



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ARI-E

### Introduction

On October 3, 2022, the Landlords applied for a Dispute Resolution proceeding seeking an additional rent increase pursuant to Sections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the “Act”) and Section 23 of the *Residential Tenancy Regulation* (the “Regulation”), B.C. Reg. 477/2003.

A hearing in respect of this Application was convened on January 17, 2023, at 11:00 AM. Both Landlords and the Tenant attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing and evidence package was discussed and there were no issues concerning service. As such, all of the Landlords’ evidence was accepted and considered when rendering this Decision.

The Tenant did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Landlords entitled to impose an additional rent increase for an extraordinary increase in operating expenses?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and/or arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The Landlords advised that the tenancy started on April 30, 2019, whereas the Tenant advised that it started on April 30, 2018. Regardless, both parties agreed that rent was currently established at \$2,444.00 per month and that it was due on the first day of each month. Neither party knew if a security deposit or a pet damage deposit were paid. A copy of the signed tenancy agreement was not submitted by either party as documentary evidence for consideration.

With respect to this matter, I note that Policy Guideline # 37 outlines the following:

To prove a financial loss, a landlord must ordinarily submit into evidence an audited or certified financial statement that:

- summarizes the financial condition of the landlord,
- includes a statement of profit and loss, and
- is signed by someone authorized to sign audited financial statements in the Province of British Columbia, or is certified by a professional accountant, or is accompanied by a sworn affidavit of the landlord that the financial statements are true.

However, Landlord F.N. advised that they did not submit into evidence an audited or certified financial statement that was either signed by a person authorized to do so, or certified by a professional accountant. Furthermore, there was no sworn affidavit provided that the financial statements are true. However, she referenced the breakdown of expenses that was included in their Application.

She testified that they emailed the Tenant on August 31, 2022, and September 4, 2022, outlining the significant increases in expenses that they have been subjected to that have caused hardship. As well, in this email, they made a suggestion to the Tenant about allowing a roommate, and that they were hoping to increase the rent by way of a mutual agreement. These emails were not submitted as documentary evidence for consideration. She stated that they were seeking a rent increase of their costs plus 5%.

Landlord M.B. referred to page five of their Application, which listed the three costs that had increased from 2019 to 2021, being: strata fees, insurance, and property taxes. While he noted that their mortgage payments have increased as well, they did not include this as part of their Application. In addition, he stated that their insurance will go up another \$199.00 in the next year. He testified that they were unable to raise the rent for a time, due to the rent freeze as a result of the COVID-19 pandemic, and that they did attempt to increase the rent once in the past; however, they sent this form to the wrong email address of the Tenant.

N.F. reiterated that their expenses for their mortgage, strata fees, insurance, and property taxes have all increased, and she referenced the documentary evidence submitted to demonstrate how much their mortgage payments have increased.

Regarding the Landlords' claim that their strata fees increased by \$218.80 from the 2020 fiscal year to the 2021 fiscal year, they referenced documentary evidence submitted to support this claim; however, not all statements were included, and calculations to determine this amount were required to be made by myself, for the Landlords, as they were not aware how they reached these figures.

With respect to the Landlords' claims that their insurance fee will increase by \$199.00 for 2022, they indicated in their Application that from the 2020 fiscal year to the 2021 fiscal year, there was no net increase in the insurance cost. They referenced documentary evidence submitted to demonstrate the increase for insurance for 2022.

Finally, regarding the Landlords' claim that their property taxes increased by \$169.39 from the 2020 fiscal year to the 2021 fiscal year, they referenced documentary evidence submitted to support this claim. However, it appears as if there was some sort of payment or adjustment of the 2020 property taxes, which reduced the amount of taxes owing by \$1,426.00.

In section 9 of the Landlords' Application, the total amount of a rent increase they were seeking was \$556.00, bringing the rent per month up to \$3,000.00. When they were

asked to elaborate on how they came up with this figure, M.B. advised that it was the permitted rent increase amount established by the Residential Tenancy Branch of 2% for 2023, plus the increase in their operating expenses, which was noted as \$387.39 in section 6 of their Application, plus an additional 5%. However, he could not explain where this additional 5% was derived from.

He advised that their request for \$556.00 extra per month, in section 9 of their Application, would cover the increase in the items listed on their Application, but would also cover the cost to repair any potential damage that the Tenant may have caused during the tenancy for wear and tear on the rental unit. Additionally, N.F. reiterated the hardship that they have faced due to these rising costs.

The Tenant acknowledged that the Landlords did raise the issue about increasing the rent over the maximum allowable amount established by the Residential Tenancy Branch, and she told them she would seek further information from the branch. She stated that the Landlords informed her that they would file for an additional rent increase, and she stated that she understood their position.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

The starting point in assessing this Application is Section 43(3) of the *Act*, which states the following:

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.

We must now turn to Sections 23(1)(a) and (b) of the *Regulation* which states the following:

#### **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;
- (b)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;

This is the specific Section of the *Regulation* that applies to the Landlords' Application. Moreover, this Section indicates the following regarding what must be considered to grant an additional rent increase:

(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)Repealed. [B.C. Reg. 174/2021, Sch. 1, s. 2 (c).]
- (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.

When reviewing the documentary evidence presented before me, I find it important to reiterate that Policy Guideline # 37 indicates that to prove a financial loss, the Landlords should submit “an audited or certified financial statement that summarizes the financial condition of the landlord, includes a statement of profit and loss, and is signed by someone authorized to sign audited financial statements in the Province of British Columbia, or is certified by a professional accountant, or is accompanied by a sworn affidavit of the landlord that the financial statements are true.” The importance of this is evident, as there would be proof that a qualified professional reviewed the Landlords’ expenses, confirmed the accuracy of those expenses, and likely included all of the appropriate documents to corroborate that those expenses were calculated correctly.

While I have before me the Landlords’ solemn affirmations that the documents submitted were true, it was clearly evident that for the most part, there was a random selection of statements included and not a comprehensive set of all pertinent documents. As well, when reviewing the figures that the Landlords wrote in their Application for their expenses, it was clear that they were not entirely sure how those figures were derived, and what little documents they did submit did not necessarily accord with their reported figures.

Moreover, this policy guideline notes that, “If a landlord has failed to give rent increases to capture rising operating expenses in previous years, the arbitrator may deny the landlord’s application even if they prove financial loss.”

One of the reasons for this is that it would demonstrate that the Landlords have taken steps to mitigate this issue, by increasing the rent annually, as is their right under the *Act*. While I acknowledge that there was a period of time where there was a rent moratorium due to the COVID-19 pandemic, there were other years in which the

Landlords could have legally increased the rent, yet they failed to do so. In fact, they acknowledged that the one time they attempted to increase the rent, they did so improperly by serving the Notice of Rent Increase to an incorrect email address.

I also note that this policy guideline states that, “The financial loss must be the result of an extraordinary increase in operating expenses. Extraordinary means very unusual or exceptional. If operating expenses sharply and suddenly increase without warning, it may be extraordinary. For example, if the cost of a kilowatt hour of electricity doubled in a period of 3 months, this may be considered extraordinary. If the cost of garbage collection increased 7% over the previous year, this would probably not be extraordinary.”

Based on the figures that the Landlords noted in their Application, the strata fees did not drastically increase within a matter of months, but increased by approximately 4% from the 2020 fiscal year to the 2021 fiscal year. As well, their insurance did not increase at all from the 2020 fiscal year to the 2021 fiscal year, and their property taxes increased by approximately 6% from the 2020 fiscal year to the 2021 fiscal year. Based on these calculations and the information in the policy guideline, I do not find that these increases in operating expenses would constitute unusual, exceptional, or extraordinary increases in operating expenses.

Finally, I find it important to note that when the Landlords were asked to explain how they calculated the amount of \$3,000.00 per month for the rent increase, it was clear that this amount was chosen simply to ensure that they would be earning a profit moving forward. It was especially evident that there was little thought placed in accurately justifying this figure as M.B. acknowledged that an undetermined part of this amount was to account for the cost to repair any potential damage that the Tenant may have caused during the tenancy.

Firstly, the Landlords are apparently seeking to increase the rent, in part, to pay for damages pre-emptively, even before they know if any damages have occurred or not. I find that this supports a conclusion that this request for an additional rent increase is not justified appropriately. Secondly, there are mechanisms in Section 38 of the *Act* to deal with damages to the rental unit at the end of the tenancy, and this would be a reason for the collection of a security deposit.

In summary, it is my finding, based on the reasons above, that the proposed request for an additional rent increase for expenses is unfair and unreasonable. For these reasons, pursuant to Section 23(4)(b) of the *Regulation*, the Landlords' Application under Section

23(1) of the *Regulation* is refused. Given the above, I make no findings in respect of any remaining factor enumerated under Section 23(3) of the *Regulation*.

### Conclusion

The Landlords' Application is refused. The Landlords are at liberty to make another Application under Sections 43(1)(b) and 43(3) of the Act, and Section 23 of *Regulation*, taking into consideration my findings above.

This Decision is made on delegated authority under Section 9.1(1) of the *Act*. A party's right to appeal the Decision is limited to grounds provided under Section 79 of the *Act* or by way of an Application for Judicial Review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: February 16, 2023

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Residential Tenancy Branch