



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 pursuant to section 43 of the *Residential Tenancy Act* (the Act) and section 23 of the *Residential Tenancy Regulation* (the Regulation) based upon an extraordinary increase in operating expenses.

Landlord W.H.L. was represented by its owner I.W. at the hearing.

Tenant D.H. attended the hearing.

The parties confirmed service of their respective submissions and supporting evidence to the other party, as well as an opportunity to review prior to the hearing. I find service of the proceeding package and the parties' respective evidence were served to the other party in accordance with the Act.

Issue for Decision

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

Background and Evidence

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

The Landlord stated she purchased the rental property approximately ten years ago and it is the Landlord's only rental property. The rental building consists of three habitable units and one unit designated for storage which is also leased. The lower-level unit is one bedroom with one bathroom; the main and upper-level units are both two bedroom-two bath units. Over the course of ownership, the Landlord has renovated the rental property. Most recently, within the prior 18 months, the Landlord renovated the kitchens in the three units and upgraded the appliances to energy-efficient models. The Landlord submitted documentation regarding the cost of the renovations. The Landlord stated she had recently replaced the balcony of the subject unit at an expense of approximately \$28,000.00. The Landlord stated the balcony replacement was necessary as the replaced balcony had exceeded its useful life. The Landlord stated a home equity line of credit (HELOC) was used to pay for the renovations and repairs.

The Landlord's application requests an additional rent increase in the amount of 36.6 percent but only with respect to the Tenant's unit. The application filed by the Landlord indicates income from the rental property over the past three years as follows:

<u>Last Fiscal Year</u>	<u>Prior Fiscal Year</u>	<u>Prior Two Fiscal Years</u>
\$ 93, 912.00	\$ 97,330.00	\$ 81,764.40

With respect to rental income from the Tenant's unit, the Landlord provided copies of rental agreements for the period commencing July 1, 2020. The Tenant has resided in the unit since 2016.

The Landlord recorded the following operating costs for the same time periods:

<u>Last Fiscal Year</u>	<u>Prior Fiscal Year</u>	<u>Prior Two Fiscal Years</u>
\$ 104,081.31	\$ 91,431.63	\$ 78,708.02

The Landlord provided more detailed information regarding operating expenses for the rental property between this most recent fiscal year as compared to the prior fiscal year indicates a decrease in city tax and utilities (-\$677.00); gas and electric utilities (-\$827.10) and a modest increase in internet and property insurance (+\$1,458.18); and mortgage and HELOC payments (+\$286.96). The Landlord submitted banking record summaries for the period January 1 to December 31, 2023, and January 1 to December 31, 2024. The Landlord did not provide invoices and billing statements relating to the utilities and similar, adopting the position that the bank statements were for the business and the withdrawals for utilities and the like were self-explanatory and thus she did not consider it necessary to provide the documents to substantiate the withdrawals for the operating expenses appearing on the annual bank summary statements.

The Landlord testified the application was primarily the result of a change in mortgage financing costs for the property. The Landlord testified consistent with the application that the interest rate for the mortgage for the property had increased from 2.89 percent to 5.15 percent when it was renewed in September 2024. Similarly, the HELOC interest rate increased at that time from 2.34 percent to 6.95 percent.

However, as noted by the Tenant, the single largest increase in operating costs sustained by the Landlord were for management fees. In the previous fiscal year, the Landlord incurred \$2,047.50 for accountant/property management fees. In the most recent fiscal year, this expense increased to \$14,394.15. The Landlord submitted a copy of the property management invoice for the annual period January to December 2024, in the amount of \$12,189.15. The Landlord testified these management fees are paid to herself. The Landlord explained she is a licensed realtor and her current office requires her to charge management fees for her rental property.

The Landlord submitted that the upper-level unit, which is identical to that of the subject unit, currently rents for \$3,300.00. The Landlord's application for an additional rent increase of 36.5 percent would raise the Tenant's rent from \$2,638.86 (as of June 1, 2025 pursuant to an authorized rent increase) to \$3,500.00.

The Tenant stated the bank records provided by the Landlord were incomplete and without the invoices and billing statements for the operating expenses paid, it was not possible to verify the withdrawals for expenses incurred for the rental property. He further noted there were several large withdrawals of cash that lacked explanation. Additionally, the Tenant stated a review of the bank summary statements submitted by the Landlord did not provide adequate information as to withdrawals for the HELOC or mortgage payments, and that these were for the rental property. The Landlord stated it was a business account for the rental property and all withdrawals were related to it.

The Tenant stated the Landlord explained the "main issue" for the application concerned the increased mortgage and HELOC interest rates. He noted the application indicated only a very modest year-to-year increase of \$268.00. The Tenant contended the increase in financing rates was not extraordinary. The Tenant also pointed out the utilities the Landlord paid for the rental property had decreased in a year-to-year comparison of these costs. His position was the rental income history provided on the application demonstrated an approximate 15 percent increase over the three-year period, which was sufficient to pay operating expenses.

The Tenant's argued the increased management fees the Landlord paid to herself was the largest source of the alleged increased operating expenses. Toward that end, the Tenant argued the management fees could not be asserted to lead to an operating loss when the Landlord was paying the fees to herself. He stated the invoice did not establish payment and he speculated may have been generated solely for the purpose of the application as there were no withdrawals matching the management fees appearing on the bank statements. The Landlord countered that she paid expenses to her realty firm and personnel from those fees. However, the Landlord did not provide documentation to support that contention.

The Tenant also advanced the argument the Landlord's application was invalid in the first instance as Regulation section 23(2) requires a landlord to submit a single application for additional rent increase for all rental units, there being only limited exception to this rule that was not applicable in this case.

Analysis

Standards for Application for Additional Rent Increase

Rule of Procedure 6.6 provides 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. Generally, the burden to provide evidence in support of a claim is on the party making the claim.

Section 41 of the Act provides that a landlord may not increase rent except in accordance with the Act. Section 43(3) of the Act states, in relevant part: “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 section 23 sets forth the requirements for an application for additional rent increase when, as here, the basis for the landlord's application is brought under Regulation section 23(1)(a) when “the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property.” Regulation 23 requires the following:

(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;

(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.

Landlord's Application

As noted above, Regulation section 23(2) requires a landlord make a single application to increase the rent for all rental units in the building by an equal percentage. Policy Guideline 37D restates section 23(2) with an exception as noted: "The landlord must make a single application to increase the rent for all rental units in the residential property or sites in the manufactured home park by an equal percentage. The only exception is when the applicant is a landlord who, as a tenant, has received an additional rent increase for the rental unit or site that they have sublet to another tenant."

In this case, the Landlord submitted an application for a rent increase for only the Tenant's unit. The Landlord stated there are two other dwelling units in the building for a total of three units, and one unit used solely for storage. The Landlord testified she had raised the rent when new tenants moved into one unit (the unit above the Tenant's) and adjusted rent accordingly. For the unit below, the Landlord stated she was credibly informed she could not raise rent for the unit after mediating with the assistance of RTB a rent reduction for that tenant due to a noise complaint.

The Tenant took the position the Landlord's application should include all four units, including the storage unit. He further requested the application be dismissed for the Landlord's failure to comply with Regulation section 23(2).

I find there are three (3) dwelling units in the rental property. I accept the Landlord's submission that one unit is used solely for storage purposes and rented for that purpose. Although not defined in the Regulation whether a storage unit would be included when the rental property is mixed-use, as in this case, I note the Regulation speaks in terms of "residential property." Policy Guideline 37C which applies to additional rent increases for capital expenditures refers to "dwelling units." I find the scope of Regulation 23(1) includes residential dwelling units, and not units that are used

for non-residential purposes such as, in this case, storage, with no tenants inhabiting the unit.

I find the Landlord's application fails to comply with Regulation section 23(2) that requires the Landlord applying for an additional rent increase for an extraordinary increase in operating costs must file a single application that includes all rental units in the building.

Sufficiency of the Landlord's Evidence to Support the Application

A landlord bears the burden of proof on a balance of probabilities in accordance with Rule of Procedure 6.6. Section 23(1)(a) necessarily requires the landlord provide evidence to show the rent history for the affected rental units and the change in operating expenses and capital expenditures in the 3 years preceding the date of the application so that the director may properly assess in accordance with section 23(3)(d,e) the change in operating expenses in the preceding three years and the relationship between that change and the additional rent increase requested. The application completed by the Landlord requests at section 5 that financial statements be provided for the "last fiscal year," and if the financial statements are unaudited, that "sufficient evidence be provided before or at the hearing (e.g. supporting documentation) to verify accuracy."

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 from extraordinary increase in operating expenses

Financial loss happens 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.

In this case, the Landlord did not provide an audited or certified financial statement, as noted in Policy Guideline 37D. The Landlord stated she did not provide copies of invoices and similar in support of withdrawals for utilities and other expenses made on the Landlord's business account as these were identified as such in the bank annual statement she submitted for 2023 and 2024. The Landlord also did not provide copies of mortgage and/or HELOC statements, property taxes or insurance statements, in support of these operating expenses set forth in the application. I find the Landlord has not provided sufficient documentary evidence to establish the claimed operating expenses in the amounts set forth in the application. As urged by the Tenant, the bank statements alone do not provide adequate evidence of the expenses, and that these are strictly for the rental property. Additionally, the bank statements are not self-evident as to other withdrawals made, the purpose of the withdrawal and whether for the benefit of the rental property or some other unrelated expense.

The importance of audited or certified financial statements is that these provide probative evidence that a qualified professional reviewed the Landlord's expenses, confirmed the accuracy of those expenses, and likely included all the appropriate documents to corroborate that those expenses were calculated correctly.

Furthermore, while I accept the Landlord's operating expenses may have increased in those aspects as provided on the application, there being instances where some of the operating expenses decreased, I am not satisfied that with respect to any increased operating expense, it qualifies as an "extraordinary increase." The policy guideline states:

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)

A review of the Landlord's application provides that increases in operating costs are primarily attributable to rising mortgage interest rates, and the Landlord testified the increased financing costs were a primary driver of the increased operating expenses for the rental property. Under section 23(1)(b), the landlord must act reasonably in incurring the financial loss for 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. Mortgage interest rates often rise (and fall) and are a reasonably foreseeable circumstance.

Additionally, as noted by the Tenant in his submissions, the single greatest increased operating expense detailed in the application were property management fees. The Landlord testified the property management fees were required to be assessed by her current employer. Nevertheless, these fees represent profit from the rental property to the Landlord that may otherwise be available to cover any increase in operating expenses. The property management fees the Landlord assesses and pays to herself is simply a pass-through of profit from the rental property. That the Landlord currently assesses property management fees payable to herself due to her current employment situation, but otherwise did not previously (as indicated in the two years prior to the current year's expenses detailed in section 6 of the application), supports a finding the claimed management fees are solely a product of her unique employment situation and not an actual operating expense she has consistently incurred irrespective of her employment.

Therefore, I find the Landlord's application for an additional rent increase due to an extraordinary increase in operating expenses, including an increase in financing costs, is dismissed as the Landlord has not provided sufficient evidence on which such a determination can be made.

Conclusion

The Landlord's application for an additional rent increase due to an extraordinary increase in operating expenses is dismissed.

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: May 28, 2025

Residential Tenancy Branch