



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      ARI-E

### **Introduction**

This hearing concerned the Landlord's application filed pursuant to section 43, *Residential Tenancy Act* (the "Act") for an additional rent increase based upon the an increase in eligible financial or operational expenses for the rental unit.

The Landlord was represented by family member X.W. at the hearing, who was assisted by an interpreter. Tenant J.F. attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Landlord was granted substituted service by email for service of the proceeding package to the Tenant. The Landlord emailed the proceeding package to the Tenants on July 25, 2024, submitting a proof of service form to confirm the service.

### **Service of Evidence**

The Landlord included copies of her evidence in the proceeding package served to the Tenants by email on July 25, 2024.

The Tenants did not submit evidence for this proceeding.

### **Preliminary Matters**

At the start of the adjourned hearing, Tenant J.F. advised that Tenant H.J. had moved out of the rental unit in approximately February 2023. I find it appropriate to remove Tenant H.J. as a named party to this proceeding and I amend the case caption accordingly.

## **Issues for Decision**

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

Is the Landlord entitled to an additional rent increase for financial loss for financing costs incurred for purchasing the property?

## **Background and Evidence**

The Landlord purchased the rental unit on August 18, 2020, and financed the purchase with a variable rate mortgage. At the time of purchase, documents submitted by the Landlord establish the mortgage interest rate was 2.35 percent.

Tenant J.F. stated he and his co-tenants took possession of the rental unit in November 2020. He stated the Landlord has increased the rent the annual amount permitted under the Regulations. At the time the Landlord filed this application, the monthly rental rate was \$3,301.00. Tenant J.F. testified the Landlord's most recent annual rent increase was effective November 1, 2024, and their current monthly rent is \$3,416.00 (an increase of \$115.00 per month).

The Landlord's documentary evidence establishes the mortgage interest rate has increased over time. As of December 31, 2022, the interest rate was 5.4 percent and increased to 6.15 percent as of December 31, 2023. The Landlord's representative testified that, based upon the most recent mortgage statement dated September 2024 (not submitted in evidence), the current mortgage interest rate is 6.95 percent. The Landlord submitted in evidence a copy of an annual mortgage statement providing that interest paid on the loan for 2022-2023 was \$53,999.97. Mortgage interest paid as of November 2021 was \$20,354.06.

The Landlord also submitted documentation for the prior three years for insurance on the unit, and an operating expense and income for the prior two years. The representative stated the Landlord prepared the income and expense statements. The expenses for the unit included property taxes and management fees (a set percentage of the monthly rental rate). The Landlord's representative testified the monthly rent for the unit was below market value. The Landlord did not submit any documentary evidence in support, but the representative testified that prior to the hearing she reviewed comparable listings for 2-bedroom units in the vicinity and found the monthly rent to be between \$4,000.00 and \$4,500.00.

The Landlord's representative stated as a result primarily of the increased interest rate, the Landlord has listed the unit for sale.

Tenant J.F. noted the Landlord could expect interest rate fluctuations with a variable rate mortgage. Tenant J.F. stated the Bank of Canada had reduced the prime interest rate 1.25 percent over the course of the year and he opined the Bank was expected to reduce interest rates further. The Tenant questioned the propriety of the Landlord requesting an additional rent increase when interest rates rose without a corresponding decrease in rent when the rate was reduced.

Tenant J.F. stated the property management fees were the choice of the Landlord who lived out of the area, and any increase in property insurance was due to a neighbor's unit flooding and the water infiltrating the unit. He also stated that property taxes would be expected to increase, consistent with inflation.

The Landlord's representative replied the Landlord could not adjust the variable rate mortgage to a fixed mortgage as there would be a penalty for the latter at the time the unit sold.

## **Analysis**

Section 43(3) of the Act states that in 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.

Sections 23(1)(a) and (b) of the Regulation states:

- (1) A landlord may apply under section 43 (3) [additional rent increase] of the Act for an additional rent increase, other than for eligible capital expenditures, 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....

The Landlord's application requests an additional rent increased based upon both a financial loss from an extraordinary increase in operating expenses as well as a financial loss attributable to financing costs for purchase of the rental unit. Each of the Landlord's requests is addressed.

- (i) Financial loss from extraordinary increase in operating expenses

Residential Tenancy Policy Guideline 37D was published by the Residential Tenancy Branch to assist landlords and tenants on the issues that are likely to be relevant in

applications for additional rent increases for expenditures. At part 2, the Guideline states:

Financial loss [occurs] when expenses exceed revenue over a fiscal year. For example, if the operating costs of a building exceed the revenue generated by the building (usually through payment of rent), this may result in financial loss. The financial loss must be the result of an extraordinary increase in operating expenses...

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.

If there is more than one corporate entity involved with the residential property, a landlord should submit audited or certified financial statements for each of the corporate entities. Factors that the director must consider on such an application 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. 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. The landlord should not apply for an additional rent increase to cover the financial loss until after the fiscal year end for the residential property.

Audited or certified financial statements provide probative evidence that a qualified professional reviewed the Landlord's expenses, confirmed the accuracy of those expenses, and likely included all appropriate documents to corroborate the correct calculation of the expenses.

Audited or certified financial statements also assure that a requested rent increase to cover an extraordinary increase in operating expenses does not operate as a windfall to the landlord in exorbitant profits.

In this case, the Landlord did not provide audited financial statements nor an affidavit in support of financial statements. I find that, absent this evidence, the Landlord has not provided sufficient evidence to corroborate these expenses, has not established these

expenses are extraordinary; and, has not sufficiently established the Landlord's financial condition.

Additionally, the operating expenses – management fees, property insurance – indicate a modest increase I find cannot be characterized as “extraordinary.” Rather, the annual increase in these remaining operating expenses is intended to be covered by the annual rent increase authorized by the regulation.

The Policy Guideline 37D further provides:

The financial loss must be the result of an extraordinary increase in operating expenses. *Extraordinary means very unusual or exceptional.* If operating expenses sharply and suddenly increase without warning, it may be extraordinary. For example, if the cost of a kilowatt hour of electricity doubled in a period of 3 months, this may be considered extraordinary. If the cost of garbage collection increased 7% over the previous year, this would probably not be extraordinary. (emphasis added)

I find the Landlord has not provided sufficient evidence to establish, on a balance of probabilities, the Landlord has sustained an extraordinary increase in operating expenses.

(ii) Financial Loss for Financing Costs of Purchasing the Property

The Landlord further requested an additional rent increase based upon an incurred financial loss due to increased financial costs in financing the purchase of the rental unit. The Landlord's application states, and is supported by documentary evidence, that the Landlord financed the purchase of the rental unit with a variable-rate mortgage. The Landlord's mortgage statements provide that at the time of purchase of the unit in August 2020, the variable interest rate was set at 2.35 percent. By July 2023, the rate had increased to 5.95 percent and as of the time the application was filed, the interest rate was 6.15 percent on December 31, 2023.

Under section 23(1)(b), the landlord must act reasonably in incurring the financial loss for the financing costs of purchasing the residential property. It is a requirement of this section that the financing costs could not have been foreseen under reasonable circumstances. Variable rate mortgage interest rates often rise (and fall) and these fluctuations are a reasonably foreseeable circumstance. The documentation submitted by the Landlord and provided from the bank to her warns interest rates may rise.

A variable rate mortgage necessarily implies foreseeable rate increases. First, the approximate 4 percent increase in the interest rate from 2020 to December 31, 2023, may not have been anticipated but cannot be considered unforeseen under reasonable circumstances. Moreover, because the interest rate is subject to fluctuations, it may

also decrease (as noted by the Tenant), whereas a rent increase would not be subject to similar adjustment for this reason.

Therefore, I find the Landlord has not provided sufficient evidence to support the application for an additional rent increase due to an extraordinary increase in financing costs that could not be foreseen under reasonable circumstances. The Landlord's request for an additional rent increase on this basis is dismissed.

## **Conclusion**

The Landlord's application for an additional rent increase due to an extraordinary increase in operating expenses and financial loss due to financing costs for the purchase of the unit, is dismissed without leave to reapply.

I order the Landlord serve the Tenants with a copy of this decision in accordance with section 88 of the Act.

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

Dated: November 14, 2024

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Residential Tenancy Branch