



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ARI

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- Is the landlord entitled to a rent increase higher than the regulations allows pursuant to section 43(3).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord had their legal counsel represent them at the hearing. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Whether the landlord is entitled to a rent increase beyond the amount permitted by the legislation?

Background and Evidence

The landlord and their agents gave the following testimony and submissions. AD testified that the building was built in 1979 or 1980 and that she has owned it since 1994. AD testified that she has done regular maintenance on the building and made repairs as necessary. EP testified that he has been the building manager for ten years and has addressed any leaks quickly and appropriately. EP testified that leaks are a part of regular maintenance but there wasn't any indication that this was a significant problem. EP testified that as a result of a plumbing inspection conducted in 2018 the landlord made the decision to replace all the domestic water piping. Counsel submits that the landlord spent \$116,550.00 on the re-piping alone. Counsel submits that its clearly a significant cost, the piping should last at least 25 years if not substantially longer and that the cost was unforeseen. AD testified that 14 of the 22 units have accepted the proposed increase. AD testified that she seeks to have an additional increase of 7.4% in addition to the allowable 2.6% for 2020 for a rent increase of 10%.

The tenants gave the following testimony. RS testified that he has lived in the building for about eight years and that leaks have been an ongoing issue. MV testified that the plumbing was a “ticking timebomb” that the landlord chose to ignore and questions why the tenants have to cover that burden. BF testified that the landlord purchased new tubs however none were ever installed. GM testified that he is adamantly opposed to any increase as he is a newer tenant and doesn’t understand the reasoning as to why he should pay for an old problem.

Analysis

Section 23 of the Residential Tenancy Regulations states as follows:

Additional rent increase

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.

In addition to the above, Residential Tenancy Policy Guideline 37 addresses the issue before me of “significant repairs or renovations” as follows:

1. Significant repairs or renovations

In residential tenancies, a landlord’s completion of a repair or renovation is a circumstance under which he or she can apply for an additional rent increase if: (1) the repair or renovation is significant; (2) the repair or renovation could not have been

foreseen under reasonable circumstances¹⁰; and (3) the repair or renovation will not reoccur within a time period that is reasonable for the repair or renovation.

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 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.*

Where an expenditure incurred on the repair or renovation has been, is anticipated to be, or will be reimbursed or otherwise recovered (e.g., by grant or other assistance from a government, by an insurance claim), a rent increase will not be ordered. In considering a landlord’s capital expense for a significant repair or renovation, the arbitrator will consider only those expenditures which have not been included in full or in part in a previous rent increase given to the tenant before the subject proposed rent increase.

*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 renovation project in phases and seek an additional rent increase at the completion of each phase. **However, the additional rent increase must apply equally to all rental units in the building.***

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.

All four of the tenants that participated in the conference call argue that the landlord should have anticipated this cost as the building is at least 25 years old and that there have been ongoing leaks since 2012. The tenants further argued that some of the tenants have only lived in the building for a year and should not be subject to this rent increase.

Counsel submits that this was a significant cost and that it was due to a severe rupture in one of the units that caused the landlord to act after having the plumbing company come and inspect and advise on the state of the plumbing.

I find that the facts before me are a clear reflection of the example outlined above in Residential Tenancy Policy Guideline 37. I accept that there were some leaks over the years; I find that those can be attributed to regular repairs and maintenance. I do not accept the tenants' position that the landlord should have known that this was to be expected because of any one specific leak. It would not be prudent or reasonable to expect the landlord to undertake a massive re-piping project as a result of intermittent and small leaks. I further find that the landlord provided sufficient documentary evidence to support their claim and has met the three factors as outlined in Residential Tenancy Policy Guideline 37.

I further find that the amount the landlord is seeking is reasonable considering the significant cost incurred, accordingly; I grant the landlords request for an additional rent increase of 7.4% above the legislated amount of 2.6% for 2020 for a total increase of 10%.

Conclusion

I find that the landlord is entitled to an additional rent increase of 7.4% in addition to the 2.6% for 2020. The landlord must attach a copy of this decision and act in accordance with the regulations when implementing the increase.

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 25, 2019

Residential Tenancy Branch