



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MANERIE INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OL

Introduction

This hearing dealt with the Landlord's Application for an Additional Rent Increase, pursuant to section 43 of the *Residential Tenancy Act* (the "Act").

All parties were represented at the hearing. The corporate Landlord was represented by its agent DR (the "landlord"). The tenants were primarily represented by the tenant from unit 302, GK (the "tenant") who confirmed she also represented the tenants who were not in attendance at the hearing. The tenants were also assisted by advocates. Both parties were given a full opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions.

The parties confirmed that there were no issues with service and they had each been served with the other's materials. Based on the undisputed testimonies I find that each of the parties have been served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to increase the rents for these tenancies above the amount permitted under the Act and Regulations?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced

here. The principal aspects of the landlord's claims and my findings around each are set out below.

The rental building is a multi-unit building built in 1973. There are 12 units in the building. The landlord testified that it is their practice to establish a market rate rent for each tenancy and to not increase them throughout the course of the tenancies. The landlord submits that the rents for the subject units range from \$1,375.00 to \$1,950.00 a month. Each of these tenancies started at various times, the oldest tenancy starting in May, 2010 and the most recent starting in February, 2018.

The landlord seeks an order to increase the rents for the rental units by 77.32%, 73.32% above the legislatively permitted rent increase of 4.00%. The landlord submits that they have completed significant repairs or renovations to the residential property And that they have incurred a financial loss from an extraordinary increase in the operating expenses.

The landlord submits the following financial information:

	Last Fiscal Year	Previous Fiscal Year	Two Fiscal Years Ago
Total Rent for period if all sites rented	\$190,560.00	\$178,800.00	\$177,600.00
Other income	\$9,619.00	\$9,396.00	\$7,880.00
Total Operating Costs	\$55,607.04	\$42,226.07	\$49,222.26

While the application provides rows to be completed by the landlord if there are Financing Costs or Other Costs the landlord did not submit any information in those rows. The landlord did not submit an audited financial statement or any financial statement in support of their application.

The landlord testified that over the past year they have undertaken major renovation and repair work. The landlord said that the work includes replacement; of bathtubs and piping, retiling in the bathrooms, installing exterior lighting, changing and updating keys and locks to the building, and replacing the electrical wiring in the building. The landlord submits that the cost of these repairs was \$170,263.10. The landlord submitted into written evidence numerous invoices and receipts for the work done.

The landlord said that this was the first time that such major repairs and renovations were undertaken. The landlord characterized the work as preventative maintenance.

The landlord said that the electrical system upgrades were performed as they were advised by their insurer through a loss prevention inspection that the aluminum wiring posed a fire hazard compared to copper wiring. A copy of the insurance report was submitted into evidence.

The landlord said that the plumbing work was initiated when they attended to reports of a leak in a unit and discovered that the bathtub and piping was significantly aged and required updating.

The landlord testified that the upgrade of the security system and locks was undertaken as there were incidents of break-ins approximately 5 years ago. The landlord testified that they were advised by police that exterior lighting upgrades would be a deterrent. The landlord also said that they discovered that the locks and keys to the building were outdated, with many keys becoming worn and unusable.

The landlord submits that as a result of these repairs and renovations they have incurred a significant loss. The landlord testified that they are not expecting any further renovations to be necessary and that the work performed is expected to last for at least 10 years. The landlord said that they are now seeking to raise the rents in the rental units above the statutory amounts to pay for the cost of these repairs.

Analysis

In accordance with section 43 of the *Act*, a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. Presently, a landlord may increase rent by up to 4.0%. The legislation also states at section 42(1)(a), that a landlord must not impose a rent increase for at least 12 months after the date on which the rent was first established under the tenancy agreement.

Under section 43 of the *Act*, the Landlord is allowed to request an additional rent increase beyond the percentage allowed by the *Act* and regulation, by making an Application requesting an additional rent increase such as this one.

There are several grounds upon which a landlord might request an increase, in the present case the landlord has indicated on their application that they are seeking authorization for an additional rent increase on the basis that;

- The landlord has completed significant repairs or renovations to the residential property that:
 - Could not have been foreseen under reasonable circumstances, and
 - Will not recur within a time period that is reasonable for the repair or renovation.
- The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property.

I find that the evidence of the landlord and the figures provided do not support their application.

The landlord states, in one section of their application, that they are seeking an additional rent increase of 73.32% above the statutorily permitted 4.00% for a total increase of 77.32% for these tenancies. However, as the tenant correctly points out in their testimony, the amounts of requested increase the landlord claims in their application for each of the rental units are amounts that vary between 44.00% to 120%. In the landlord's application, there is no rental unit for which the landlord is actually requesting a 77.32% increase. It is apparent from the landlord's application that they are seeking to increase the total rent for the units by an average amount of 77.32% with some units being imposed a higher percentage rent increase. However, as outlined in Residential Tenancy Policy Guideline 37, if a landlord is making an application to increase the rent they must make a single application to increase the rent for all rental units by **an equal percentage**.

I find that the landlord's application does not comply with the instructions written in the application form or the Guidelines as the application seeks to impose different percentage rent increase to each of the rental units.

The parties gave undisputed evidence that the tenancy for Unit 304 began in February, 2018. I find that it has not yet been 12 months since the rent was first established under the tenancy agreement for this unit. Therefore, I find that in accordance with section 42(1)(a) the landlord is not permitted to impose a rent increase for this rental unit as it has not yet been 12 months since the rent was first established.

The landlord claims that they have incurred a financial loss due to extraordinary increase in operating costs. In their application the landlord claims that the difference between the operating expenses from the last fiscal year and the year previous is an increase of \$13,372.76. I note parenthetically, that the amount provided by the landlord

as the operating expenses under the section of the application for listing all operating costs differs slightly from the amount listed as total operating costs under the section of the application for Financial Statement Information.

Residential Tenancy Policy Guideline 37 provides that a Financial Loss is the amount by which the total costs for a given accounting period exceeds the total revenue. The onus is on the landlord to provide sufficient evidence that there has been a Financial Loss. In their application the landlord listed their revenue from rental income if all units are rented for the fiscal year ending December 31, 2017 as \$190,560.00. The landlord submitted that other income would be \$9,619.00. The landlord listed their total operating costs for the fiscal year as \$55,607.04. No other costs were provided by the landlord. The landlord did not submit into evidence audited financial statements for any period.

On the basis of the evidence presented I am unable to find that the landlord has experienced a financial loss, extraordinary or otherwise. The revenue from the rental income alone exceeds the operating costs such that there is a net gain of over \$100,000.00. While the landlord testified that they have incurred costs related to significant repairs and renovations to the rental building, I find that these costs, as described would be one-time costs of repairs, a capital expense, rather than an increase in the cost of ongoing operations.

While I accept the landlord's submission that there has been a net increase in the operating expenses from the previous fiscal year to the last year of \$13,372.76 I find there is insufficient evidence to deem this increase to be extraordinary. Policy Guideline 37 defines extraordinary as going beyond what is usual or regular or exceptional to a marked extent. In reviewing the evidence submitted by the landlord, consisting principally of the figures in their application as the landlord has not submitted any financial statements, I find that there has been an increase in the operating costs from the previous fiscal year to the last year. However, I find that there is insufficient evidence to deem the increase in costs to be extraordinary as they do not significantly alter the landlord's net profit.

I find that the landlord has not shown on a balance of probabilities that they have incurred a financial loss. Furthermore, I find that the landlord has not shown that there has been an extraordinary increase in the operating expenses of the residential property.

Policy Guideline 37 sets out that:

A repair or renovation may be considered “significant” when (i) the expected benefit of the repair or renovation can reasonably be expected to extend for at least one year, and (ii) the repair or renovation is notable or conspicuous in effect or scope, or the expenditure incurred on the repair or renovation is of a noticeably or measurably large amount.

In order for a capital expense for significant repair or renovation to be allowed in an Application for Additional Rent Increase for a residential tenancy, the landlord must show that the repair or renovation could not have been foreseen under reasonable circumstances and will not reoccur within a time period that is reasonable for the repair or renovation. An example of work that could not have been foreseen under reasonable circumstances is repairs resulting from a ruptured water pipe or sewer backup even though adequate maintenance had been performed.

The parties gave undisputed evidence that there have been repairs and renovations to the rental building. The landlord submits that the work was significant as the updating of the electrical systems, bathrooms of the rental units and security systems are intended to last for at least a decade. I find that the repairs and renovations undertaken by the landlord which consist of bathroom renovations, security upgrades and replacement of locks, and updating the electrical wiring for the building, to meet the definition of significant repairs. I find that the expected benefit of the work is greater than one year and the work is notable in effect and scope. The landlord submits that the expenditures incurred for the repairs and renovations is \$170,263.10, an amount I find to be measurably large for a building with a reported operating cost of \$55,607.04 for the past fiscal year. For these reasons I find that the repair and renovations are significant.

The landlord submits that all of the work could not have been foreseen and will not reoccur within a reasonable period of time. I am not convinced that the nature of the repairs and renovations undertaken were reasonably unforeseeable.

I find that work related to updating tubs, piping and electrical wiring for the building to be issues that would be reasonably expected to occur for a building of the age and vintage of the subject property. I find that it is reasonable to expect that throughout the lifespan of a building, periodic repairs, maintenance and renovations will be required. While the timing of these particular issues may have been unexpected, I find that the nature of the

work is reasonably foreseeable. It is reasonable to expect that a four decade old building will require periodic replacement of bathroom fixtures, piping and electrical wiring. Furthermore, I also find that replacement of building locks, security systems, and exterior lighting are issues that could be reasonably foreseen to be required over time.

While the landlord may not have expected that the need for these repairs and renovations would have occurred at this time, I find that the nature of the work was upgrades that were reasonably foreseeable. Periodic maintenance and upgrades to a building are reasonable foreseeable. I find it reasonable to expect that electrical wiring and plumbing pipes would require some maintenance and upgrades over time. I find that locks and keys would also have a lifespan and that periodic replacement would be warranted. It may have been unexpected that the repairs and renovations would be required at this particular point in time and that all three issues would require attendance at once but I find that the nature of the issues were reasonably foreseeable. As such, I find that the landlord has not shown that the repairs and renovations completed could not have been foreseen under reasonable circumstances.

I find that the landlord's oral submissions and the figures submitted in their written evidence are not consistent with each other. The landlord said that they are now operating at a loss but the figures submitted as their financial statement information shows that there is a net profit when their operating costs are deducted from their total rental and other income. This is the case for both the previous fiscal year and two fiscal years ago. While there is undisputed evidence that the landlord took on large renovation projects, I find that these are all capital improvement projects that could have been reasonably anticipated and for which a reasonable landlord would be building up a contingency fund from their annual net profits. The landlord was aware of the age of the building. I find it unreasonable for a landlord to not anticipate that a rental building would not require periodic upgrades, repairs and renovations.

I find that the landlord has not established, on a balance of probabilities, the basis for a rent increase beyond the statutory amount. Consequently, I dismiss the landlord's application.

Conclusion

I dismiss the landlord's application for an additional rent increase without leave to reapply. The rents for these tenancies remain at the current rate until changed in accordance with 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 *Residential Tenancy Act*.

Dated: August 17, 2018

Residential Tenancy Branch