



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Other considerations.

Introduction

This matter dealt with an application by the Landlord for other considerations (in the form of an additional rent increase).

The Landlord said he served the Tenants with the Application and Notice of Hearing (the “hearing package”) by personal delivery on October 15, 2018. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded in the absence of the Tenants.

At the start of the hearing the Landlord said the application does not involve the Tenant D.L. as she is a new tenant and she moved into the unit after the restoration work was completed. The Landlord said the application for an additional rent increase is only applicable to the Tenant E.B.

Issue to be Decided

1. Is the Landlord entitled to an additional rent increase and if so how much?

Background and Evidence

The Landlord said he made this application for an additional rent increase of 31% under part 3 of the Residential Tenancy Act and in accordance with Part 4 section (23) of the Residential Tenancy Regulations. The Act says a landlord can make an application for an additional rent increase if the landlord has completed significant repairs or renovations to a residential tenancy unit and these repairs or renovations are reasonable, necessary and will not recur in a reasonable period of time.

The Landlord said the application is a result of a flood in Tenant E.B. rental unit on June 21, 2018. The flood was caused by a break in the drain connection of the wash machine owned by the Tenant E.B. The flood resulted in the lower rental unit being flooded. A restoration company was called in to mitigate the flood damage. The work done was to repair the flood damage and to replace the flooring in the rental units.

Further the Landlord said the restoration company cost \$4,033.30 and the replacement flooring cost \$2,485.19 for a total of \$6,518.49. The annual rent increase of 2.5% and the additional rent increase of 31% would allow the Landlord to recover these costs in and estimated 27 months. The Landlord continued to say that making an application for the full amount under a loss or damage claim would be a hard ship on the Tenant and the Tenant does not have the means to pay a claim of \$6,518.49. Consequently, the Landlord believes an additional rent increase is the best way to handle the cost of the damage the Tenant caused with his washing machine. In addition the Landlord said his insurance company declined the claim as they said the Tenant was responsible for the damage. The Landlord said the Tenant did not carry tenant insurance so the loss could not be satisfied by and insurance claim.

The Landlord said he believes an additional rent increase on the unit of Tenant E.B. is the best way to deal with the costs of the damage to the rental units. In addition the Landlord said increasing the rent to \$961.20 is in line with the lower unit's rent of \$960.00 and both rental amounts are below market rent in the area. The Landlord said he believes this is a fair way of handling the cost that he has incurred due to the flooding caused by the Tenant E.B.

The Landlord concluded his testimony requesting an annual rent in the amount of 2.5% and an additional rent increase of 31% in a total amount of \$241.20 for Tenant E.B. This would increase Tenant E.B.'s rent from \$760.00 to \$961.20.

Analysis

The Act says in Part 3 section 43

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) **calculated in accordance with the regulations,**

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The regulations say in Part 4 section 23

23 (1) A landlord may apply under section 43 (3) of the Act [additional rent increase] if one or more of the following apply:

(a) Repealed. [B.C. Reg. 225/2017, App. 2, s. 2.]

(b) the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

(i) could not have been foreseen under reasonable circumstances, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

(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 rental units in the residential property 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 rental units in the residential property immediately before the proposed increase is intended to come into effect;

(b) the rent history for the affected rental unit 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 residential property in which the rental unit 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 32 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 residential property 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.

(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 residential property.

(5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

Policy guideline 37 says

Additional Rent Increases under the Act

The Residential Tenancy Act allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the maximum annual allowable amount. The Residential Tenancy Regulation⁵ sets out the limited grounds for such an application. A landlord may apply for an additional rent increase if one or more of the following apply:

1. **The landlord has completed significant repairs or renovations** to the residential property in which the rental unit is located 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.

2. The landlord has incurred a financial loss from an extraordinary increase in

the operating expenses of the residential property.

3. The landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances.

4. The landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

If a landlord applies for a rent increase under any of the first three circumstances, the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage. If one or more tenants of rental units in the residential property agree in writing to the proposed increase, the landlord must include those rental units in calculating the portion of the rent increase that will apply to each unit, however the tenants need not be named and served on the Application for Additional Rent Increase.

I find the Landlord has met the criteria for an additional rent increase and he has incurred costs for restoration caused by the Tenant E.B. that are not normal and will not recur in a reasonable length of time. I award the Landlord the annual rent increase of 2.5% and the additional rent increase of 31% for a total rent increase of 33.5%. This will increase the rent for Tenant E.B.'s unit from \$760.00 per month to \$961.20 per month. Further Tenant D.L. is not affected by this decision and her rent remains at \$960.00 per month.

I order the rent for Tenant E.B. to be \$961.20 starting January 1, 2019.

Conclusion

The Landlord's request for an annual rent increase and additional rent increase in the amount of 33.5% or \$241.20 is granted for Tenant E.B.'s unit only. The rent on Tenant E.B.'s unit is \$961.20 starting January 1, 2019.

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: November 27, 2018

Residential Tenancy Branch