

DECISION

Introduction

This hearing dealt with the Landlord's October 23, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- Additional rent increase pursuant to section 43(3) of the Residential Tenancy Act, and section 23(1)(a) of the Residential Tenancy Regulation.

Landlord K.K. attended the hearing for the Landlord.

Tenant L.M. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenants confirmed receipt of the Landlord's application.

Service of Evidence

The Tenants confirmed receipt of all evidence except the Landlord's record of rent payments received from the Tenant. I informed the parties that each side is typically expected to maintain their own records related to payment of rent. I find that the Landlord served the Tenant with their full application as required by the Act.

The Tenant did not submit or serve evidence of their own.

Preliminary Matters

The parties attempted settlement for approximately 30 minutes before moving into a formal hearing. They were informed that settlement discussions happen without prejudice and that matters discussed during settlement are not considered during hearing proceedings.

The hearing was originally scheduled for January 16, 2024, and then rescheduled due to Arbitrator availability. Both parties agreed to the rescheduling.

Issues 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 reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy agreement has been ongoing since 2017.

The Tenant occupies a contained 1-bedroom rental unit in the top floor of the residential property. The Landlord and their two teenage children occupy three bedrooms that are spread across the main floor and top floor of the 2800 square foot property. The Tenant emphasized that the two bedrooms for the teenage children are on the same floor as their unit.

Monthly rent was originally set at \$1,050.00 all inclusive. It is currently \$1,095.00 a month. The Tenant paid a \$525.00 security deposit when the tenancy started in 2017 and a \$525.00 pet damage deposit in 2019 when they acquired a pet with the Landlord's permission.

The Landlord applied for approval of a 55% rent increase, which is substantially greater than the maximum allowable rent increase of 3.5% for 2024. The Landlord is requesting monthly rent of \$1,700.00, which represents a \$605.00 increase in monthly rent payment.

The Landlord submitted three years of mortgage statements for their property and explained that they have two mortgages because it is common product arrangement at their bank. The Landlord testified that they applied for this rent increase because their monthly mortgage payments have increased substantially since signing a new fixed rate 3-year mortgage in August 2023, increasing from approximately \$1,000.00 a month in 2020 to now \$4,000.00 or more a month.

The Landlord provided a written summary of annual expenses on their application form, claiming a substantial increase in loss due to operating expenses over the past three fiscal years.

	Revenue	Expenses	Loss to Landlord
2021-2022	\$12,600.00	\$28,502.00	\$15,902.00
2021-2022	\$12,600.00	\$37,752.00	\$25,152.00
2022-2023	\$13,140.00	\$55,797.00	\$42,657.00

The Landlord referred to their 2022 income tax return and stated that this return was prepared by their accountant. The Landlord was asked to show how their claim for

increased operating costs was reflected in the tax records. The Landlord was confused or possibly flustered by this request and did not appear to realize that their 2022 taxes show rental revenue of \$2,606.22. The Landlord testified that they are in financial trouble.

The Tenant testified that they do their best to be a good tenant.

The Landlord stated that they submitted all required documentation including:

- Mortgage 1 statements
- Mortgage 2 statements
- Insurance bills for the property
- Property taxes for the property
- Utilities for the property

The Landlord stated that they need more money for the rental unit or they will default on their mortgages, one of which the Landlord referred to as a personal Line of Credit. I directed the Landlord to Landlords BC and the Tenant to TRAC for more information regarding respective obligations of landlords and tenants.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim is responsible for providing evidence over and above their testimony to prove their claim.

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

Rent may only be raised in accordance with the Residential Tenancy Act, or the Regulations. A landlord may apply for an order approving a rent increase that is greater than the annual rent increase in the following circumstances shown in 23(1) of the Regulations to the Act, including:

- 1) Financial loss from extraordinary increase in operating expense
- 2) Financial loss for financing costs of purchasing property or park
- 3) A tenant, who is a landlord, receives an additional rent increase.

The parties agreed that the Landlord applied for an increase in rent for the increase in monthly mortgage financing costs requesting compensation for financial loss from an extraordinary increase in operating expenses.

As shown in RTB Policy Guideline 37D: Additional Rent Increase for Expenditures

“Financial loss happens when expenses exceed revenue over a fiscal year... The financial loss must be the result of an extraordinary increase in operating expenses... Extraordinary means very unusual or exceptional...”

Applying this framework to the Landlord’s application, I find that they failed to establish on the balance of probabilities that they have experienced extraordinary loss because their 2022 Income Tax statement of Rental Income shows income of \$2,606.22 which is very different figure than the \$42,657.00 or \$25,152.00 loss claimed on their application by the Landlord for the same time period.

I therefore find that it appears the Landlord was claiming (knowingly or unknowingly) their full costs for a 4- bedroom house against the Tenant who pays to rent a self-contained 1-bedroom unit in the property. I find that this approach is contrary to the rules used by Landlord’s accountant when preparing the Landlord’s statement of Rental Income where only an appropriate percentage of the Landlord’s household costs are designated as claimable costs for maintaining the rental unit in the residential property.

Related to this, I reviewed the 3 years of Tax statements provided by the Landlord and recognize that their claimable income from the rental has decreased from \$7,106.34 claimed in 2020 to the \$2,606.22 reported for 2022. I recognize this decrease. However, I do not find the decrease unusual or exceptional since the parties agreed that the Landlord only increased the 2017 rental rates in 2022.

I therefore find that the Landlord has failed to minimize their claimed loss as required by Policy Guideline 37D by regularly increasing rent as permitted by the Act and Regulation to offset increasing costs.

I also find that the Landlord failed to submit audited or certified financial statements as required by RTB Policy Guideline 37D.

I therefore dismiss the Landlord’s application for additional rent increase pursuant to section 43(3) of the Residential Tenancy Act, and section 23(1)(a) of the Residential Tenancy Regulation. I do not give leave to reapply.

Conclusion

I dismiss the Landlord’s application and do not give leave to reapply.

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: January 24, 2024

Residential Tenancy Branch