



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-E

Introduction

On August 2, 2023, the landlord applied for a dispute resolution proceeding seeking an additional rent increase pursuant to section 43 of the Residential Tenancy Act (the Act) and section 23 of the *Residential Tenancy Regulation* (the Regulation) for an additional rent increase because of their increase in financial expenses.

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed service of the landlord's application for dispute resolution (application) and documentary evidence.

Preliminary Matters

The parties confirmed their email addresses at the start of the proceeding. The decision will be sent to all parties by email as a result.

In addition, tenant MK confirmed that they vacated after this application was filed in case the rent was increased as they would not be able to afford an additional rent increase. As tenant MK was listed on the original application, they have been included in this decision as a result.

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 from both parties and the testimony of the parties. Only the relevant and important details related to the landlord's application have been included below.

For tenant MK, the tenancy began in 2016. For tenant MC, the tenancy began in June 2018. The home has two rental units in the basement, and the landlord lives in the upper portion of the property.

The current monthly rent at the time of the application is as follows:

1. Tenant MK = \$1,350.58 (left side basement)
2. Tenant MC = \$1,436 (right side basement)

A. increase in financial costs

The landlord stated that they purchased the home on December 22, 2015, for \$1,040,000, which contradicts their application which states the purchase price was \$1,600,000 and a down-payment of \$600,000.

The landlord stated that their variable rate mortgage was at 2% as of December 2015 and was at that amount for many years. The landlord bank records indicate the following variable mortgage rate changes:

- November 2021 from 2% to 1.27%
- March 3, 2022 from 1.27% to 1.52%
- April 14, 2022 from 1.52% to 2.02%
- June 2, 2022 from 2.02% to 2.52%
- July 14, 2022 from 2.52% to 3.52%
- September 8, 2022 from 3.52% to 4.27%
- October 27, 2022 from 4.27% to 4.77%
- December 8, 2022 from 4.77% to 5.27%
- January 26, 2023 from 5.27% to 5.52%
- June 8, 2023 from 5.52% to 5.77%
- July 13, 2023 from 5.77% to 6.02%

The landlord's application was filed in August 2023.

The landlord did not submit any financial records from an accountant or certified by an accountant. The landlord also did not submit an affidavit with their financial documents.

The landlord admitted that they did not issue a rent increase for 2020/2021, which I will address further below. The rent increases for other years were provided.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

The Act section 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*, (PG 37D) 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.

Furthermore, 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 I find the landlord failed to provide financial records certified by an accountant and without an affidavit from the landlord and as such, have not proved a financial loss. In addition, PG 37D also states the following:

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.

[emphasis added]

I find that by failing to issue a rent increase on both tenants for 2020/2021, that I dismiss the landlord’s application for failing to capture rising operating expenses in 2020/2021.

Finally, I find the landlord submitted contradictory evidence as they testified that the purchase price was \$1,040,000 yet their application states \$1,600,000 with a downpayment of \$600,000 which is not consistent.

Conclusion

The landlord's application fails and is dismissed in its entirety, without leave to reapply due to insufficient and contradictory evidence.

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: December 5, 2023

Residential Tenancy Branch