



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      ARI-E

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution (Application) under section 43 of the *Residential Tenancy Act* (the Act) and section 23 of the *Residential Tenancy Regulation* (the Regulation) for an additional rent increase because the Landlord's eligible financial, operational, or rent expenses have increased.

An Agent for the Property Management company responsible for the residential property (the Property) and two of the owners of the Property attended the hearing.

Fifteen of the thirty Respondent Tenants listed in the Application, and an Advocate for one of the Tenants, attended the hearing for the Tenants.

As representatives for both parties were present, service was confirmed at the hearing. The Landlord's Agent confirmed the Notice of Dispute Resolution Package (the Materials), and Landlord's evidence was served to all Respondent Tenants in-person on October 18, 2023. Witnessed proof of service forms were submitted into evidence by the Landlord. None of the Tenants attending the hearing raised any issues with service of the Materials and Landlord's evidence. Given this, per section 71 of the Act, I find that the Tenants were served with the Materials and evidence as required under sections 88 and 89 of the Act.

### Preliminary Issue – Amendment

At the outset of the hearing, the Landlord's Agent confirmed that since the Application was submitted, two Tenants listed in the Application had vacated the Property and another Tenant had passed away. Given this, the Application was amended to remove the names of these Tenants.

Issue to be Decided

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

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord seeks to impose a 49.5% increase in rent, in addition to the 3.5% annual rent increase permitted by the Regulation. The Landlord's Agent stated the Property is a single room occupancy hotel building owned by a not-for-profit society and due to increases in expenses, the Landlord is struggling with budgeting.

The Landlord's Agent testified costs such as utilities, taxes, HVAC costs and mechanical issues have meant rental income no longer supports the expenses of running the Property. No rent increases have been imposed onto the Tenants in recent years, though four new tenants not listed on the Application who have moved into the Property since the Application was submitted have tenancy agreements requiring them to pay rent of \$650.00 per month, which is in line with the rent increase requested in this Application.

The Respondent Tenants pay between \$425.00 and \$570.00 in monthly rent. There has been no change in services or facilities offered by the Landlord at the Property in the twelve months preceding the Application.

The Landlord's Agent drew my attention to the rise in janitorial costs caused by having to remove junk from the Property, deal with pest control issues and former tenants leaving their units filled with items after they vacated the Property that had to be removed. There is also a breezeway by the Property where there is an ongoing situation with people leaving junk items, which then have to be removed.

When I asked the Landlord's Agent to clarify how the requested increase of 49.5% was calculated, they said it was reached "with accounting" and they are trying to project for future increases in costs.

The Landlord submitted into evidence financial statements for the three fiscal years prior to making the Application which, whilst they were not audited by a third party, were signed off by the Landlord's in-house accountant, finance director, controller, and property manager. The financial information is summarized as follows:

	<b>2022</b>	<b>2021</b>	<b>2020</b>
Total rent	\$194,040.00	\$194,040.00	\$194,040.00
Other income	\$2,739.00	\$1,579.00	\$3,780.00
Operating costs	\$163,552.00	\$196,457.00	\$191,419.00
Other costs	\$116,186.00	\$94,308.00	\$80,576.00
<b>Deficit</b>	<b>\$82,959.00</b>	<b>\$95,146.00</b>	<b>\$74,175.00</b>

In section 6 of their Application form, where extraordinary increases in operating costs are provided, the Landlord lists the following:

	<b>2022</b>	<b>2021</b>	<b>2020</b>
Property tax	\$21,409.00	\$20,996.00	\$17,280.00
Water & sewer	\$19,507.00	\$15,043.00	\$10,915.00
Utility – Gas	\$16,294.00	\$15,174.00	\$11,038.00
Janitorial services	\$17,886.00	\$8,974.00	\$3,533.00
<b>Total</b>	<b>\$75,096.00</b>	<b>\$60,187.00</b>	<b>\$42,766.00</b>

The Tenants attending the hearing were provided with an opportunity to respond to the testimony of the Landlord's Agent. The Tenants voiced their opposition to the Application and their submissions and arguments are summarized as follows:

- Expenditures are rising due to poor management and the weekend janitor is paid for eight hours, while they only stay for a few minutes at the Property.
- Rent increases within the annual amount allowed would be agreeable and affordable, but this had not been done and a 49.5% increase is too high for them to afford.
- Costs of running the Property could be cut by turning the heating down, which generally appears to be on a high setting.
- Units in the Property have been left vacant for months at a time, while other occupants have been allowed to stay without paying rent for up to ten months, resulting in lost rental income for the Landlord.
- Tenants have carried out unpaid work at the Property by helping tidy up the breezeway and removing garbage when left behind by vacating tenants.

## Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Section 43(3) of the Act states that in the circumstances prescribed in the Regulation, a landlord may request an arbitrator's approval of a rent increase in an amount that is greater than the permitted annual rent increase provided under the Regulation, by making an application for dispute resolution.

Section 23(1) of the Regulation states that a landlord may apply for an additional rent increase, other than for eligible capital expenditures, under section 43(3) of the Act if one or more of the following apply:

- The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property.
- 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, as a tenant, has received an additional rent increase under this section or section 23.1 of the Regulation for the same rental unit.

Section 23(3) of the Regulation sets out the factors an arbitrator must consider in deciding whether to approve an application under section 23(1) of the Regulation as follows:

- The rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect.
- The rent history for the affected rental unit in the three years preceding the date of the application.
- 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 twelve months preceding the date of the application.
- A change in operating expenses and capital expenditures in the three years preceding the date of the application that the director considers relevant and reasonable.

- The relationship between the change described in the above bullet point and the rent increase applied for.
- A finding by the arbitrator that the landlord has contravened section 32 of the Act by not meeting their obligation to repair and maintain.
- 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.
- 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.
- Whether the director has set aside a notice to end a tenancy within the six months preceding the date of the application.
- Whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has submitted false or misleading evidence, or failed to comply with an order of the director for the disclosure of documents.

As set out in Policy Guideline 37D – Additional Rent Increase for Expenditures, 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.

From reviewing the certified financial statements and evidence before me, I find the Landlord is a non-profit entity, the Property is a loss-making venture and has been consistently in a budget deficit for the three fiscal years leading up to the submission of the Application. Additionally, the Tenants' rent has not been raised in recent years, though newer tenants who moved into the Property after the Application was made pay a higher amount than the Respondent Tenants.

The Landlord has defined their costs in two forms: operating costs and "other costs". I find the Landlord's operating costs have fallen by \$32,905.00 between the fiscal years ending 2021 to 2022. Additionally, though the Landlord submits in their Application that "other costs" have risen from \$94,308.00 to \$116,186.00 from 2021 to 2022, property

taxes for 2020 and 2021 were omitted from the summary even though these costs are known, per the Application form and financial statements. "Other costs", with the addition of the omitted property taxes are summarized as follows:

	<b>2022</b>	<b>2021</b>	<b>2020</b>
Property tax	\$21,409.00	\$20,996.00	\$17,280.00
Insurance	\$11,837.00	\$11,368.00	\$12,639.00
Mortgage	\$57,940.00	\$57,940.00	\$57,940.00
Owner contribution	\$25,000.00	\$25,000.00	\$10,000.00
<b>Total</b>	<b>\$116,186.00</b>	<b>\$115,304.00</b>	<b>\$97,859</b>

It appears to me that "other costs" have remained consistent over the three fiscal years before the Application was submitted when owner contributions are removed. It was not made clear to me why owner contributions would be considered a cost and these "costs" appear to be a transaction or movement of funds, rather than an expense of the Landlord.

Policy Guideline 37D sets out that financial loss in the context of an application under section 43 of the Act must be the result of an extraordinary increase in operating expenses. The Policy Guideline also provides the following on the definition of "extraordinary".

*"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."*

From reviewing the operating costs, the Landlord specifically lists as those that have purportedly increased extraordinarily, namely property taxes, water and sewer, gas, and janitorial services, I find the only costs which could reasonably be said to have risen in a manner even approaching "extraordinarily" are the water and sewer costs, and janitorial services. All other outgoings appear to be reasonably stable and, in my view, have not increased extraordinarily.

Over the three fiscal years before the Application was made the water and sewer, and janitorial services increased by \$22,925.00. The total annual rent paid by the Tenants is \$159,960.00 so a 14.33% increase in rent would cover the rise in these costs alone.

As previously stated in this Decision, the Landlord's operating costs have recently dropped by \$32,905.00 and the Landlord has failed to impose any rent increases allowed by the Regulation in recent years, all of which are factors I must consider in whether to grant the Landlord's Application.

Additionally, there did not appear to me to be a clear relationship between the 49.5% additional rent increase requested and the financial information provided by the Landlord. When I sought clarity on this during the hearing, the Landlord's Agent stated the requested figure was reached through "accounting" but could not elaborate any further.

Furthermore, based on the Landlord's Agent's testimony, it appeared to me that the Landlord was seeking to pre-empt future increases in costs which I find is not permitted given the wording of section 23 of the Regulation refers only to losses in the past tense so it follows that only losses that have been incurred may be the subject of this Application, not projected future losses.

Based on the above, whilst I acknowledge the Landlord has been making a loss for the three fiscal years preceding the submission of the Application, I find the Landlord has failed to establish on a balance of probabilities the losses are as a result of an extraordinary increase in the operating expenses of the Property. Therefore, the Landlord's request for an additional rent increase under section 43 of the Act and section 23 of the Regulation is dismissed without leave to reapply.

### Conclusion

The Application is dismissed without leave to reapply.

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: February 12, 2024

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Residential Tenancy Branch