



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-E

Introduction

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

The Landlord stated that he had reached an agreement with two tenants prior to the hearing. Of the remaining two tenants, only one attended the hearing. The Landlord’s testimony was that each tenant had been served by Canada Post registered mail. Tenant G.L. submitted proof of service to the Landlord and Landlord’s property manager of copies of his evidence by Canada Post registered mail.

Issue to be Decided

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

Background and Evidence

The subject property is a four-unit building. The Landlord purchased the building on July 1, 2008. The Landlord’s application and testimony regarding the requested rent increase was principally based upon an increase in mortgage financing rates, property taxes, strata management fees and repair costs incurred. The Landlord’s application sets forth the cost increase for these expenses in summary form for the prior two fiscal years. The Landlord also submitted copies of his bank statements to substantiate the expenses, together with an unaudited income statement for the period January 2022 through December 2022. The Landlord submitted a letter from his property manager outlining comparable rental rates in the area for similar units.

The Landlord testified that over the course of his decade-long ownership of the building, he has incurred greater than anticipated costs for repairs. He stated that he needed to

use reserve funds in the approximate amount of \$5,000.00 to meet repair requirements in the past two years, but that this in turn had resulted in a deficit. The Landlord stated that operating costs from 2021 to 2022 had increased approximately \$11,000.00. He stated that financing costs (due to mortgage interest rates) had increased approximately \$8,000.00 in that same time and he reasonably anticipated further increases to financing (mortgage interest rate) costs. There are two mortgages on the property. Property taxes had also increased. On the other hand, the Landlord explained that rental income from the four units had not kept pace with these rising expenses. The Landlord had factored in a four percent vacancy allowance as well, which the property manager stated was reasonable. The Landlord submitted a summary of expenses and the percent of increase for 2023 compared to 2022. The Landlord's property manager stated that he had managed the building for the Landlord and the Landlord could not sustain its operating costs without an additional rent increase, or the Landlord would be forced to sell the units.

Tenant G.L. who attended the hearing noted that the Landlord had not provided the financial documentation as set forth in Policy Guideline 37D. The Tenant's advocate stated that Tenant G.L. and his wife M.L. were long-term tenants on a fixed income and they could not afford the estimated 43 percent rent increase requested by the Landlord. The Tenant's advocate further contended that the Landlord's expenses were not "extraordinary" in the sense of being unanticipated or extraordinary, but rather were a steady, foreseeable increase in existing expenses.

Tenant G.L. further testified that he was concerned that the cost of repairs was not for each unit but rather certain units.

Both the Landlord and the Landlord's property manager stated that Tenant G.L. and his wife were "exceptional tenants," but without an approved additional rent increase, the Landlord testified he would have no option but to sell all four units. The Landlord and Tenant G.L. had spoken previously regarding a rent increase, but Tenant G.L. stated he simply could not afford what the Landlord had requested in his application for dispute resolution.

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.

Sections 23(1)(a) and (b) of the Regulation states:

(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 on the issues that are likely to be relevant in applications for additional rent increases for expenditures. At part 2, the Guideline states:

Financial loss from extraordinary increase in operating expenses

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.

In this case, the Landlord did not provide an audited or certified financial statement, as noted in Policy Guideline 37D. The importance of audited or certified financial statements is that these provide probative evidence that a qualified professional reviewed the Landlord's expenses, confirmed the accuracy of those expenses, and likely included all of the appropriate documents to corroborate that those expenses were calculated correctly.

Audited or certified financial statements also assure that a requested rent increase to cover an extraordinary increase in operating expenses does not operate as a windfall to the landlord in exorbitant profits.

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 in the 3 years preceding the date of the application. However, this documentation was not provided by the Landlord.

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 increased, I am not satisfied it qualifies as an extraordinary increase. The policy guideline states:

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. (emphasis added)

A review of the Landlord's application provides that the primary increases in operating costs are attributable to rising mortgage interest rates and property taxes. Under 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. Mortgage interest rates often rise (and fall) and are a reasonably foreseeable circumstance. Similarly, increases in property taxes in a sustained climate of increasing property values is also reasonably foreseeable.

Therefore, I find that the Landlord's application for an additional rent increase due to an extraordinary increase in operating expenses and financing costs that could not be foreseen under reasonable circumstances is dismissed as the Landlord has not provided sufficient evidence on which such a determination can be made.

Conclusion

The Landlord's application is dismissed.

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: December 06, 2023

Residential Tenancy Branch