

DECISION

Introduction

This hearing addressed the Landlord's Application for Dispute Resolution pursuant to the *Residential Tenancy Act* (the Act) section 43 for an additional rent increase.

The Landlord's application requests an additional rent increase on the basis that, acting reasonably, the Landlord has incurred a financial loss for the financing costs for purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord served the proceeding package to the Tenants on or before December 2, 2024, in person. The Tenants acknowledged receipt but stated they had not received all the Landlord's evidence as reviewed during the initial hearing. An Interim Decision was issued on February 14, 2025, providing for the Landlord to serve their evidence to the Tenants. The Landlord complied with the order set forth in the Interim Decision for service of their evidence to the Tenants, submitting proof of service as requested. The Tenants acknowledged receipt and an opportunity to review the Landlord's evidence.

The Tenant submitted no documentary evidence for consideration in this proceeding.

Issue for Decision

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 entered into a tenancy agreement with the Tenants on December 1, 2020 for a one-year fixed term. Each year the parties execute an annual term tenancy agreement. A copy of the parties' tenancy agreement for the period December 1, 2024 to December 1, 2025, was provided in evidence. The Tenants' current monthly rent is \$2,718.42. The Landlord stated that, with the exception of the first year of tenancy, they have increased rent each year in the amount provided by regulation. The Landlord requests in their application an additional rent increase to \$3,246.27 per month, as noted by the Tenants.

The Landlord provided documentation to establish that monthly strata fees had increased as follows:

- 2021 - \$422.08
- 2022 - \$422.08
- 2023 - \$493.57 to \$516.19
- 2024 - \$516.19

The Landlord also stated in their application that the strata had installed an EV charger at cost assessed to the Landlord in the amount of \$1,089.44. The Landlord stated this cost had been paid and was a separate assessment from the monthly strata fees.

The Landlord stated the increase in mortgage interest rates, coupled with the increase in strata maintenance fees (set forth above), have increased the financial burden for the costs for the rental unit. The Landlord provided mortgage documentation for the following years:

	<u>Principal (Approx.)</u>	<u>Interest Paid</u>	<u>Bi-weekly Payment</u>
• 2020	\$547,000.00	\$ 2,370.16	\$ 1,042.78
• 2021	\$531,000.00	\$11,783.71	\$ 1,047.78
• 2022	\$518,000.00	\$19,795.83	\$1,545.31
• 2023	\$507,000.00	\$28,681.21	\$1,545.31

The Landlord noted the mortgage interest rate had increased during the Covid period when rental increases were not permitted by the regulation. The Landlord stated the current interest rate on the mortgage for funds to purchase the unit was 5.68 percent fixed when they had recently renewed their mortgage.

The Tenants noted there was a mathematical error in the annual strata fees as calculated by the Landlord.

The Landlord replied the calculation error was inadvertent and minor compared to the increased mortgage interest rate.

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 a financial loss attributable to financing costs for purchase of the rental unit. However, the Landlord's application does include the cost of strata fees paid each year on the unit, and these costs pertain to operating expenses. The operating costs will also be addressed in this decision.

(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 information regarding all the operating costs associated with the rental unit, limiting the application only to the strata fees. Additionally, the Landlord did not provide audited financial statements nor an affidavit in support of financial statements. I find, absent this evidence, the Landlord has not provided sufficient evidence to establish this expense is extraordinary.

The operating expense information provided by the Landlord regarding the strata fees indicate a modest increase I find cannot be characterized as "extraordinary."

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, they have sustained an extraordinary increase in operating expenses based upon an increase in the annual strata fees for the rental unit.

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

The Landlord requested an additional rent increase based upon an incurred financial loss due to increased financial costs for 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 mortgage. As demonstrated by the Landlord's evidence and testimony, the mortgage interest rate has increased from 2.20 per cent to the current rate of 5.68 per cent.

A review of the Landlord's mortgage statements for the years ending December 31, 2020, 2021, 2022 and 2023, indicate that for 2020 and 2021, the Landlord had a variable rate mortgage at 2.20 per cent for a term expiring October 20, 2025.

The annual mortgage statements provided by the Landlord indicate that in 2022, the Landlord refinanced their mortgage early from the variable rate of 2.20 per cent to the fixed rate of 5.68 per cent for a term expiring November 29, 2025.

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.

The Landlord thus voluntarily undertook early refinancing from a lower variable rate to a higher fixed rate. 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 for financial loss due to financing costs for the purchase of the unit, 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 Act.

Dated: March 23, 2025

Residential Tenancy Branch