



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

On August 7, 2024, the Landlord applied for a dispute resolution proceeding seeking an additional rent increase pursuant to s. 43 of the Residential Tenancy Act (the “Act”) and s. 23 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase because of their increase in financial expenses.

The Landlords (hereinafter, the “Landlord”) and the single Tenant involved attended the hearing. The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceedings and hearing information. The Tenant confirmed this in the hearing.

Preliminary Matter – Landlord service of evidence

The Landlord in the hearing stated they did not serve their evidence to the Tenant for this hearing. The Landlord provided document evidence to the Residential Tenancy Branch on November 4, 2024, three days before the scheduled hearing on November 7.

The *Residential Tenancy Branch Rules of Procedure*, which are in place to ensure a fair, efficient, and consistent process for dispute resolution, provide as follows:

11.2 Evidence not submitted at the time of Application for Additional Rent Increase for Capital Expenditure

... evidence the applicant intends to rely on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 30 days before the hearing.

The hearing material sent to the Landlord by the Residential Tenancy Branch on September 16 notes:

Prepare Your Notice of Dispute Resolution Proceeding Package

You must print and prepare a **separate** Notice of Dispute Resolution Proceeding package to each respondent: [name]

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding (Dispute Notice)
2. A copy of the application form that you submitted at Service BC or the Residential Tenancy Branch office
3. All evidence submitted with this application
4. Respondent Instructions for Dispute Resolution

I find the Landlord did not serve a copy of their Application form, nor their prepared evidence they provided to the Residential Tenancy Branch later.

For this reason, I exclude all Landlord evidence from consideration because it is procedurally unfair for it to be submitted as evidence without being served to the Respondent.

Issue to be Decided

- Is the Landlord entitled to impose an additional rent increase for their increase in eligible financial expenses?

Background and Evidence

The Landlord and the Tenant both attended the hearing and provided the following points in their statements:

- the parties have a tenancy agreement in place, starting from August 15, 2021, at \$1,900 per month
- every year the Landlord notifies the Tenant of a rent increase via email – the Tenant during the hearing verified they had an email from June 2024, purportedly about this proposed rent increase associated with this Application, for an additional \$582.93, to start from October 1, 2024
- the Tenant did not pay this increased proposed amount, and informed the Landlord it was not possible for them to do so
- via email on September 3 (by which the Landlord notified the Tenant about this hearing), the Tenant and the Landlord did agree to a 7% rent increase that started on October 1, 2024, making the Tenant's monthly rent amount at \$2,104.76

- this agreed-to rent increase would continue until this decision stemming from this hearing
- the Landlord proposed a rent increase amount of 28%; however accounting for the agreed-to 7% already in place, the Landlord through this Application is seeking a 21% rent increase
- the Landlord provided this was due to the increase in their mortgage rate, and property taxes for the rental unit property – these increases meant the Landlord was “in jeopardy of losing their property”
- the Tenant confirmed that they provided cheques to the Landlord for this 7% increased amount, for only three months
- the Tenant paid this increased amount for October 2024 and November 2024.

In the hearing the Landlord described their increased mortgage costs and property taxes. On their Application to the Residential Tenancy Branch, they set this out in terms of amounts over the past three years. They stressed the difficult situation they were in, presenting that a rent increase was required because otherwise they would have to sell the property.

In summary, the Landlord makes this application for a rent increase based on the impact of financing to them.

The Landlord requests a rent increase of \$582.93 that would bring the monthly amount of rent to \$2,550. This is an addition of the 3.5% permitted annual rent increase, plus an additional rent increase of 25%, for a total rent increase percentage of 28.5%.

Analysis

The *Act* s. 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;

The *Residential Tenancy Branch Policy Guideline 37D: Additional Rent Increase for Expenditures*, specifies some basic guidelines and criteria for consideration of a Landlord's financial loss because of financing costs for purchasing a 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.

I find 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 of the Landlord's Application, I cannot see evidence of an actual financial loss to the Landlord. The Landlord is clear that interest rates have increased, and this has affected their bi-monthly mortgage payments; however, there are no other statements or evidence on the Landlord's financial condition. This would entail statements on income, including that of from the rental unit or other sources, and employment or other investments or assets. This is a specific burden of proof on the Landlord.

Additionally, I excluded the Landlord's evidence from consideration because they did not provide it to the Tenant for this hearing. As such, there was no information in the evidence about the Landlord's financial position overall.

In summary on this point, I find there is not sufficient evidence in place in the Landlord's Application to show the resulting financial loss to them. The Landlord did not present evidence of an actual financial loss, and this must be in place should they wish to increase rent in a legally valid manner.

I direct the Landlord's and Tenant's attention to s. 43 of the *Act*, that which governs an agreed-to rent increase and the strict requirements. As well, the Residential Tenancy Branch published the specific policy guideline *Residential Tenancy Policy Guideline 37B. Agreed Rent Increase*. Any other issues regarding the Landlord-Tenant agreement they have about an agreed-to rent increase, as described above, is outside the scope of this Landlord's Application.

I dismiss the Landlord's Application in its entirety for this reason.

Conclusion

I refuse the Landlord's Application in its entirety.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 19, 2024

Residential Tenancy Branch