



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Code**     ARI-E

### **Introduction**

This hearing dealt with the Landlords' Application under the *Residential Tenancy Act* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase. The Application states the Landlords, acting reasonably, have incurred a financial loss for the financing costs of purchasing the residential property, and the financing costs could not have been foreseen under reasonable circumstances. Section 43 of the Act and section 23 of the Regulation apply.

Landlord S.O. and Landlord K.O. attended the hearing for the Landlords.

Tenants V.D., A.D., M.S., E.M., and R.C. attended the hearing for the Tenants.

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

The Landlords served the Proceeding Package to the Tenants by Canada Post registered mail on February 9, 2024. The Landlords provided the Canada Post customer receipt tracking numbers attesting to this service. All Tenants that attended the hearing confirmed receipt of the Proceeding Package. I find that the Tenants were deemed served with the Proceeding Package on February 14, 2024 in accordance with sections 89(1)(c) and 90(a) of the Act.

Tenant M.S. said they had evidence, but they did not submit it. The remaining Tenants confirmed that they did not upload any evidence for this matter.

## **Issue to be Decided**

Are the Landlords entitled to impose an additional rent increase for incurring a financial loss for the financing costs of purchasing the residential property?

## **Background, Evidence and Analysis**

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 their case is on the person making the claim.

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlords bought a four-plex unit in October 2021. The Landlords described the residential property as a duplex, and each duplex side has self-contained upper and lower rental units.

The Landlords testified that the interest rate increases are such that the rental income now received makes the property unsustainable for them.

### **Are the Landlords entitled to impose an additional rent increase for incurring a financial loss for the financing costs of purchasing the residential property?**

Section 43(3) of the Act states that 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 by making an application for dispute resolution.

Section 23 of the Regulation states that a landlord may make a single application to increase the rent for all rental units in the residential property by an equal percentage.

Section 23(3) of the Regulation describes the points that the director must consider when deciding whether to approve an application for an additional rent increase application.

Residential Tenancy Policy Guideline #37D-Additional Rent Increase for Expenditures (PG#37D) is intended to help the parties to an application understand issues that are

likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position.

PG#37D states a landlord may apply for an additional rent increase if they, acting reasonably, have 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.

PG#37D describes that financing costs refers to the costs directly attributable to borrowing money.

Have the Landlords incurred a financial loss for the financing costs of purchasing the residential property?

The Landlords purchased the property on October 28, 2021. This is their first rental property. Their initial interest rate for borrowing money to buy the residential property was 1.9%. The Landlords testified that they have always used a variable rate mortgage and at the time of setting up the mortgage, the rates had been stable. At the time, there was no definitive indication that the interest rate would increase as much as it did. The Landlords contracted into a variable rate mortgage, and the document explains that the principal and interest payment amount will vary automatically as the interest rate varies.

The Landlords' mortgage is held by one of the big five banks. By June 2023, interest rates had gone up to 6.4%, and by July 2023, interest rates went up to 6.65%. To the present, the Landlords testified that the interest rate still remains at 6.65%. In the last fiscal year, the impact on the financing costs incurred by the Landlords because of the increased interest rates was \$80,058.99. The Landlords compared this figure to the interest payable in the previous fiscal year which was \$45,722.44.

The Landlords reached out to the Tenants in April 2023 and asked if they would be agreeable to an additional rent increase over the annual allowable limit. Tenant M.S. said the Landlords asked the Tenants for a \$500.00 per month increase. The Tenants were not agreeable. Some Tenants argued that this is the Landlords' investment, so how can this be classified as a loss when the Landlords are 'going to come away with a million dollar house.'

The Landlords stated that if they fixed their interest rate in 2023, the penalty would be very large. It was too early in their mortgage term.

Tenants V.D. and M.S. stated that with a variable rate mortgage it is reasonably foreseeable that the rate will change. The Landlords should enter these kinds of financing circumstances with a cushion to absorb the rate variability.

Tenant M.S. said when they received the Landlords' letter about an additional rent increase, they instead offered the Landlords a \$50.00 increase. The Landlords did not respond to their reply. Tenant M.S. said given that the mortgage interest rates had been low for so long, it was reasonable to assume that the rates would go up.

The Landlords' application seeks a 23.5% additional rent increase. The Landlords submitted that they are not asking for an additional rent increase close to the current market rent rate, but at present their current financial situation is unsustainable. The Landlords said they did have a buffer, but, they said, no one saw this going to this level. The Landlords argued that even with the increase, they are not going to breakeven.

I find the Landlord's evidence about incurring a financial loss for the financing costs of purchasing the residential property could not have been foreseen under reasonable circumstances credible. The Landlords testified that they have always used a variable mortgage interest rate. Over the years, the variable rate has been stable, and it would be reasonable that the interest rate may increase by a few percent at renewal. The Landlords stated they did have a cushion to buffer in case of rate increases, but the rate increase in 2023 was substantial and quick. I find the Landlords experienced dramatic interest rate increases which have made managing the property unsustainable.

I find the world and economic events in reaction to the pandemic were not reasonably foreseeable and have impacted the Landlords, despite them taking reasonable precautions by accessing a mortgage through a recognized and well-known lender. I find the Landlords exercised care, foresight, judgment, financial prudence, and due diligence in purchasing and financing the residential property, but significant increases in the mortgage interest rate occurred due to unforeseen events.

Is there a single application to increase the rent for all rental units in the residential property by an equal percentage?

The Landlords stated they have never applied for an additional rent increase. The Landlords' single application does seek to increase the rent for all the rental units by an equal percentage. The Landlords determined the total increase amount by considering the rental income loss they can manage. They determined that a net income loss of \$10,000.00 was an amount they can accept, and would still allow them to retain the

property. The Landlords' application seeks a 23.5% additional rent increase amount on top of the permitted annual rent increase amount of 3.5% for a total rent increase of 27%.

Based on the Landlords' uncontested testimony and written submissions, I find the Landlords have made a single application to increase the rent for all rental units in the residential property by an equal percentage in accordance with section 23(2) of the Regulation.

#### Other considerations

The Landlords' rental units are two bedrooms, one bath suites. Utilities are included in the Tenants' rents. Rent amounts in the residential property are \$1,282.00, \$1,450.00, and \$1,550.00. The Landlords' requested additional rent increase application would raise the rents in the residential property to \$1,628.14, \$1,841.50, and \$1,968.50 per month.

The Landlords uploaded a research document setting out five comparable examples of rental units in the same area. The rental units chosen do not have utilities included in the rent. The examples' rent ranged from \$2,200.00 to \$2,650.00.

Tenant V.D. submitted that the Landlords' research document shows rental units that are larger and more modern than theirs. Tenant V.D. said her daughter has looked for her own place to live, and she has found comparable rental units for \$1,700.00 to \$1,800.00 with utilities included.

The Landlords testified that there have been no changes in any services or facilities that the Landlords provide to the Tenants over the 12 months preceding the date of this application.

Tenant V.D. submitted that there have been minor interruptions in the services and facilities provided in the tenancy. The Tenants had to wait for parts for the laundry facilities for over one week, and the Landlords did not offer any compensation to the Tenants for the time period the Tenants had to go out and get their laundry done outside of the residential property. Tenant V.D. said there have been similar situations with the furnace not operating properly, and the Tenants were without heat for a week.

The Landlords stated that heating costs have gone up in the last quarter, but there have been no significant increases in operating expenses. The recent expenses dealt with by the Landlords have just been normal wear and tear.

The Landlords have served 10 Day Notices for unpaid rent, but they were resolved. Recently, the Landlords served a One Month Notice on a Tenant for being repeatedly late paying rent. They did not know if that Tenant has disputed the notice.

The Landlords confirmed that they have never had the director set aside a notice to end tenancy served by them.

The Landlords do not have any past Residential Tenancy Branch (RTB) decisions against them that they have submitted false or misleading evidence, or failed to comply with an order of the director for the disclosure of documents.

Tenant V.D.'s concerns about the Landlords' rental unit research does not disclose a situation that affects my findings.

Based on the above testimonies and evidence, I find there are no adverse findings against the Landlords that would prevent an approval for an additional rent increase for a financial loss for financing costs of purchasing the residential property.

## **Outcome**

I find the Landlords have been successful. They have proven, on a balance of probabilities, all the elements required to be able to impose an additional rent increase for a financial loss for financing costs of purchasing the residential property under section 23 of the Regulation.

The Landlords seek an additional rent increase of 23.5%. Section 23(4) of the Regulation states when considering an additional rent increase application for a financial loss for financing costs of purchasing the residential property, the director may order that the increase granted under subsection (1) be phased in over a period of time. I find this rent increase significant in one instalment, and I order it may be applied over two years. I grant that the Landlords are authorized to increase their Tenants' rents according to the following tables:

**Year 1: 2024**

| Unit | Current rent | Annual Rent Increase | Additional Rent Increase | New rent   |
|------|--------------|----------------------|--------------------------|------------|
|      |              | 3.5%                 | 12%*                     |            |
| 855A | \$1,282.00   | \$44.87              | \$153.84                 | \$1,480.71 |
| 855B | \$1,450.00   | \$50.75              | \$174.00                 | \$1,674.75 |
| 857A | \$1,550.00   | \$54.25              | \$186.00                 | \$1,790.25 |
| 857B | \$1,550.00   | \$54.25              | \$186.00                 | \$1,790.25 |

**Year 2: 2025**

|      |            | TBD | 11.5%*   |  |
|------|------------|-----|----------|--|
| 855A | \$1,480.71 |     | \$147.43 |  |
| 855B | \$1,674.75 |     | \$166.75 |  |
| 857A | \$1,790.25 |     | \$178.25 |  |
| 857B | \$1,790.25 |     | \$178.25 |  |

\*total additional rent increase is 23.5%

In 2025, the Landlords are authorized to impose the annual rent increase in addition to the 11.5% additional rent increase. The annual rent increase percentage for 2025 usually is published in September 2024.

The parties may refer to RTB Policy Guidelines 37A and D, sections 41, 42 (which requires that a landlord provide the tenants three months' notice of a rent increase), and 43 of the Act, and section 23 of the Regulation.

**Conclusion**

The Landlords have been successful. I grant the application for an additional rent increase of 23.5% over two years as set out above. The Landlords must impose this increase in accordance with the Act and the Regulation.

The Landlords must serve the Tenants with a copy of this decision in accordance with section 88 of the Act.

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: May 8, 2024

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Residential Tenancy Branch