



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code ARI

Introduction

This hearing dealt with the application pursuant to the Residential Tenancy Act (the Act) and the Residential Tenancy Regulation (the Regulation) for an additional rent increase due to financial loss for financing costs, under section 23 of the Regulation.

Landlord CN (the Landlord), agent TN, and tenant AH attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant AI

The Landlord requested the exclude tenant AI, as he agreed to the requested rent increase.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the application to exclude tenant AI.

Tenants' addresses

Both parties agreed tenant AH resides in unit A and tenant AI resides in unit B.

Pursuant to section 64(3)(a) of the Act, I have amended the application to correct both tenants' addresses.

Hereinafter, I will refer to tenant AH as the Tenant.

Service

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding and the application form. The Tenant did not serve response evidence.

The Landlord affirmed he did not serve the evidence submitted to the Residential Tenancy Branch (RTB).

Rule of Procedure 3.14 states the applicant must serve the evidence at least 14 days prior to the hearing.

Considering the undisputed testimony, I find the Landlord served the Notice of Dispute Resolution Proceeding and the application form in accordance with section 89(1) of the Act. I excluded the Landlord's evidence, as he did not serve it, as required by Rule of Procedure 3.14.

Issue to be Decided

Is the Landlord entitled to an additional rent increase due to financial loss for financing costs?

Background and Evidence

I have reviewed the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agreed the ongoing tenancy started on June 1, 2019. Monthly rent today is \$1,445.00, due on the first day of the month.

The Landlord is seeking to increase the rent by an extra 11%, besides the 3.5% regular rent increase, totalling an increase of \$209.53 and resulting in a new rent of \$1,654.53.

The Landlord stated the mortgage rate increase effective in September 2024 from 3 to 5.07%, the mortgage monthly payment for both units A and B increased from \$1,409.06 to \$1,704.84, and the new rate is a fixed rate for 4 years.

The Landlord testified that in August 2024 he received a letter from the bank about the mortgage renewal indicating the fixed offered rate was a good one.

The Tenant said the Landlord did not incur a financial loss that could not have been foreseen under reasonable circumstances and that she does not believe it is fair to have this additional rent increase.

Both parties confirmed they had enough time to make their submissions.

Analysis

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

Section 23(1)(b) of the Regulations states that landlords may obtain an authorization 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.”

Section 23(3) of the Regulations states the arbitrator must consider the following factors:

- (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;
- (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;
- (c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;
- (d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;
- (e) the relationship between the change described in paragraph (d) and the rent increase applied for;
- (f) Repealed. [B.C. Reg. 174/2021, Sch. 1, s. 2 (c).]
- (g) a finding by the director that the landlord has contravened section 32 [obligation to repair and maintain] of the Act;
- (h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year;
- (i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;
- (j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
- (k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has
 - (i) submitted false or misleading evidence, or
 - (ii) failed to comply with an order of the director for the disclosure of documents.

I accept the Landlord's uncontested and convincing testimony that in August 2024 he received a letter from the bank about the mortgage renewal indicating the fixed rate

offered was a good one, and that the mortgage rate increased from 3 to 5.07% effective in September 2024.

The Landlord did not submit evidence about rent payable for similar rental units, changes in services offered in the unit in the last 12 months, and prior applications with the Residential Tenancy Branch. In fact, the Landlord has not served any evidence with this application.

I find the Landlord did not act reasonably by accepting the fixed rate of 5.07% for a 4 year-term in August 2024, as in that time there was a strong expectation that the interest rates were going to reduce, and this has happened.

The Landlord did not explain why he did not research the market as part of an expected and reasonable due diligence before renewing his mortgage, considering the strong expectation in August 2024 for the interest rate reduction. I find the change in the operating expenses by the increase in the mortgage happened, at least in part, because the Landlord was not reasonable.

The Landlord submitted this application on October 4, 2024. In accordance with sections 23(3)(d) and (e) of the Regulations, I find the Landlord's change in operation expenses resulting from the new mortgage rate that happened in September 2024 is relevant and it is the reason the Landlord requested this increase, but the increase could have been significantly lower, and the Landlord could have reduced the change in the operating expenses with a variable rate if he had fulfilled his obligation of due diligence.

In summary, the Landlord could reasonably have reduced the financial loss by choosing a variable rate mortgage.

Thus, I dismiss the Landlord's request for an additional rate increase due to financial loss for the financing costs.

Conclusion

I dismiss the application without leave to reapply.

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: December 4, 2024

Residential Tenancy Branch