



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **ARI-E**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase for expenditures under section 43 of the Act and under section 23 of the Regulation.

Landlord L.C. attended the hearing for the Landlord.

Tenant V.B. attended the hearing for the Tenant.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant V.B. is deemed served with the Proceeding Package, in accordance with section 90 of the Act, on October 24, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided the Canada Post tracking number and the Tenant confirmed receipt.

Service of Evidence

On October 13, 2023, the Landlord uploaded eight pages of evidence to the RTB dispute access website. The Landlord stated that he only served the first page of his evidence-Annual Main Cost Changes on the Tenant. The remainder of his evidence, he stated, was confidential and he did not serve that evidence on the Tenant.

On January 1, 2024, the Landlord uploaded five additional pieces of evidence; however, again, the Landlord said this evidence was confidential and this evidence was not served on the Tenant. The Landlord's evidence submission deadline was December 18, 2023.

RTB Rules of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute

Resolution Proceeding Package: The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch or within a different period specified by the director, serve each respondent with copies of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) any fact sheets provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution]. (emphasis added)

Rule 3.7.1 states:

3.7.1 Redacting information from evidence: ...

To ensure procedural fairness, evidence provided to the Residential Tenancy Branch and the other party must be the same. If a party redacts information from evidence, the redactions should be reflected in the evidence provided to both the Residential Tenancy Branch and the other party. (emphasis added)

...

The Landlord must serve all their evidence on the Tenant. The Landlord cannot cherry pick which evidence they will share with the other party. Based on the submissions and rules before me, I find that the Landlord's evidence was not served to the Tenant in accordance with the Act, therefore I decline to consider the Landlord's evidence.

Based on the submissions before me, I find that the Tenant's evidence was sufficiently served to the Landlord in accordance with section 71(2) of the Act.

Issue to be Decided

Is the Landlord entitled to impose an additional rent increase for expenditures?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on October 7, 2014. Monthly rent is \$1,548.36 payable on the first day of each month. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord did not submit into evidence an audited or certified financial statement.

The Landlord pointed to his Application for Additional Rent Increase form #RTB-52, section 6: Extraordinary Increase in Operating Cost which, he stated, supported his request for an additional rent increase for expenditures. He stated that his variable rate mortgage interest payments have doubled since 2022.

The Landlord stated he has always imposed rent increases on his Tenant when he was permitted to do so. The Landlord did not upload his rent increase history.

The Tenant submitted in 2021 he agreed to a 1.9% rent increase even though the RTB said that rent increases were set at 0%. The Tenant does not agree to the rent increase the Landlord wants to impose. The Tenant said they should follow the maximum allowable rent increase percent put out by the RTB. The Tenant submits that the Landlord must also abide by the notice provisions for rent increases.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Residential Tenancy Policy Guideline #37D-Additional Rent Increase for Expenditures (PG#37D) is intended to help parties understand issues that are likely to be relevant in an additional rent increase for expenditures application. PG#37D states for the Landlord to prove a financial loss from an extraordinary increase in operating expenses, 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.

PG#37D describes the factors that the director must consider for an application for an additional rent increase for a financial loss from extraordinary increase in operating expenses which 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.

Additionally, PG#37D describes that a landlord applying for an additional rent increase claiming a financial loss from financing costs must prove they acted reasonably, meaning they exercised care, foresight, judgment, financial prudence, and due diligence in purchasing or financing a property.

Section 59(2) of the Act states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings (emphasis added). The Landlord did not share all his evidence with the Tenant. The Landlord said it was confidential, although he uploaded it on the RTB dispute access website for my consideration.

Disclosure of evidence is a rule of procedural fairness, and given the nature of this application, the Landlord must disclose all relevant evidence to the Tenant. This evidence will be the basis of this decision, and the Tenant has a right to know the case he must meet.

The Landlord omitted submitting an audited or certified financial statement. This documentation is a requirement for an application for an additional rent increase for expenditures. I find that the Landlord's evidence was not fully disclosed to the Tenant for this matter, and I dismiss the Landlord's application with leave to re-apply.

Conclusion

The Landlord's application is dismissed with leave to re-apply.

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

Dated: January 05, 2024

Residential Tenancy Branch