Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's application pursuant to section 43(3) of the *Residential Tenancy Act* (the *Act*) for an additional rent increase beyond the amount prescribed under the *Residential Tenancy Regulation* (the *Regulation*).

AL, the named tenant's son, testified on behalf of the named tenant in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to ask questions and provide comments with respect to the positions taken by one another with respect to the landlord's application.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Should the landlord's application for a rent increase in an amount greater than the amount calculated under the *Regulation* be allowed?

Background and Evidence

This month-to-month tenancy began in July of 2014, with monthly rent currently set at $1,814.25. The landlord collected, and still holds a security deposit equivalent to half of the current monthly rent.

The landlord has applied to the RTB for authorization to increase rent beyond the 2.5% increase allowed for 2019 under section 43(1) of the *Act* as established under section 22 of the Regulations. The landlord identified the following reason in the application for an additional rent increase:

> *A) 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 with a time period that is reasonable for the repair or renovation...*

In the application, the landlord correctly noted that the permitted increase for 2019 is 2.5%. The landlord requested an additional increase of 18.6% for a total increase of 21.1%.

In the landlord's application, the landlord stated that the copper pipes that are part of the plumbing system in the building had "exceeded average service life with pipes showing significant deterioration and frequent leaks". The landlord stated that the re-piping was a necessary investment, and not a result of inadequate maintenance for this building which was built in 1991. The owners of the condominium complex voted in favour of the project at the Annual General Meeting held on September 12, 2018. The total cost of the project was $2,300,000.00 which was funded in part by the contingency reserve fund in the amount of $300,000.00, and the remaining $2,000,000.00 by special levy. The landlord's share of the special levy was $12,434.04, which was paid in 9 installments of $1,381.56 starting October 1, 2018 until June 1, 2019, and has been paid in full.

The landlord provided the relevant minutes and documents to support this expense, including confirmation that the new pipes should last 25 to 30 years, and that this is the first time that the building has been re-piped. The landlord submitted that both the cost of the project and timeline was unforeseeable, and as the standard allowable rent increase does not account for this extraordinary circumstance. The landlord stated that it was difficult to forecast the cost of this project, especially when the project necessitated a special levy.

The tenant opposed the landlord's application on the grounds that this is not an unforeseeable repair considering the age of the building. The tenant feels that although

the landlord may not have been able to foresee the amount of a special levy, the project itself is not a surprise given the age of the building at 28 years old.

Analysis

Residential Tenancy Branch Policy Guideline 37 (the Guideline) provides considerable guidance to Arbitrators and to the public as to the considerations to be taken into account when Arbitrators are tasked with making a decision on an application from a landlord for an additional rent increase beyond that allowed under the *Regulation*. The full text of the Guideline) is available on the RTB's website at:

http://www.rto.gov.bc.ca/documents/GL37.pdf

As stated in the Guideline, "The policy intent is to allow the landlord to apply for dispute resolution only in 'extraordinary' situations." Section 23 of the *Regulation*, essentially the reasons cited on the landlord's application form, establishes limited grounds for seeking an additional increase in rent beyond that which is allowed under the *Regulation* without filing such an application. As noted in the Guideline in bold letters, "**The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount**."

The Guideline outlines the criteria for an additional rent increase to be granted under the grounds of significant repairs or renovations as stated below:

"In order for a capital expense for a 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. Another example is capital work undertaken by a municipality, local board or public utility for which a landlord is obligated to pay (e.g., sewer system upgrade, water main installation), unless the work is undertaken because of the landlord's failure to do the work. An example of work that could have been foreseen under reasonable circumstances, and for which a rent increase would not be allowed, is a new roof…

The landlord must provide documentary evidence (e.g. invoices) of the costs of those repairs or renovations, and must also be prepared to show why those costs could not have

been foreseen (residential tenancy) or are reasonable and necessary (manufactured home park tenancy), and that they will not recur within a reasonable time period."

Although the landlord did provide detailed documentation to show that the landlord has faced an extraordinary expense in order to fund the re-piping of the 28 year-old building, the landlord did not provide sufficient evidence to support why this cost could not have been foreseen under reasonable circumstances.

Although I accept the landlord's submissions that it is difficult to forecast the cost of a major project such as the re-piping of a building, I find that the landlord was aware that the building was built in 1991. As stated in the landlord's own evidentiary materials, the project was a necessary one as the copper pipes have exceeded average service life. Although the cost was considerable to re-pipe the building, the owners' decision, which is decided based on a majority vote, to fund the project in part through the contingency reserve fund, and in part through a special levy does not necessarily reflect the fact that the cost was unforeseeable. Although the landlord indicated in her application that the timeline was unforeseeable, I find that given the age of this building the need for re-piping should have been expected under reasonable circumstances.

Based on the evidence provided by the landlord, I am not convinced that the landlord could not have anticipated the cost of the re-piping as an expense of the long-term maintenance of the entire building. As was noted above, the burden of proving entitlement to an additional rent increase rests with the landlord. I find that the landlord has not met this burden of proof and dismiss the landlord's application accordingly.

Conclusion

I dismiss the landlord's application with the effect that the rent for the tenant's unit remains unchanged.

As noted in the Guideline and pursuant to section 22(2) of the *Regulation*:

> *...If a landlord applies for an additional rent increase and the application is not successful,*
> *(a) the landlord may give a notice of rent increase to one or all tenants of rental units in the residential property for a rent increase of an amount up to that calculated under the applicable Regulation; and*

(b) the landlord may give a notice of rent increase to one or all tenants agreeing to an additional rent increase in writing, for a rent increase of an amount up to the amount agreed…

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 30, 2019

Residential Tenancy Branch