



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order allowing him an additional rent increase of 8.3%.

The Tenants, L.H., E.H., A.R., and Y.M, and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The hearing was adjourned, because of the complex nature of the Landlord's evidence and it was reconvened to finish reviewing the Landlord's claim.

Issue(s) to be Decided

- Has the Landlord proven that an additional rent increase beyond the percentage allowed under the Regulation should be allowed, and if so, in what amount?

Background and Evidence

The Parties agreed that the three tenancies to which the increased rent would apply operated as follows as of the date of the hearing:

1. H.s' (Upper), 2. T.R.'s (Main) 3. Y.M. (BSMT)

2. Start date: Feb 1/14 → Jan 31/15 then mth-2-mth Current Monthly rent \$2,022.96
Due: 1st Security deposit of how much \$913.00 Pet deposit n/a Landlord still has deposit? Yes
3. Start date: June 1/13 → May 31/14 then mth-2-mth Current Monthly rent \$1,067.70
Due: 1st Security deposit of how much \$495.00 Pet deposit n/a Landlord still has deposit? Yes
4. Start date: Aug 15/13 → Aug 1/14, then mth-2-mth Current Monthly rent \$959.85
Due: 1st Security deposit of how much \$445.00 Pet deposit n/a Landlord still has deposit? Yes

The Landlord applied to increase the rent in all three units by an additional 8.3%, because he said he has performed significant repairs that were not covered by his insurance. The Landlord submitted email correspondence with his insurance agent, which confirmed this lack of insurance coverage for this issue. None of the Tenants agree with the need for an additional rent increase.

The Landlord said the repair work was needed, because of a serious water leak through the foundation, due to a failed drain-tile issue. The Landlord said that as a result a lack of insurance coverage, he had to pay for costs associated with the suite restoration in which the leak occurred, the foundation repair, as well as loss of use for the basement Tenant.

The Landlord said his Application is based on section 23 of the *Residential Tenancy Act* Regulation ("Regulation"), which says that a Landlord may apply for an additional rent increase if 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.

The Tenants all provided testimony in the hearings, which included the following. The Tenants said that this repair work was not unforeseen, because when each of them moved into the residential property, the Landlord gave them little pouches of powder to put into the sink drains every month, because of back-up issues in the lower unit. The [H.s] said: "This has been an issue since we moved in, in 2014. For it to be unforeseen, I question that." They also said: "I would assume that when someone purchases a property or home that it would be high on the list to do a foundation inspection for cracks or to verify if there are drain tiles around the house."

Y.M. said:

I took possession on August 15, 2013, and was immediately given these little bags of powder to put down the sink, and he said to clean the pipes. He said to do it overnight. I have no idea what those chemicals were. I put it down the drain twice and I stopped. My sink backs up every single time the washing machine is used by the [H.s]. Every single time. He did have a plumber come in, in February 2015, I think it was. I wasn't home at the time, so he came in with the plumber Thursday, January 8, 2015, but nothing ever changed.

Y.M. described what happened that led to the drain tile renovation work. She said:

December 11, 2016 was the first leak in the storage unit and in my son's bedroom in the closet. The next day [the Landlord] had the contractor come out and brought fans to dry it out. They took out a patch in the drywall, instead of the whole drywall. They re-patched and repainted that area, but it took one month. On January 17, 2017, there was another flood in the back storage room - about two to three inches of water. The carpeting was completely soaked in the whole bedroom, so he didn't have a bedroom for three months. If the issue would have been checked after the December 11 flood, the January 17 flood may not have happened, if the proper stuff was done, instead of a band aid.

The Tenant A.R. said that this was not unforeseen. He said the Act also states that the Landlord has to keep the place in reasonable wear, and is responsible for reasonable

wear and tear - deterioration due to aging or other natural forces. A.R. said:

When I read that there had been no drain tile [originally], I called up [the City]. In 1978 there were drain tile permits, but because I'm not the homeowner, I'm not allowed to get evidence, unless I go through a *Freedom of Information* application, which will take too long for this hearing.

The Bylaws Officer said that when there is more than one tenant, you have to have permits, and an inspection has to be done on any work. I asked him about this work, but no permits were done, and no inspections were done. . . . That there is no drain tile is in contradiction with the City, and no permits is against the Act and Bylaws.

There's no standing for this application. There's no reason for it. That's the first thing. [The Landlord] says in his claims that there was no drain tile, so it was an unforeseeable problem. The City, they said yes, there was a drain tile. Every single house in the City limits has to have a building inspection. You cannot build legally without that. They looked through their documentation – they have forms and paperwork that were done. They found it in the records. It was put in, in 1979 according to the City. I've talked to four different people and they all say the same thing.

In calls to multiple insurance companies (including the Applicant's), I was told they do not cover foundation leaks because they are considered routine maintenance and are not special or unforeseen events.

The H.s said:

Based on [the Landlord's] evidence, every year he's made \$19,216.00 - he still made a profit. If he increases our rent, he will have it recouped in two years. But we would have to continue to pay the increase for years. Also, I don't see the calculations to get that extra percentage. His tax deduction - I don't see that in the profit. I don't know what he's spending on, otherwise. We're all good tenants; we pay the rent on time; we'd like to maintain a good relationship with [the Landlord], but this is a lot to ask for.

According to [A.R.]:

As there was an existing drainage tile system according to City building records,

the building of another one may likely not have been required. Without legally required permits and inspection, there is no evidence that this building of a new drainage system was either needed or built to code, contrary to the Act.

According to the Applicant's evidence, there were multiple times the basement Tenant reported leaks before they were finally sealed. Internal repairs were done, which had to be redone again because the problem wasn't fixed. I am being asked to pay for insufficient work having to be redone in a unit I don't reside in.

The Applicant's building insurer replied to the Applicant that his insurance did not cover water seeping in from foundation walls, and suggested he get the 'rented condo' package that covers water damage. This suggests the Applicant had an option to purchase insurance that may have covered the damage he is claiming, but purchased a policy that didn't cover it.

Without fixing the original drain tile and with no inspection, there is no evidence to support that the problem won't recur. There were a significant amount of tree roots dug up. If those were the cause, then were there preventative measures to insure the roots don't grow back and cause drainage problems again? No preventative foundation maintenance checks were ever taken.

The Tenants also agreed that the Landlord does not do regular and/or preventive maintenance at the residential property. Y.M. said that the sidewalk along the house:

...became a skating rink, with pouring rain oozing out of the gutters and the drain spouts, because they were defective. The South/West corner of the house was detached, so water would gush down the side of the house. Both [A.R.] and I have mentioned it to [the Landlord] that this was a problem. Nothing was done. Basically, she and I would throw salt down, so that neither one of us would get hurt. This went on for four winters, but finally the eaves troughs and gutters were cleaned when the drain tiles were fixed.

The H.s said:

Costs associated with the foundation leak were preventable and foreseeable at numerous points: pre-purchase inspection, regular basement inspection, previously reported leaks, contacting city building office, and having a proper insurance policy. An unforeseen event involving the foundation might be an earthquake.

Although foundation leaks are considered maintenance, unless from an unforeseen event such as an earthquake, even if the repairs could be not considered preventable or part of building maintenance, as defined by RTA and in the insurance industry, the amount requested is absurdly high. Rental increases are based on the cost of living index to allow for increases in maintenance costs and the ability to cover those costs. Asking four times the allowable amount is exorbitant. The repairs and damage amount to just under \$12,000.00, and the Applicant wants an increase of \$4,034.31 the first year, \$4,034.31 the second year, and \$4,034.31 the third year. After three years the Applicant would have surpassed the full repair cost, and each year afterwards the Tenants would be paying an additional \$4,034.31 above the cost of the repairs resulting from lack of maintenance.

There was no information given about whether the Applicant wrote off this expense in his taxes or not. If deducted, he is asking tenants to pay for a business expense already claimed. Any the amount claimed on tax deductions should be deducted from the requested increase.

The Tenant's figures were taken from the Landlord's evidence entitled: "Additional_Rent_Increase_Number_Breakdown". I have reproduced it as follows, with the internal errors crossed out and replaced with accurate numbers.

| | 2020 Rent | 2020 ↑ per Mth | | Yrs to recover \$11,980 @ 2.6% | Difference /Month | Year Total (increase) |
|------------|------------------|-----------------------|--------|---------------------------------------|---------------------------------|------------------------------------|
| | | 2.6% | | Total rent/month | | |
| Upper | \$2022.96 | \$52.60 | Year 1 | \$4155.82 | \$105.31 | \$1263.72 |
| Main | \$1067.70 | \$27.76 | Year 2 | \$4263.87 | \$213.36 \$108.05 | \$2560.38 \$1296.60 |
| BSMT | \$959.85 | \$24.96 | Year 3 | \$4374.74 | \$324.23 \$110.86 | \$3890.70 \$1330.32 |
| Total Rent | \$4050.51 | \$105.31 | Year 4 | \$4488.48 | \$437.97 \$113.74 | \$5255.62 \$1364.88 |
| | | | | 4 YEAR TOTALS | \$437.96 | \$12970.46 \$5255.52 |
| Foundation | \$ 9000.00 | | | | | |
| Ste Reno | \$ 2980.00 | | | | | |
| Ttl Cost | \$11980.00 | | | | | |

The Landlord said that without an additional rent increase, he can recover the

\$12,000.00 expense in about five years. However, he said that this might not be guaranteed, because the allowable rent increase might not always be as high as 2.6% a year. I found the Landlord's calculations to be in error as noted above; and therefore, based on my calculations, I find that a 2.6% increase in rent for all tenancies would cover the cost of the foundation repairs in less than three years without an additional rent increase.

The Landlord also did the calculations for an 8.3% rent increase for the residential property over four years. He calculated the 2020 rent from the residential property before any rent increase to be \$4050.51, as noted above. An 8.3% rent increase would add \$336.19 per month for the residential property, for an increase in annual rental income of \$4,386.70, but which the Landlord has stated as \$4,034.31. If the rent in the residential property were raised by 8.3% in one year and 2.6% in other years, it would take the Landlord 2.7 years to pay off the cost of the foundation repairs.

To simplify the calculations and make them comparable, I set out the following calculations for a 2.6% rent increase versus a 8.3% rent increase.

| | Starting Rent | Annual Total with 2.6% ↑ |
|--------|--------------------------|-------------------------------------|
| Year 1 | 4050.51 x 1.026 = | \$ 4,155.82 |
| Year 2 | 4155.82 x 1.026 = | \$ 4,263.87 |
| Year 3 | 4263.87 x 1.026 = | <u>\$ 4,374.73</u> |
| | Total: | <u>\$12,794.42</u> |

| | Starting Rent | Annual Total with 8.3% ↑ |
|--------|--------------------------|-------------------------------------|
| Year 1 | 4050.51 x 1.083 = | \$ 4,386.70 |
| Year 2 | 4386.70 x 1.026 = | \$ 4,500.75 |
| Year 3 | 4500.75 x 1.026 = | <u>\$ 4,617.77</u> |
| | Total: | <u>\$13,505.22</u> |

In both scenarios, I find that the Landlord would have sufficient rental income to pay off the foundation repair debt in less than three years.

YM said:

[The Landlord] mentioned in our last call about being able to have a contingency

fund for repairs. Unfortunately, I don't see how we should have to supplement for him. Why we should be charged for this? Why didn't he have a contingency fund for the drain tiles? Regularly schedule maintenance is never done in this house. No fire department visits to inspect smoke detectors. No furnace service repair or inspection. No eaves trough. ... for him to have this contingency fund for repairs, what does he mean, because there is no maintenance done? He's just lining his pockets for what he calls unforeseeable events. But if the house was maintained, we would not have these events

The Landlord said that he is basing his Application on the ground from section 23 of the Regulation that he had to deal with an unforeseen, major repair or renovation. The Landlord said that he did not need to do repairs or maintenance in years prior to the initial leak on December 11, 2016. He said:

Water entered through the foundation, and the basement unit, [Y.M.'s], was affected. There was an issue with the building to be repaired, and if it wasn't addressed, I wouldn't be able to collect rent, because it's a flooding issue.

The Landlord said that the foundation repairs cost him "\$11,980.00 - almost 12 thousand in total." He continued:

I did not know about there was no drain tile and there was no inspection. Even with my own home, I've never been given anything. The drainage has been going for 42 year. I only found out about the problem when the water went through the foundation. The insurance does not cover the damage. I hired a contractor to address the issue; he started digging and he couldn't find any drain tile. He said some buildings are built this way. I installed a new drainage system to divert the water. That's what the money was spent on.

In answer to the question of how he calculated the percentage increase he has requested, the Landlord said:

So how many years does it take to break even? I want more money for future repairs. I said to 2020, the limit is 2.6%. It would take 10 years to get back the \$12,000.00. I started to play with a lot of different calculations. I think for the past 3 – 4 years it's been at that percentage. If I had increased by 2.6 % for every year, I would have to do it for 4 years. But I am using up my permitted rent increase to cover this repair. I like the Tenants; they pay their rent on time. I can usually work with them.

I ended up, I came to this number, because I can get it back in about three years. And they would have been there for 10 years. That's how I came to how much I wanted.

It's up to the contractor. I can't dispute that there wasn't a drain tile. He started digging and found that there. Re inspections or permits - I was not aware, my first response was to get the work done. It's been three years since it has been done and it hasn't reoccurred.

You can call the contractor to verify the work, but I didn't bother to ask him to join us. Only he can say if there was drain tile. The receipts are the only thing that can prove that the work was done.

The Landlord submitted an invoice from an electrical and heating services company dated August 23, 2017, which describes the work done as: "Drain tile repair <West side only>". This invoice billed the Landlord \$9,000.00, including GST.

The Landlord also submitted an invoice for "basement suite flood restoration", which billed the Landlord \$2,980.00 to "dry the floor, replace drywall, replace carpet, and paint walls".

In terms of the Tenants' complaint about the lack of regular maintenance on the residential property, I asked the Landlord if he has the eaves troughs cleared and/or inspected annually. He said: "No it's a fairly high roof, so I haven't had it cleaned, but there's been no issues with it, and the contractor did go up there and look at it."

The Landlord said that he has never applied for an additional rent increase before. He said:

This is my first time applying for it. And I was not aware of the possibility of this year's increase. These Tenants have been good, and I've never increased the rent, until this happened. Now that I have tried to increase the rent; it's the main reason for this additional rent increase. The 2015 and 2016 expenses were roughly about \$25,000.00, and in 2017 it was \$12,000.00, and hence the decision of me to apply for this additional rent increase.

The Landlord said that his 2015 and 2016 expenses included insurance, property taxes, interest, some regular expenses such as cable, and miscellaneous repairs. My mortgage payment is separate.

AR questioned the \$12,000.00 expense in 2017. He said:

That includes insurance money and his business licence – those are not allowed, because they are recurring. For this claim to be eligible, the Act [and Regulation are] very clear in what is allowed.

The [Regulation] states that:

...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. The Landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property. 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.

Those are the only reasons allowed for additional increases. Section 32(4) of the Act says that a tenant is not required to make repairs for reasonable wear and tear. Age deteriorations and other natural forces are the responsibility of the Landlord.

He did not show any financial loss. He showed less of a profit. He says he puts out \$25,000.00, but where does that go? He's making over \$48,000.00 a year here. His loss was not a loss, but less of a profit in one year.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 43(3) of the Act stipulates that a landlord may apply for dispute resolution and request a rent increase that is greater than the amount calculated by the Regulation. Section 23(1) of the Regulation states that a landlord can apply for an additional rent increase when:

23 (1) (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;

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

As set out in Policy Guideline #37 ("PG #37"): "The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount." PG #37 reiterates and further explains the grounds set out in section 23 of the Regulation.

In considering the grounds for an additional rent increase, I find the following:

- 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.**

Based on the evidence before me overall, I find on a balance of probabilities that it appears on the face of it that the Landlord completed significant repairs or renovations to the residential property, which were unforeseen. However, the Tenant, A.R.'s, testimony about his research with the City and Bylaw Officers, and insurance companies, including the Landlord's company, as to whether those repairs were needed raises questions in my mind. Was there no drain tile on the property, and therefore, it needed to be installed, or was the drain tile in place and in need of repair?

The Landlord stated that the contractor did not find the drain tile when doing this work, however, the contractor's invoice referred to "drain tile repair" and not installation, and it also said the work was done on the "west side only". I find this implies that the drain tile was in place, but that it needed repairing; otherwise, the contractor's invoice would indicate that they installed drain tile in less than half of the residential property, which I find to be inconsistent with common sense and ordinary human experience.

This matter is made more concerning, given the lack of evidence before me that permits, or inspections of this repair work were done. Further, I find that A.R. appeared to know more about this process and the repair work than did the Landlord; and therefore, I find that A.R. has more credibility as to whether there was a drain tile in place or not than does the Landlord.

Further, I tend to agree with A.R.'s conclusion after his having spoken with multiple insurance agents. He said: "In calls to multiple insurance companies (including the Applicant's), I was told they do not cover foundation leaks because they are considered routine maintenance and are not special or unforeseen events."

Given the evidence before me overall, I must ask myself whether the Landlord was misled by the contractor or whether the Landlord provided misleading testimony in the hearing.

The standard of review in this administrative hearing is on a balance of probabilities. Given the above questions I have about the repairs, I find it is more likely than not that the repair work that was completed was not, in fact, the repair work that the Landlord testified as to having been done. I do not doubt that the Landlord made financial investments in repair work; however, I find that there are too many unresolved questions in the evidence before me to make a finding for the Landlord. Rather, I find that the Landlord provided insufficient evidence that his situation complies with section 23 of the Regulation. Therefore, I dismiss the Landlord's Application without leave to reapply.

2. The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property.

I also find that the Landlord has not provided sufficient evidence that he incurred a financial loss from this increase in operating expenses at the residential property.

The Landlord did not submit audited or certified financial statements; rather, he submitted a typed sheet with seven expenses and the total rental income for 2017. Based on this unaudited statement of rental incomes and expenses, I find that the Landlord has not established that he incurred a financial loss from the foundation repairs. The Landlord's bottom line for rental incomes and expenses for 2017 was a net positive. As such, I find that this further supports dismissing this Application without leave to reapply.

Conclusion

The Landlord is unsuccessful in his Application for an additional rent increase above that authorized by the Regulation. The Landlord provided insufficient evidence of the work that was done on the residential property, and the Landlord did not provide

sufficient evidence that he incurred a financial loss from an extraordinary increase in operating expenses at the residential property.

The Landlord's Application is dismissed without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 19, 2020

Residential Tenancy Branch