



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding AWANA GROUP DEVELOPMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ARI-E**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for an additional rent increase because the landlord's eligible financial, operational or landlord rent expenses have increased, pursuant to section 43.

Each party was administered an affirmation to tell the truth and they each confirmed that they were not recording the hearing.

The landlord was represented at the hearing by representatives, TJ and GJ. The tenants MJ and NM attended on behalf of the tenants and acknowledged being served with the landlord's Notice of Dispute Resolution Proceedings. The other 3 tenants named on the landlord's application for dispute resolution did not attend the hearing.

The landlord testified that each of the remaining tenants were served with the landlord's Notice of Dispute Resolution Proceedings package via registered mail on April 1, 2023. The landlord provided tracking numbers for the mailings which are recorded on the cover page of this decision. I find each of those tenants were served on April 6, 2023, the fifth day after mailing in accordance with sections 89 and 90 of the Act.

Preliminary Issues

The parties agree that the tenant in unit 5 vacated the rental unit on or about May 5, 2023 and the landlord's application seeking a rent increase against that tenant is dismissed without leave to reapply.

The landlord misspelled the surname of the tenant in unit 1. I have amended this tenant's name in the application and on the cover page of this decision pursuant to section 64(3) of the Act.

That same tenant uploaded evidence to the Residential Tenancy Branch's online portal the day before the hearing and did not provide a copy of her evidence to the landlord at least 7 days before the hearing. As this tenant didn't comply with rule 3 of the Residential Tenancy Branch rules of procedure, her documentary evidence was excluded from consideration in this decision although she could speak about it during testimony.

Issue(s) to be Decided

Is the landlord entitled to an additional rent increase for an extraordinary increase operating expenses?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord testified that the building was constructed in 1910. The landlord purchased the building from the previous owner on June 29, 2021. The two attending tenants testified that the landlord entered into new tenancy agreements with each of them upon purchasing the building. Their rent was not raised upon the landlord taking over ownership.

The landlord advised that when they purchased the building they "back paid" expenses to the previous owner. Those expenses included hydro consumed by the tenants from January 1, 2021 to June 29, 2021, insurance, property tax and utilities paid for the time the previous owner had possession of it. I asked the landlord to direct my attention to the documents to verify this "back payment" but the landlord testified that he didn't provide those documents for this hearing.

The landlord testified that when they purchased the building, they just “broke even”. No profit and loss statements were supplied to verify this. When they bought it, they were only approved for a 1 year open mortgage at 2.6% interest. The landlord believed that interest rates were not going to rise so much by the next year.

When I asked the landlord how the figure of a 28% rise in rent would prevent a financial loss and not a large profit, the landlord responded that this would provide a break-even point if I were to add up the rents and subtract the expenses. No spreadsheet to show the revenue and expenses was provided for me to review the landlord’s calculations.

During the hearing, the landlord acknowledged he read Residential Tenancy Branch Policy Guideline 37D [Additional Rent Increase for Expenditures], but he did not submit into evidence an audited or certified financial statement certified by a professional accountant or signed by a person authorized to do so. Also, the landlord didn’t provide an affidavit swearing that the financial statements are true.

Despite this, the landlord provided a following financial statement information in their application. On this financial statement, the landlord is required to provide their operating costs for the last fiscal year, the previous fiscal year and two fiscal years ago.

When I asked about these columns, the landlord testified that the last fiscal year ran from January 1, 2022 to December 31, 2022. The “previous fiscal year” ran from January 1, 2021 to December 31, 2021. When I asked how the landlord had operating expenses between January 1, 2021 and June 29, 2021, while the building was owned by the previous landlord, the landlord responded by saying he “backpaid” the previous landlord operating expenses for that period. When asked, the landlord was unable to direct my attention to any documents to verify this statement.

The landlord had no operating expenses from two fiscal years ago, as the building was operated by the previous landlord.

During the hearing, I had the landlord answer specific questions directly from section 23(1) of the Regulations. The landlord’s responses are noted beside each question.

(a)the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;	Varies by different landlords. Probably more than what we charge. This is an older building and rents are less.
(b)the rent history for the affected rental unit in the 3 years preceding the date of the application;	Didn't provide. Think it was the same for the past 3 years for each of the tenants and the rent amount carried over from the previous owner.

	Only one tenant is new, in unit 2. Unit 1 is not new to me. Not from a previous tenancy.
(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;	Nothing taken away. Originally oil heating. The landlord is in the process of removing that. Big issues for insurance. Changing to electrical heating to bring down operating costs. Not included in this 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;	Mortgage gone up. Prop tax went up. Hydro gone up, utilities up.
(e)the relationship between the change described in paragraph (d) and the rent increase applied for;	None provided.
(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 [<i>obligation to repair and maintain</i>];	There have been no applications filed against this landlord pursuant to section 32. The landlord always does repairs when asked to.
(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;	This landlord has only owned the property for 1.5 years.
(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;	Never applied before.
(j)whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;	No.

(k)whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has submitted false or misleading evidence, failed to comply with an order of the director for the disclosure of documents.	No.
--	-----

The tenant from unit 2 testified that heating has been an ongoing concern since last December and refutes the landlord's testimony that repairs are made when they are made aware. There are concerns regarding the landlord's evidence, for example section 5 includes a sewer line cleanup that happened in 2023 when "last fiscal year" is supposed to be 2022. Also, the range of hydro includes electricity up to January 10, 2023, so it's inaccurate.

The tenant from unit 1 testified that the landlord's foundation for this application is based on a misunderstanding of the expenses. For example, the mortgage for "last fiscal year", 2022 is exactly double the "previous fiscal year", 2021, because in 2021 the landlord only paid a half year's mortgage. No proof of increased mortgage was provided. This is not an increase in operating expenses, it's evidence of a half year's operating expenses as compared to a full year's. The landlord has not been able to justify the increase to their rent in the hundreds of dollars monthly.

The landlord responded saying that they paid the previous owner's operating costs as a backpayment. The interest rate on the mortgage has risen, insurance is higher, there's a carbon tax imposed and utilities are higher. He's only asking for the increased rent to be fair and break even.

Analysis

Section 43(3) of the *Act* states that 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;

Residential Tenancy Policy Guideline 37D was published by the Residential Tenancy Branch to assist landlords and tenants understand the issues that are likely to be relevant in applications for additional rent increases for expenditures. During the hearing, the landlord acknowledged that he read this guideline in preparation for this hearing. At part 2, the guideline states:

Financial loss from extraordinary increase in operating expenses (Both)

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...

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.*

If there is more than one corporate entity involved with the residential property, a landlord should submit audited or certified financial statements for each of the corporate entities. Factors that the director must consider on such an application include the rent history for the affected rental unit in the 3 years before the date of the application and a change in operating expenses and capital expenditures in the 3 years before the date of the application that the director considers relevant and reasonable. 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. The landlord should not apply for an additional rent increase to cover the financial loss until after the fiscal year end for the residential property.

For this hearing, the landlord did not provide an audited or certified financial statement, as noted in Policy Guideline 37D. 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.

To justify operating expenses for 2021, the landlord gave affirmed testimony, saying he "backpaid" expenses to the previous landlord for expenses from January 1, 2021 to June 29, 2021, but provided no documentary evidence to corroborate this. I do not accept the truthfulness of this statement, as it would be both illogical and patently unreasonable for this landlord to pay the previous landlord for the previous landlord's operating expenses while the previous owner owned it.

Further, the landlord testified that since purchasing the building, the landlord has "broke even" on it – meaning revenue (rents) were equal to cost (operating expenses). Without an audited or certified financial statement or a statement of profit and loss, I am left without any ability to determine whether this is true. Moreover, while the landlord justifies a 30% increase in the tenants' rents to cover the extraordinary increase in operating expenses, he supplied no documentation to prove to me that this drastic rent increase wouldn't result in an exorbitant jump in profit for the landlord. I cannot grant this additional rent increase without any meaningful justification for the percentage sought.

Section 23(1)(b) and (d) requires that the landlord provide evidence to show the rent history for the affected rental units and the change in operating expenses and capital expenditures on in the 3 years preceding the date of the application. In this case, the landlord has not even owned the building for 3 years. I find it premature for the landlord to make this application without being able to supply this evidence required under the regulations. The first year of operation, 2021, was not even a full year of operating expenses, since the landlord took possession of the building in late June 2021. As stated earlier, without corroborating evidence, I do not accept that the landlord "back paid" the previous landlord operating expenses for the period of January 1, 2021 to June 29, 2021. Consequently, I find the landlord has not provided sufficient evidence to prove the rent history for the affected units and the change in operating expenses and capital expenditures in the 3 years preceding the date of this application.

While I accept that the landlord's operating expenses may have gone up during the short time he has owned it, I am not satisfied it qualifies as an extraordinary increase. The 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."

The primary reason for this application was based on the rate of interest the landlord pays for the property, according to the landlord. Pursuant to section 23(1)(b), the landlord must act reasonably in incurring the financial loss for the financing costs of purchasing the residential property. It is a requirement of this section that the financing costs could not have been foreseen under reasonable circumstances.

I find that when the landlord purchased the building in 2021, in a climate of rising interest rates, instead of taking advantage of a conventional 5-year mortgage rate, the landlord chose not to and opted for a 1-year term. Had the landlord acted reasonably, the interest rate would not have been affected by the sudden rise in interest. I do not find the financial loss experienced by the landlord to be an extraordinary increase in operating expenses as, when he financed the property, the financing cost could have been foreseen under reasonable circumstances.

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.

Conclusion

The Landlords' Application is refused.

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*. 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: July 12, 2023