



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ARI

Introduction

This hearing was scheduled in response to the Landlord's application for an additional rent increase, pursuant to section 43(3) of the *Residential Tenancy Act (Act)*.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony, to ask questions and to make submissions.

Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to increase the rent in an amount that is greater than the annual amount prescribed by section 22 of the *Residential Tenancy Regulation* as a result of an extraordinary increase in operating expenses.

Background and Evidence

This tenancy commenced in February 2010; it is one of 3 units in the building, in which utilities are shared by a single meter. The tenants pay \$1,450.00 rent, due on the first day of each month.

The landlord has applied to increase the rent by the annual allowable amount for 2011; 2.3%, plus an additional 6.3%; which would bring rent owed from \$1,450.00 to \$1,575.00 per month.

The landlord supplied copies of:

- BC Hydro bills for usage between November 30 and December 31, 2010, in the sum of \$1,313.37 and between January 22, 2011 and March 21, 2011, in the sum of \$1,220.09;
- An income and expense statement for January 1, 2009 to December 31, 2009; and
- An income and expense statement for January 1 2010 to December 31, 2010.

The financial statements were copies of those used when filing income tax returns; they were not audited or certified.

The landlord testified that the basement unit occupants entered into a new tenancy agreement in June, 2010, which allowed the landlord to recoup costs; they pay rent in the sum of \$1,500.00 per month. The occupants in the upper unit of the building took possession of the unit in October 2009 and the rent provides adequate income.

The landlord has requested an additional rent increase to reflect the increased energy use costs that they have determined is a direct result of the tenants leaving windows open. The other occupants are currently paying fair market rent; therefore, the landlord chose not to request an additional rent increase for those units.

In 2009 the cost of natural gas and hydro was \$5,272.40; in 2010, the cost for both utilities increased by \$1,595.81. The landlord stated that this is an extraordinary increase in operating costs that should be paid by the tenants; as he has observed windows in their unit open during January, resulting in excessive use of utilities.

The parties agreed that there are approximately 5 electrical heat thermostats in the rental unit. There was no explanation provided as to what the natural gas operates.

The tenants testified that the lower unit has 3 occupants, the upper has 1. There are 3 tenants living in the suite in question. The tenants believe that the number of occupants in the lower suite likely results in them utilizing a disproportionate share of utilities. The tenants agreed that one of their co-tenants does leave his window opening he winter, as the home is older, can be stuffy and he likes fresh air; however, the tenants have observed other windows in the building that are left open during the winter months.

Analysis

Section 43(3) of the *Act* stipulates, in part, that a landlord may file an Application for Dispute Resolution and request a rent increase in an amount that is greater than the amount calculated under the *Residential Tenancy Regulation*. Section 23(1) (c) of the *Residential Tenancy Regulation* stipulates that a landlord can apply for an additional rent increase when:

c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property

Residential Tenancy Branch policy suggests that proof of a financial loss normally consists of an audited or certified financial statement and includes a balance sheet, a statement of profit and loss and is signed by an individual authorized to sign audit statements in the Province of British Columbia. In the absence of audited statements evidence of the extraordinary loss may be given by way of supporting documents. I find this to be a reasonable stance.

Policy also suggests that when an application for an additional rent increase is made for the reason cited by the landlord, the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage. I find this

is a reasonable expectation, as all units should share in the cost of any accepted extraordinary costs. However; the landlord chose to apply to increase rent to only 1 of the 3 units, as the landlord has determined these tenants are responsible for the increased utility costs.

Once evidence is provided that shows a significant increase in operating expenses, policy suggests that invoices be provided as evidence and that the impact on the landlord's financial position be demonstrated. The landlord provided copies of 2 hydro bills from 2011; no evidence of costs for 2009 or 2010, were provided. No evidence of natural gas costs was supplied. Outside of the statements prepared by the landlord, there was an absence of any documentation that supported the landlord's position.

Policy defines extraordinary as constituting costs that go beyond what is usual or regular, or exceptional to a marked extent. I find on the balance of probabilities and, in the absence of evidence such as copies of utility bills for 2009 and 2010, that the landlord has failed to demonstrate an extraordinary increase in costs that has resulted in a financial loss. I find that the statements prepared by the landlord are insufficient as those statements were not supported by further evidence.

In the absence of an application that included all 3 rental units in the building that share utility costs, I find that the application fails to meet the reasonable expectation; that all occupants are expected to proportionately share the cost of any extraordinary increase in costs that are determined to contribute to a financial loss by the landlord.

Therefore, the application for an additional rent increase is dismissed. The landlord is at liberty to issue a Notice of Rent increase in the form and amount as provided by the Act and Regulation. Current allowable rent increase information is posted on the Residential Tenancy Branch web site at <http://www.rto.gov.bc.ca/> under Latest News.

Conclusion

After considering all the relevant factors listed in section 23(1) of the *Residential Tenancy Regulation*, I dismiss the Landlord's application for an additional rent increase.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 30, 2011.

Residential Tenancy Branch