



## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for an additional rent increase for extraordinary increase in operating expenses under section 43 of the Act and Regulation 23.

Landlord R.L.S.C.S. was represented by L.M., Board president and C.J. Board treasurer, at the hearing.

Tenant J.S., Tenant W.S., Tenant R.F., Tenant D.R. attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find the Landlord served each Tenant in person or by posting on the rental unit door the proceeding package on February 5, 2025. The Landlord's representative confirmed that each package included a copy of the evidence submitted by the Landlord to the RTB in support of the application. The Landlord submitted a Declaration of Service together with a proof of service form.

Tenant W.S. submitted a written statement dated March 28, 2025. Tenant W.S. stated he did not provide a copy of his statement to the Landlord. Tenant W.S. was permitted to testify as to the contents of his statement but was advised that because he had not provided a copy to the Landlord prior to the hearing, the statement would not be admitted in evidence, pursuant to Rule of Procedure 11.3 requiring a respondent serve evidence to the other party "not less than 15 days prior to the hearing."

### **Issue 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 participants attending the hearing. 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 Landlord is a non-profit society that provides for veterans. The Landlord's residential rental property constructed in 1976 consists of 7 residential rental buildings and a clubhouse open to all tenants. Five of the residential buildings have between 8 and 12 units; and the remaining two buildings each have 12 units. There are a total of 64 units. The Landlord's representative and Board president L.M. stated the rental property is limited to those who are senior citizen veterans, their partners and spouses. Some of the tenants are in their 80's. The Tenants live independently in their units.

The Landlord's application details the rental income over the course of the prior three years. The Landlord filed its application on January 16, 2025, and used data from 2022, 2023 and 2024.

	<u>2022</u>	<u>2023</u>	<u>2024</u>
Rental Income	\$297,600.00	\$312,800.00	\$326,400.00
Other Income	\$ 5,003.00	\$ 74,107.00	\$ 62,486.00

The Landlord's Board president stated that "other income" included income from coin-operated laundry facilities on the rental property, bank interest, and BC Housing grants it had received. She testified the BC Housing grant was non-renewable and provided documentation in support of the grant received March 29, 2023. A copy of the correspondence from BC Housing regarding the grant terms and limits was provided in evidence. The Board president stated the grant was specifically for maintenance costs related to the rental property. In particular, she explained, there had been a plumbing issue that required extensive repair totaling approximately \$30,000.00 for which the grant funds were applied. The Board president also noted that the interest included in "other income" was from a GIC of which she estimated was initially \$30,000.00 but had a current balance of \$14,000.00.

The Landlord's application also provides its operating expenses for the rental property:

	<u>2022</u>	<u>2023</u>	<u>2024</u>
Operating costs	\$365,785.00	\$294,979.00	\$393,610.00
Other costs (administrative fees, accountant fees)	\$ 24,267.00	\$ 23,788.00	\$221,115.00
Utilities	\$ 83,651.33	\$ 87,300.28	\$106,913.09
Insurance	\$ 30,037.00	\$ 33,801.00	\$ 45,449.00

The net increase in utility costs from 2023 to 2024 was \$19,612.81; and, an increase of \$11,648.00 in insurance costs for that same time period.

The Landlord provided copies of its utility bills and insurance invoices, as well as audited financial profit and loss statements for 2022-2023, and copies of complete audited financial statements. (The latter were submitted separately and proof of service to the tenants was provided by the Landlord).

The Landlord's representative stated that rent had not been raised in the previous 5 years, in part due to the Covid pandemic as well as to provide affordable housing to its seniors and veterans. During that time, Landlord's treasurer C.J. testified efforts had been made to obtain a second mortgage on the rental property. However, she stated this was "challenging," in part because of the existing mortgage with an early pay-off penalty of \$80,000.00. This penalty, in turn, precluded the Landlord from re-financing the first mortgage as the current mortgage interest rate the Landlord pays is three percent and the balance is due for pay-off in approximately 18 months. Furthermore, the Landlord's non-profit status limited its ability to obtain a second mortgage to enable it to meet rising operating expenses.

The Landlord's treasurer explained that efforts had been made to obtain additional grant funding, but without success. For instance, when discussing financial support with BC Housing officials, the Board was informed that no financial assistance would be available until the rental buildings were upgraded.

Similarly, the Landlord's representatives explained that insurance costs for the rental buildings are increasing rapidly, in part due to the age of the buildings. Despite efforts to secure less expensive insurance, the representatives stated their insurance options were very limited due to the age of the rental buildings and location in a flood plain. The president testified she has handled obtaining insurance for the rental property. Recently, she approached 14 insurance providers, but all declined, save for the current insurer, due to the age of the rental property and its location in a flood plain. She stated the current insurer provides insurance for non-profits, but the age of the buildings continues to be an issue with other insurers. The president stated the deductible is high; therefore, the Board avoids submitting claims to avoid increasing the premium.

The Board president and treasurer stated they volunteer their time and services to managing the rental property, as did the other Board members. Additionally, as the Landlord is a non-profit, it is exempt from property taxes.

The Landlord's application requests an additional rent increase of 27 percent. The Board president testified that the rental rates are considerably below the local market value of \$1,500.00 to \$2,000.00 for bachelor units (the residential rental building provides larger units). The rental rate for current Tenants ranged from \$348.25 to approximately \$480.00 with four units having monthly rental rates between \$517.50 to \$580.64. The president stated that a 27 percent increase in monthly rent would place their tenants in the correct rent range. On its application, the Landlord computed the 3

percent annual increase together with the 27 percent additional rent increase would raise monthly rents to \$452.72 to \$754.83 for the most expensive units.

Absent an approved additional rent increase, the Board's treasurer stated the Landlord (a society) would be required to dissolve and the rental property would then be sold. She stated the rental units would be likely be deemed uninhabitable and the Tenants would be required to relocate. The Board's president, who has held the position for approximately 10 years, stated they have "done our best to provide a home for [this] aging population," but without the additional rent increase they saw a narrow path forward in continuing to meet increasing operating expenses.

Tenant R.F. stated she was not objecting to the additional rent increase. She stated she understood the Landlord's position and expressed concern that if the application is not granted, the Landlord will be forced to sell the property and she will be homeless. Tenant R.F. explained she had been homeless once before and did not want to be in that situation again. She stated that although the rent increase was not preferable, the monthly rental rate was much below the market rate which she could not otherwise afford. Tenant R.F. noted there had been plumbing problems in some of the units.

Tenant W.S. expressed concern that the Board had not yet held its annual general meeting. The Board president stated the AGM would be scheduled after the Board had met with BC Housing. He stated he had previously been hired by the Board to do on-site maintenance work but was replaced 2 years ago with an independent contractor. He stated since the hiring of the independent contractor, it takes the contractor longer to make repairs. The treasurer replied the delays in the contractor making repairs were due to supply difficulties that arose during the Covid pandemic. She noted the contractor's time spent making repairs was lower.

Tenant D.R. stated she has lived in her unit for approximately 3-1/2 years. She stated she receives disability payments and felt the property was "in disrepair." However, she recognized that she would be required to pay significantly more in rent if she were not residing at this rental property. Tenant D.R. was also concerned about her monthly heating bill. The Landlord's representative stated tenants are responsible for their own electricity. The representative further stated that tenants must provide a written request regarding any repairs or pest control they may need in response to Tenant D.R. stating she had seen mice in the building. The representative further stated that after an inspection, insulation had been replaced in the buildings and the Landlord utilizes regular pest control services.

Tenant J.S. stated she supported the additional rent increase. Tenant J.S. noted that most tenants were in their 60's to 80's and they do not want to move. She stated the Landlord has "done an amazing job" and rent increases are "rare." Tenant J.S. stated that she has found that social housing requires 30 percent of a tenant's gross annual income, whereas the same requirement is not made by this Landlord. She expressed concern that if the Landlord was forced to sell, the rental property buildings would be torn down and replaced with large single-family homes.

## Analysis

### Standard and Framework for Determination of an Application for Additional Rent Increase

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 burden to provide evidence in support of the claim is on the party making the claim.

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.

Regulation 23 sets out the framework for determining if a landlord is entitled to impose an additional rent increase:

23 (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;

(c)the landlord, as a tenant, has received an additional rent increase under this section or section 23.1 for the same rental unit.

(2) If the landlord applies for an increase under subsection (1) (a) or (b), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage.

(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

(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; [and]

(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.

In this case, the Landlord requests an additional rent increase based upon an extraordinary increase in its operating expenses.

### Factors for Consideration

#### *(a) Rent for Similar Rental Units*

I accept the Landlord Board president's testimony that the rental rate for similar units in the locale where the rental property is located is approximately \$1,500.00 to \$2,000.00 for bachelor units. The president based her testimony on personal knowledge of the local rental market. Within the rental property itself, the Landlord's representative testified rent has not increased in the prior 5 years, in part due to the Covid pandemic as well as the Landlord Board's efforts to keep monthly rental rates as low as possible in consideration of the tenant population that the Landlord-society serves. The rents set forth in the Landlord's application, as discussed herein, are markedly lower than the current market rate and demonstrate the Landlord Board's commitment to provide housing to lower-income veterans and their spouses/partners.

I find the Landlord has maintained rental rates for its tenants well below the market rate due to the specific tenant-population it serves. For its highest rental rate units, these are approximately one-third that of the market rate for a bachelor unit in the locale. Furthermore, several of the Tenants at the hearing noted the Landlord's low rental rate that they could not find elsewhere. As Tenant J.S. stated, her monthly rental rate was "ridiculous" (in comparison to the local market rate). I find that even with the annual rent increase and the additional rent increase (a combined 30 percent), the Tenants resulting monthly rent for its most costly unit will still be 50 percent of the lowest estimated current market rate for a bachelor unit.

*(b) Rent History for the Affected Rental Units in the Prior Three Years*

The Landlord's evidence of the rent history from 2022, 2023 and 2024 (the three years prior to the date of the Landlord's application submitted January 16, 2025), indicate a modest rise in rental income. Between 2022 and 2023, rental income rose \$15,200.00 and between 2023 and 2024, rental income increased \$13,600.00. Although expenses decreased between 2022 and 2023 by \$63,872.05, expenses incurred by the Landlord increased \$128,218.81 between 2023 and 2024. This is a rapid and dramatic increase exceeding any savings between 2022 and 2023, and well in excess of the rental income increase over the same period of time. Moreover, the Landlord's maintenance costs were assisted by a BC Housing grant in 2023, which is non-renewable and by its terms was offered only once to the Landlord to assist with plumbing repairs to the rental property. I find the Landlord has established with sufficient evidence a significant and extraordinary increase in its operating costs and expenses between 2023 and 2024. I further find the Landlord has no other source (such as, grants, second mortgage) it can utilize to off-set these expenses without the requested additional rent increase.

*(c) Change in Service or Facility in the 12-Month Period Preceding the Landlord's Application*

The Landlord presented no evidence of a change in the facility or services it provides to Tenants at the rental property. The Landlord maintains a common building for Tenants' use and this building and there was no evidence this common area has undergone any change in the 12 months prior to the Landlord's application.

*(d) A Change in Operating Expenses in the Three Years Preceding Date of Application Considered Relevant and Reasonable*

The Landlord submitted evidence, and its representatives testified, regarding the increase in operating expenses. The evidence establishes the Landlord's operating costs for property insurance and utilities have increased considerably during the last year, in particular. Additionally, I accept the Landlord's representatives' testimony regarding their efforts to obtain alternate financing and/or grants to meet the increased operating costs. I further accept the president's testimony regarding the condition of the property due to its age and the plumbing issues that have arisen as a result. I find the Landlord has established an increase to its operating expenses that are relevant to the

management and maintenance of the rental property within the three-year period preceding the date of the Landlord's application on January 16, 2025.

*(e) The Relationship between the Increase in Operating Expenses and Rent Increase the Landlord has Applied For*

I accept the Landlord's request that rental rates are much below market rate, and an increase in monthly rental rates is the remaining source of funds available to the Landlord to pay for its increasing operating costs.

*(f) Whether the Landlord has been Found by the Director to Have Contravened Section 32 of the Act*

I find the Landlord has not previously been found to have contravened an order entered pursuant to section 32 of the Act. During the hearing the Tenants noted the plumbing issue with the building, the presence of mice at one time, a plumbing issue in one building and that the independent contractor that makes repairs may do so in a dilatory manner. The representative testified the Landlord has regular pest control services and had not received written requests from the Tenant regarding an issue with mice. Further, the representative stated the plumbing issue on the rental property had been repaired and the independent contractor they retained for maintenance work is less costly (billing fewer hours) and there had been supply chain delays that affected his repair work.

*(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*

The Landlord presented evidence the major plumbing repair for the rental property was paid with the use of a one-time grant provided by BC Housing. I find the Landlord's increase in operating costs is not a result of inadequate repair of maintenance.

*(i) Previous Additional Rent Increase*

I find, based upon the evidence, the Landlord has not previously applied for an additional rent increase under the Act.

*(j) Whether the Director has Set Aside a Notice to End Tenancy within the Prior Six Months*

I find there is no evidence the Landlord has issued a notice to end tenancy that has been set aside in the prior 6-month period from the date of the Landlord's application.

*(k) Whether the Landlord has been Found to Have Provided False or Misleading Information, or Has Failed to Comply with an Order for the Disclosure of Documents in Relation to an Application under this Section*



I find no evidence the Landlord has either failed to comply with an order for disclosure of document or has provided false or misleading testimony in relation to an application brought by the Landlord under this section.

### Sufficiency of the Landlord's Evidence

As noted earlier, the Landlord bears the burden to establish on a balance of probabilities its application for an additional rent increase.

Residential Tenancy Policy Guideline 37D provides guidance on documentary evidence to establish a financial loss:

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.

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 submitted audited financial statements and audited profit and loss statements for the period ending December 31, 2023 prepared by a certified accountant in October 2024, in support of this application. The audited financial statements confirm the Landlord's representatives' testimony that in 2023 the Landlord's operating expenses, even when taking into account the BC Housing grant it received, exceeded its rental and other revenue by approximately \$37,000.00. The year ending 2022 in the financial statement indicates a modest profit of \$57,615.00. The audited financial statements indicate an increasing deficiency in costs to revenue for which the

Landlord's Board president and treasurer have testified is such that without the additional rent increase the rental property may no longer be financially feasible.

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 provided sufficient evidence to establish, on a balance of probabilities, the Landlord has sustained an extraordinary increase in operating expenses, and the year-to-year increase in operating costs has exceeded its rental income. The increase in costs is attributable to utilities, insurance and loss of grant funding for significant maintenance and repair issues due to the age of the residential rental buildings.

## **Conclusion**

The Landlord's application for an additional rent increase of 27 percent, in addition to the standard annual rent increase provided under the Act and regulation, due to an extraordinary increase in operating expenses is granted. The Landlord is directed to implement the additional rent increase together with the annual rent increase in accordance with Part 3 of the Act.

I order the Landlord serve the Tenants with a copy of this decision in accordance with section 88 of the Act within two weeks of the date of this decision. I authorize the Landlord to serve a Tenant by email if the Tenant provided an email address for service.

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: April 24, 2025

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Residential Tenancy Branch