



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-E

Introduction

This hearing concerned an application filed by the Landlord pursuant to section 43, *Residential Tenancy Act* (the “Act”) for an additional rent increase because the Landlord’s eligible financial or operational expenses for the rental unit have increased.

The Landlord was represented by the property manager C.M. at the hearing. The Tenant did not attend the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant was deemed served the fifth day after the Landlord served the proceeding package on June 28, 2024, by Canada Post registered mail. The Landlord provided a copy of the Canada Post registered mail tracking number to confirm this service.

Additionally, on June 28, 2024, the Landlord served the Tenant with the proceeding package by email at the address provided by the Tenant on the tenancy agreement.

Service of Evidence

The Landlord’s representative confirmed copies of the Landlord’s evidence were included in the proceeding package served to the Tenant by registered mail as well as included as attachments to the email sent to the Tenant on June 28, 2024.

The Tenant submitted no evidence for consideration in this proceeding.

Issues to be Decided

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's representative testified the Landlord purchased the rental unit pre-construction in 2016. The Landlord closed on the purchase and took possession in October 2018.

The Landlord entered into a tenancy agreement with the Tenant effective August 1, 2021, for an annual term to July 31, 2022, and thereafter to continue to on a month-to-month basis. A copy of the tenancy agreement was provided in evidence. The Tenant's current monthly rent is \$2,277.00 established by rent increase in 2023. In 2022, the Tenant's monthly rent was \$2,233.00. The Landlord's representative stated that during the tenancy the Landlord has increased the Tenant's rent annually as permitted by the Regulation. The Landlord's representative stated the Landlord has not yet noticed a rent increase for 2024 preferring to do so upon determination of this application.

The Landlord submitted financial information and documentation to establish the following expenses associated with the rental unit:

Variable Mortgage Rate or Landlord's Monthly Mortgage Obligation

- July 1, 2021 – rate set at 4.14%
- July 1, 2022 – rate set at 7.04%
- to July 1, 2023 – monthly payment set at \$2,024.77
- to July 1, 2024 - monthly payment set at \$2,095.59
- July 1, 2024 – monthly payment set at \$2,514.17

Property Taxes

- 2021 - \$2,564.91
- 2022 - \$2,374.22
- 2023 - \$2,450.61

Property Insurance

- 2021 - \$590.00 (plus \$564.00 top-up)
- 2022 - \$564.00
- 2023 - \$640.00

Property Management Fees – flat rate 7% of monthly rent

- 2021 - \$169.05/month
- 2022 - \$161.70/month

Strata Fees

- 2020 - \$370.17/month, \$4,442.04 per year
- 2021 - \$408.50/month, \$4,902.00 per year
- 2022 - \$427.73/month, \$5,132.26 per year
- 2023 - \$473.73/month, \$5,680.26 per year
- 2024 - \$546.38/month, \$6,556.56 per year

The Landlord's representative testified the monthly strata fee covered general maintenance for the building and yearly increases were not associated with an assessment. A review of the mortgage information provided by the Landlord from the financial institution indicates the property taxes are collected by and are included in the monthly payment made by the Landlord.

The Landlord claims a net annual increase in operating costs from 2022 to 2023 of \$948.70; \$798.40 attributable to an increase in the annual strata fees. Additionally, the Landlord claims an increase in financial costs due to a rise in the mortgage interest rate from 2022 of 4.14% to 7.04% in 2023. The Landlord requests an additional rent increase of 28% for a total annual rent increase of 31.5%, that includes the generally applicable annual rent increase. This would raise the Tenant's current monthly rent from \$2,277.00 to \$2,994.26.

Analysis

Section 43(3) of the Act states that 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.

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 and has not established that these expenses are extraordinary, and I find the absence of this evidence does not establish the Landlord's financial condition.

Additionally, the operating expenses – management fees, property insurance, property taxes, property management fees and strata fee increases – 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 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. As of July 1, 2022, the interest rate was 4.14% and has since adjusted annual upward to a rate of 7.04% as of July 1, 2024.

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 are a reasonably foreseeable circumstance. Similarly, increases in property taxes is also reasonably foreseeable.

A variable rate mortgage necessarily implies foreseeable rate increases. First, the approximate 3% increase in the interest rate from 2022 to 2024 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, whereas a rent increase would be permanent.

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 Tenant with a copy of this decision in accordance with section 88 of the Act.

Dated: November 2, 2024