



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 has incurred an extraordinary increase in the eligible operational expenses for the rental unit.

The Landlord and the Tenant attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant confirmed receipt of the Notice of Hearing sent by the Landlord by Canada Post registered mail on October 10, 2024 (based upon the postmark on the envelope), which he states he received approximately two days later.

Service of Evidence

The Landlord did not provide to the Tenant copies of evidence she submitted for purposes of this hearing. After reviewing the documents submitted and advising the proceeding could be adjourned for the Tenant to receive and have an opportunity to review the Landlord’s documentary evidence, the Tenant stated the documents confirmed the information provided by the Landlord in the application and stated an adjournment would not be necessary.

The Tenant submitted no evidence for consideration in this proceeding.

Preliminary Matters

The Landlord stated her husband passed away in 2019 and she had not located a copy of the tenancy agreement. The Tenant stated he had a copy of the tenancy agreement and would provide it to the Landlord by email.

Issues for Decision

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

Background and Evidence

I have considered the submission of the parties, the documentary evidence as well as the testimony of the parties. However, not all details of the respective submissions are reproduced in this Decision. Only relevant and material evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The rental unit is a single-family home constructed in 1958. The Tenant testified he moved into the unit in November 2014. The Tenant's current monthly rent is \$1,663.00, as of May 1, 2024. A copy of the Notice of Rent Increase was provided in evidence.

The Landlord requests a rent increase in the amount of \$1,837.00 per month to a monthly rental rate of \$3,500.00. The Landlord's application states this represents a 100 per cent increase or 103.5 per cent increase when the annual rent increase permitted under the Regulation is included in the calculation.

The Landlord's application provides her most recent property tax statement increased from the prior year in the amount of \$152.82. The Landlord's application has no stated property insurance for the prior two years but indicates property insurance in the amount of \$3,714.00 for this fiscal year. The Landlord provided copies of the most recent property tax invoice and the invoice for the property insurance to confirm these amounts. The Landlord testified consistent with her application that the monthly mortgage payment on the property two years ago was \$750.00; last year it was \$800.00; and this fiscal year remained \$800.00 per month. The Landlord did not submit copies of her mortgage statements to confirm these amounts.

The Landlord also stated she replaced the hot water tank in the rental unit and provided a copy of the invoice from May 2024 in the amount of \$1,785.00. The reference in the application to "other income" listed at \$60,000.00 the Landlord states is her income from her husband's pension fund, but noted that this amount decreased each year as the pension was drawn down.

The Landlord calculated an increase in operating costs in the amount \$3,916.82, which was the total of the increase in the property tax (\$152.82) and the property insurance premium (\$3,714.00).

The Tenant testified his income is limited to a pension. He stated the adult children residing with him were named occupants on the tenancy agreement entered in with the Landlord's husband. The Tenant noted the children were adults at the time the tenancy agreement was made. He explained one child was a full-time student and was working

to support to pay for tuition and his other child was “not yet on his feet.” In sum, he stated they are “just getting by” financially. The Tenant testified he pays the water bill for the property which he estimates is \$800.00 annually and he fixes items in the home as they require repair.

The Landlord’s closing comment was that she wanted fair compensation for the rental unit.

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....

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 this case, the Landlord did not provide audited financial statements nor an affidavit in support of financial statements. I find the Landlord has not provided sufficient evidence of her financial condition.

Additionally, the increase in operating expenses – property tax increase and current year property insurance – the Landlord states total \$3,916.82 I find cannot be characterized as “extraordinary” particularly where the majority of the increase (the property insurance) is an expense the Landlord recently procured.

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, that she has sustained an extraordinary increase in operating expenses to support a request for an additional rent increase.

Conclusion

The Landlord's application for an additional rent increase due to an extraordinary increase in operating expenses is dismissed without leave to reapply.

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: December 6, 2024

Residential Tenancy Branch