



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-E

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") and the Residential Tenancy Regulation (the "**Regulation**") for an additional rent increase due to a financial loss from an extraordinary increase in the operating expenses per section 23(1)(a) of the Regulation.

Tenant MS attended the hearing. The tenants counsel ("**KB**") also attended. The landlord was represented at the hearing by its property manager ("**MG**").

Preliminary Issue – Are there reasonable grounds for the application?

At the outset of the hearing, KB raised the issue of whether there were reasonable grounds for this application.

This application relates to a single luxury suite which is rented to the tenants. The current monthly rent was determined to be \$6,000 at a prior arbitration.

The landlord has applied to increase the monthly rent to \$9,000.

On its application, the landlord provided the following information regarding its revenues and operating expenses for the rental unit:

	Last fiscal year	Previous fiscal year	Two fiscal years ago
Total rent paid	\$ 67,650.00	\$ 77,600.00	\$ 87,750.00
Total operating costs	\$ 63,419.93	\$ 45,929.75	\$ 38,680.18

KB stated that, on the landlord's own materials, it could not qualify for the additional rent increase sought.

Section 23(1)(a) of the Regulation states:

Additional rent increase other than for eligible capital expenditures

23(1) A landlord may apply under section 43 (3) [additional rent increase] of the Act for an additional rent increase, other than for eligible capital expenditures, if one or more of the following apply:

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

RTB Policy Guideline 37 addresses additional rent increases due to financial loss from extraordinary increase in operating expenses. It states:

Financial loss happens when expenses exceed revenue over a fiscal year. For example, if the operating costs of a building exceed the revenue generated by the building (usually through payment of rent), this may result in financial loss. The financial loss must be the result of an extraordinary increase in operating expenses.

[emphasis added]

KB stated that, based on the landlord's application, it had not suffered any financial loss, as defined by the Policy Guideline.

MG argued that the landlord had experienced a substantial decrease in revenue generated by the rental unit in the last three years (profits dropping from roughly \$40,000 three years ago to roughly \$4,000 last year). Additionally, she stated that the operating expenses listed on the application do not include the landlord's cost to service the debt it incurred when purchasing the rental unit.

The landlord did not submit any documentary evidence whatsoever relating to debt servicing payments on the amount borrowed to purchase the rental unit. Additionally, MG testified that she was not able to say what the exact amount of debt servicing payments were, as the landlord purchased the rental unit at the same time as multiple other units and jointly financed them. She estimated the monthly debt servicing payments were \$5,800 but stated that this was based on the assumption that the landlord made a 20% down payment. She offered no evidence that this was the case.

KB argued that it would be inappropriate for me to consider whether the landlord's debt servicing payments mounted to operating expenses, as the landlord made no mention of these expenses on its application and has not provided any documentary evidence as to their amounts. I agree.

A respondent is entitled to know the case they have to meet in advance of the hearing. Prior to this hearing, there was no indication from the landlord that it intended to claim debt servicing payments as "operating expenses" for the purposes of this application. The landlord provided no documentary evidence demonstrating that such payments were made and made no amendment to its application to include such payments as expenses. I do not find that the tenants could have reasonably anticipated that the landlord would make such a claim at this hearing.

Furthermore, even if I did accept that the tenants ought to have known that the landlord would make such a claim, the landlord has not provided any reliable evidence to support that claim. As such, it would not have been able to discharge its evidentiary burden to prove that it had incurred these expenses.

The landlord is therefore left with an application where it is indicated that in the last fiscal year it generated revenue of \$67,650 from rent paid by the tenants and had operating expenses of \$63,419.93. These amounts do not show that the landlord suffered a “financial loss” as defined by Policy Guideline 37, although it appears the landlord has seen a significant decrease in the profits generated by the rental unit.

However, section 23(1)(a) of the Regulation does not allow a landlord to impose an additional rent increase for the reason of the landlord having diminished profit margins. The purpose of this section is to ensure that landlords are not forced to run their rental properties at a loss, in effect subsidizing tenants rent out of their own pocket. The present circumstances are different from this scenario. In this scenario, the landlord’s investment is profitable, just not as profitable as before.

As such, even if I accept all of the landlord’s claims listed on its application as true, it cannot succeed.

Section 62(4)(a) of the Act states:

Director’s authority respecting dispute resolution proceedings

62(4) The director may dismiss all or part of an application for dispute resolution if

(a) there are no reasonable grounds for the application or part,

The landlord’s application does not disclose any reasonable grounds. I dismissed landlord’s application, in its entirety, without leave to reapply.

I make no findings as to the amount of revenue generated by the rental unit in prior fiscal years, as to the amount of the landlord’s operating expenses in those years, or whether the expenses claimed on the application are “operating expenses” for the purposes of the Act or Regulation.

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: May 20, 2022