



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code ARI-E

Introduction

On August 14, 2023, the Landlord applied for a dispute resolution proceeding (application) 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.

The respondents confirmed service of the Landlord's application and all parties confirmed being able to review any relevant 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 DC 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 DC 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.

The rental property is made up of 2 units, an upper and lower unit. The upper unit was described as 1,200 square feet (SF) and the lower unit being 550 SF.

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

1. Upper unit = \$2,536
2. Lower unit = \$1,624

A. increase in financial costs

The Landlord writes that they purchased the rental property in September 27 2021, for \$1,200,000, with a down-payment of \$300,000 at a variable interest rate of 2.45% and that the latest change in interest rates was on November 7, 2023 where the rate was 7.2%.

The Landlord stated that when they purchased the rental property, they inherited the upper tenancy and that the Tenant vacated the rental unit since filing the application. As the upper Tenant was listed on the application, they were invited to participate in the proceeding and did so in the interests of fairness and for having been named a respondent.

The Landlord's application was filed on August 14, 2023.

The Landlord did not submit any financial records from an accountant or certified by an accountant and do not include an affidavit, which the Tenant agent (Agent) stated does not meet the requirements set out in Residential Tenancy Branch (RTB) Policy Guideline 37D – Additional Rent Increase for Expenditures (PG 37D).

The Agent specifically referred to this wording:

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.

During the hearing, the Landlord responded to questions from the Tenants where the following was confirmed by the Landlord:

- \$200,000 of the \$300,000 down payment was financed against the Landlord's personal home through a home equity line of credit (HELOC)
- The financing debt on the rental property was therefore, \$1,100,000
- The Landlord knowingly agreed to a variable mortgage rate, versus a fixed-term rate
- Landlord was aware that variable mortgage rates could increase during the term of the mortgage

The upper Tenant stated that they moved prior to the hearing date as the Landlord had also advised them that they might move into the upper portion of the rental property, so the upper Tenant did not want to risk being homeless.

The Landlord presented their financial documents and the Agent responded by stating that the Landlord has failed to prove a financial loss for a fiscal year in that the only fiscal loss reported is for an 8-month period and not a fiscal year which is reflected in the Landlord's chart below:

Financial Statements 2021-2023 and No Loss Scenario

		2021 (3 months)	2022 (12 months)	2023 (8 months)	No loss Scenario
Revenue					50% rent increase
	Rent	\$ 12,592	\$ 49,188	\$ 33,236	\$ 74,893
	Utilities	\$ 232	\$ 1,530	\$ 1,299	\$ 1,490
	Fines	\$ -	\$ 100	\$ -	\$ -
		\$ 12,824	\$ 50,818	\$ 34,535	\$ 76,383
Expenses					
	Strata Fees	\$ 1,153	\$ 4,144	\$ 2,454	\$ 4,207
	Bank Fees	\$ 13	\$ 48	\$ 28	\$ 48
	Home Insurance	\$ 169	\$ 595	\$ 361	\$ 619
	Interest - HELOC	\$ 1,396	\$ 10,019	\$ 7,537	\$ 13,663
	Interest - Mortgage	\$ 2,442	\$ 26,742	\$ 29,557	\$ 52,065
	Maintenance	\$ 1,283	\$ 191	\$ -	\$ -
	Property Taxes	\$ 1,006	\$ 3,838	\$ 3,862	\$ 3,838
	Municipal Utilities	\$ 372	\$ 1,470	\$ 1,490	\$ 1,490
	Fines	\$ -	\$ 100	\$ -	\$ -
		\$ 7,834	\$ 47,146	\$ 45,289	\$ 75,930
	Gain/ Loss	\$ 4,991	\$ 3,672	-\$ 10,754	\$ 454

The Agent also said that the Landlord did not act reasonably by financing \$1,100,000 of a \$1,200,000 purchase price while using the Landlord's personal residence to fund the \$200,000 HELOC towards the rental property purchase, when variable mortgage rates can be reasonably been foreseen to increase from the original 2.45% variable rate.

The Agent stated that the Landlord has overused debt to finance their rental property investment and now wants to put that debt on the Tenants. The Agent stated that variable rate increases can and should be foreseen by any reasonable person, which is why those that do not want to risk an increase in mortgage rates lock into a fixed-term rate for as long as possible. The Agent also stated that by agreeing to a variable rate while overusing debt is not acting reasonably by the Landlord. The Agent referenced the factors set out in section 23(3) of the Regulation, which will be addressed, in part, below.

The Agent stated that if the rent increase is permitted, the Tenant would be spending 60% of their post-tax income on rent, which would force them to have to move as the Tenant could no longer afford rent.

The Landlord claims that the policy wording appears to be for commercial Landlord's and not a private Landlord's. The Landlord stated that they prepared as best as possible. The Landlord claims their evidence is aligned with policy, which I will address below.

The Landlord submitted documents from their lender and rent increases issued under the Act. As indicated above, no financial records were submitted from an accountant or certified by an accountant and do not include an affidavit from the Landlord.

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

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 has not proved a financial loss.

I also agree with the Agent that the Landlord has failed to present a fiscal year of loss and only sets out an 8-month period in the chart described above.

Finally, I agree with the Agent that the Landlord should have foreseen an increase in the variable rates and overextended themselves by borrowing \$200,000 of their down-payment against their personal residence, and now want to recoup an increase in financing costs through the Tenants.

Given the absence of financial records certified by an accountant and without an affidavit from the Landlord I disagree with the Landlord that their evidence aligns with PG 37D. Further, I find the Landlord should have foreseen that their financing costs could likely increase significantly given the specific details before me where I find the

Landlord overextended themselves financially and borrowed most of the downpayment against the personal residence using the HELOC.

Given the above, I find that it is not necessary to consider the factors in section 23(3) of the Regulation as the application fails prior to such consideration.

Conclusion

The Landlord's application fails and is dismissed in its entirety, without leave to reapply due to insufficient 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: January 17, 2024

Residential Tenancy Branch