by some Tenants that a broken water line may have been the cause of the water below the surface of the asphalt, I find there was insufficient evidence to substantiate this position. I am satisfied with the Landlord's evidence that the water accumulation under the asphalt was the result of run-off from moisture and from an underground spring. The Landlord's witness testified the soil composition – clay on rock – is sufficient to trap water below the road surface and once present, leads to the cracking of the surface.

I find there is no evidence to support a finding the repair was necessary due to inadequate repairs and maintenance over the years or damage caused by the Landlord when using equipment such as a bobcat. The Landlord testified to repairs that had previously been made since their purchase of the park in August 2012.

The Landlord's witness also testified the repaired road surface will last approximately 15 to 20 years.

Therefore, based upon the evidence, I find the Landlord is entitled to an additional rent increase for the completion of significant repairs (namely, the asphalt road in the park used by the Tenants to gain access to their individual sites) that are both reasonable and necessary, and not anticipated to re-occur within the time-frame of the useful as provided in the Policy Guideline. I further find the Landlord's cost for this repair was $171,780.00, incurred on October 9, 2024, within 18 months of the Landlord's application. In reaching this determination, I have considered the Landlord's evidence regarding the prior three years of rent charged for each site in the park. The Landlord's representative A.K. stated in his concluding remarks the Landlord has charged the additional rent increase in the amount authorized each year but noted the annual authorized rent increase "ignores inflation."

However, I decline to authorize the financing cost of $57,534.48 be included in the additional rent increase. I find there is no basis in the Act, regulation or Policy Guideline for the inclusion of this cost. Alternatively, even if a cost that could be included in an additional rent increase, the Landlord did not provide evidence, such as a promissory note or loan documents, to substantiate that it had incurred this interest charge. The Landlord had only submitted a letter from a bank representative providing an estimate of interest at prime rate on a principal sum of $171,780.00. I find this also is an insufficient basis to include this cost as part of the additional rent increase requested in the Landlord's application.

Conclusion

In conclusion, pursuant to section 36(3) of the Act and section 33(1)(b) of the Regulation, I find the Landlord has established the basis for an additional rent increase for significant repairs or renovations.

Section 33(4) of the Regulation provides authority to grant the Landlord's application in full or in part. Therefore, I grant the Landlord's application in part concerning the cost of repair of the asphalt on the road through the park in the amount of $171,780.00. I decline to grant the Landlord's application for reimbursement of the financing interest cost.

I authorize the Landlord to impose an additional rent increase of 1.4 percent calculated on the "base rent" for each of the 34 sites in the Park for the 10-year period set out in the Landlord's application. This additional rent increase amount is for significant repairs or renovations *only*; the Landlord may impose an additional permitted annual rent

increase as set out in the legislation. The Landlord is directed to notify those Tenants who had previously provided consent to the Landlord's application which include the finance interest cost. The Landlord must impose this increase in accordance with the Act and the Regulation.

Therefore, I order the Landlord to serve all Tenants with this Decision, in accordance with section 81 of the Act, within two weeks of receipt of this Decision. I authorize the Landlord to serve each Tenant by sending it to Tenants by email when authorized by the Tenant for service in this manner or by any other manner of service permitted under 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 Act.

Dated: July 21, 2025

Residential Tenancy Branch