



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 for Dispute Resolution under the *Residential Tenancy Act* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase other than for eligible capital expenditures under section 43 of the Act, and section 23 of the Regulation.

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

No one attended the hearing for the Tenants.

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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and evidence

The Landlord testified that they served the Tenants with the Proceeding Package and evidence on January 17, 2024 by Canada Post registered mail. The Landlord uploaded the registered mail package with the Canada Post customer receipt on the envelope. I find that the Tenants were deemed served with the Proceeding Package and evidence on January 22, 2024, in accordance with sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

Is the Landlord entitled to an additional rent increase other than for eligible capital 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 Landlord owns two rental units in the residential property that are impacted by this application. The Landlord has not had any previous dispute resolution applications for their residential properties. This application is the Landlord's first time applying for an additional rent increase.

One Tenant has been in their rental unit since 2017, and the other Tenant has been in their rental unit since 2020. The Landlord stated that they have never imposed rent increases on either of their Tenants. The Landlord said the rent increases would only be two or three dollars more according to the allowable rent increases set in the Regulation.

The Landlord submitted that some of their operating expenses have increased in an extraordinary manner from 2022 to 2023. The listed operating expenses in the application were:

Type of costs (e.g. gas)	Column A: Cost last fiscal year	Column B: Costs previous fiscal year	Column C: Cost two fiscal years ago	Column A-B: Net Change
strata fees	10447.02	10087.92	10087.92	359.10
management fees	6960.00	2920.00	3474.00	4040.00
property tax	4846.17	4331.23	4168.6	514.94
insurance	1713.06	1991.88	1991.88	-278.82
interest	4293.50	3673.75	2888.64	619.75

*For clarity, column A is 2023, column B is 2022, and column C is 2021

The only operating expense that increased substantially was the management fees, and that increase was 100%, considering only the two affected properties. Property management fees in 2021 were 12% of the rent amount due, in 2022 they were 10%, and in 2023, they were 20%. The above table incorporates the fees for three of the Landlord's properties. The strata fee increase was 3.6%. The property tax increase was

11.9%. The insurance decreased by 14.0%. Mortgage interest is not considered an operating expense.

Despite discussions in the hearing that mortgage interest is not considered an operating expense, the Landlord submitted that their mortgage interest amount increased since 2022. The Landlord uploaded documentary evidence that their mortgage is a conventional fixed closed mortgage.

The Landlord did not provide any evidence of the rent amounts payable for similar rental units in the residential property. The Landlord said there are no changes in the services or facilities provided for in the residential property in the last 12 months.

The Landlord testified to one special levy imposed on them for paving around the residential property. The one-time payment did not exceed \$328.00 for each property. The Landlord paid a \$350.00 upgrade to electrical services in one of their rental units.

The Landlord uploaded a profit/loss financial statement in their documentary evidence. The Landlord prepared this document on their own. The document is neither signed by someone authorized to sign audited financial statements in the Province of British Columbia, nor was this document prepared by a certified professional accountant. The Landlord did not confirm their credentials in this regard. The Landlord did not upload an affidavit that the financial statements are true.

The financial document prepared by the Landlord does not demonstrate that the Landlord was operating at a loss in 2021, 2022, or 2023.

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.

An application for an additional rent increase because of a financial loss from extraordinary increases in operating expenses under section 23 of the Regulation can be successful if the operating costs of the Landlord's rental units exceed the revenue generated by the properties.

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 further 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.

The Landlord testified that their operating expenses have increased at an extraordinary level. The Landlord has not increased the rent in their rental units because they said that rent increases would only be two or three extra dollars per month as per the Regulation.

I calculated the total rent increases beginning after the Tenants' first year of tenancy. The Landlord's longer term Tenant would have been paying \$119.00 more than the rent at the start of their tenancy, and the Landlord's shorter term Tenant would have been paying \$42.00 more than the rent at the start of their tenancy. I find the Landlord has failed to impose rent increases on their Tenants which would have captured the rise in operating expenses the Landlord alleges exist.

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.

The Landlord did not provide evidence of rent payable for similar rental units in the residential property. The Landlord testified that there have not been any changes in

services or facilities that the Landlord has provided for the residential property in the 12 months preceding the Landlord's application.

I find the Landlord cannot consider their interest payments as this type of expense is a financing cost expense, and that type of expense falls under the application type of financial loss for financing costs of purchasing property.

Although the property management fees for the Landlord's property have increased, I find the Landlord did not provide an explanation for the increase, and the Landlord's profit and loss statement still shows that the Landlord is operating at a profit throughout each of the last three years.

I find the other operating expenses that increased were not an extraordinary increase.

I find the Landlord has not substantiated their claim for an additional rent increase on their two properties. I dismiss their claim with leave to re-apply.

The Landlord can still impose an annual rent increase to their Tenants being mindful of the requisite notice provisions and using the approved form.

Conclusion

The Landlord's claim 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: March 07, 2024

Residential Tenancy Branch