



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-E

Introduction

On February 7, 2023 the Landlord applied for a dispute resolution proceeding seeking an additional rent increase pursuant to s. 43 of the Residential Tenancy Act (the “Act”) and s. 23 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase because of their increase in financial expenses.

The Landlord and the single Tenant involved attended the hearing. The Landlord testified that they served the Tenant with copies of the Notice of Dispute Resolution Proceeding package and their supporting evidence. The Tenant confirmed this in the hearing. The Tenant did not prepare document evidence for this hearing; however, I consider their testimony to be evidence they presented in this matter.

Issue(s) to be Decided

Is the Landlord entitled to impose an additional rent increase for their increase in eligible financial expenses?

Background and Evidence

I have considered the documentary evidence of the Landlord, and the testimony of both parties. I reproduce herein the details that are only relevant and important to the Landlord’s Application. The tenancy agreement began in June 2022, and continues as of the date of the hearing on a month-to-month basis.

The current agreement between the Landlord and Tenant has the rent amount at \$3,500 per month. In January 2023, as shown in the Landlord's email record, they proposed a rent increase to the Tenant, to be in effect when the initial one-year fixed term ends on April 30, 2023. The Landlord proposed an increased rent amount of \$4,250 to the Tenant.

The Tenant responded in the negative, stating that such a rent increase would equate to a 21.43% increase. The Tenant pointed to the only "maximum allowable increase for 2023" as being 2% in total.

A. increase in financial costs

The Landlord purchased the rental unit on April 21, 2022. The Landlord paid \$1,203,000 for the rental unit. Their down payment was \$268,001. For the remaining amount covered by the Landlord's mortgage, they secured a 5-Year variable rate closed mortgage for a 60-month term.

The interest rate at the date of purchase was 2%. The Landlord provided in their evidence the details of their mortgage terms, with the bi-weekly instalment payment of their mortgage at \$1,595.05, with interest at "2.5% less 0.7%". The Landlord provided a record of these successive payments from May 6, 2022, to September 9, 2022, a total of 10 consecutive bi-weekly transactions.

On October 7, 2022 the interest rate changed to "4.75% less 0.7%". This changed the bi-weekly mortgage amount to \$1,697.05. The date of the document in the Landlord's evidence is October 14, 2022. The Landlord provided a bank record of these successive payments from September 23 to December 2, 2022, a total of 6 consecutive bi-weekly transactions.

On December 7, 2022 the interest rate changed to "5.75% less 0.7%". This changed the bi-weekly mortgage amount to \$1,847.05. The date of this document in the Landlord's evidence is December 31, 2022 though does not set out this interest rate amount. The Landlord's bank record shows that they paid successive payments from December 16, 2022 through to January 27, 2023, a total of 4 consecutive bi-weekly payments.

After this, the interest rate changed to 6% on January 1, 2023. This is what the Landlord indicated on their Application to the Residential Tenancy Branch. This record in the Landlord's evidence is dated February 25, 2023. This changed the Landlord's bi-

weekly mortgage amount to \$1,927.05. The Landlord's banking record shows they paid this amount starting on February 10, 2023, the continuing bi-weekly after that, with the record showing the most recent payment at this amount on February 24.

The Landlord calculated that their increase in operating costs, because of increasing financial costs, was \$6,048. As stated by the Landlord in the hearing, this was "more than what we set out to pay." In the hearing the Landlord noted a further interest rate increase was set a few days prior to the scheduled hearing.

In the hearing, the Landlord described their plan when they were thinking about purchasing the rental unit in early 2022. There was, at that time, "no talk of interest rates." This mortgage amount "blindsided" the Landlord, with no history of this kind of interest-rate increase in the five previous years. News about interest rates started coming after summer 2022, and the Landlord learned from the media at that time that interest rates would increase. The Landlord took out no other kind of loan for these unanticipated expenses, and they "had to accept this from our own pocketbook."

The Tenant responded by saying that in general, "things are more expensive" and this is not something unique to the Landlord's situation.

B. strata fee expenditures

The Landlord described strata fees paid by then since the start of their ownership of the rental unit property. They showed the start of rental payments on June 1, 2022 in the amount of \$650. This is in an email from the accounts receivable delegate from the strata council.

For the time including the month of the hearing in June 2023, the Landlord calculated their total expense on strata fees to be \$7,800.

C. other expenditures

The Landlord set out that they spent \$3,825.78 on three appliances.

The Landlord provided a receipt for range/microwave, dated June 14, 2022, for the amount of \$2,439.10 in total.

The Landlord also provided a receipt for the washing machine, dated October 29, 2022, for the amount of \$1,252.47.

In the hearing, the Tenant noted the appliances indicated were broken when they started their tenancy in May 2022. The Tenant cited a short circuit with the range/microwave, which was “trouble from the beginning”. The Tenant recalled that the washer worked, then was damaged and stopped working, the filled with mould when it stopped draining.

The Landlord also provided a record of their 2022 property tax invoice and receipt showing that they paid. This was to show that, from the time of their purchase, the Landlord has been “paying substantially”.

The Landlord cited another impact of the increase in costs overall was delaying the completion of their own mortgage. In sum, the Landlord stated that the current situation was “prolonging mortgage” for them.

In summary, the Landlord stated their rent increase request in this Application is primarily based on the impact of financing to them.

The Landlord requests a rent increase of \$750 that would bring the amount of monthly rent to \$4,250. This is an addition of the 2% permitted annual rent increase, plus an additional rent increase of 19.04%, for a total rent increase percentage of 21.04%.

The Landlord amended their Application on February 14, 2023. They amended the final rent increase amount to \$4,330. This was based on the final rate increase on January 25, 2023.

Analysis

The *Act* s. 43(3) sets out 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.

The *Regulation* s. 23(1)(a) and (b) provide as follows:

A landlord may apply under section 43(3) [*additional rent increase*] of the Act for an additional rent increase . . . 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;

A. increase in financial costs

The *Residential Tenancy Branch Policy Guideline 37D: Additional Rent Increase for Expenditures*, specifies some basic guidelines and criteria for consideration of a Landlord's financial loss because of financing costs for purchasing property:

A landlord can apply for an additional rent increase if 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.

The financial loss must result from something that the landlord could not foresee under reasonable circumstances.

The landlord must provide evidence of the new financing costs . . . and the resulting financial loss.

I find the policy guideline more generally describes "financial loss" in terms of a consideration of a landlord's financial condition:

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.

For this part of the Landlord's Application, I cannot see evidence of an actual financial loss to the Landlord. The Landlord is clear that interest rates have increased, and this has affected their bi-monthly mortgage payments; however, there are no other statements or evidence on the Landlord's financial condition. This would entail statements on income, including that of from the rental unit or other sources, and employment or other investments or assets. This is a specific burden of proof on the

Landlord. While the Landlord did not provide a more specialized financial statement, there was no information in the evidence about the Landlord's financial position overall.

In summary on this point, I find there is not sufficient evidence in place in the Landlord's Application to show the resulting financial loss to them. The Landlord did not present evidence of an actual financial loss, and this must be in place should they wish to increase rent in a legally valid manner.

I dismiss this part of the Landlord's Application for this reason.

B. strata fee expenditures

I find that strata fees paid by the Landlord do not represent an extraordinary increase in operating expenses, nor do they represent financial loss for the financing costs of the Landlord purchasing the property.

I find this is an example provided by the Landlord of other expenses to them since they purchased the property. The Landlord must prove that this was something that could not be anticipated, or, in the case of operating expenses, that these were very unusual or exceptional. This is not a cost that can be transferred to the Tenant in the form of a substantially high rent increase.

I refuse the Landlord's Application on this individual part concerning strata fees paid.

C. other expenditures

The Landlord set out that they spent \$3,825.78 on three appliances. The *Act* does not permit an Application for repairs or renovations, which is loosely what this part of the Landlord's Application represents. There is a separate section of the *Act* and the *Regulation* that allow for a rent increase for capital expenditures. I refuse this piece of the Landlord's Application on this individual part concerning money paid for replacing appliances.

Conclusion

I refuse the Landlord's Application in its entirety.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 13, 2023

Residential Tenancy Branch