



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      ARI-E

### Introduction

On November 1, 2023 the Landlord applied for a dispute resolution proceeding seeking an additional rent increase pursuant to s. 43 of the Residential Tenancy Act (the “Act”) and s. 23 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase because of their increase in operating expenses.

At the hearing, the Landlord confirmed that the Tenant was served with the Notice of Dispute Resolution Proceeding package to the Tenant in person on November 16, 2023. The Landlord stated that copies of the evidence in support of the application was served to the Tenant in person on January 7, 2024.

While the Landlord attended the hearing by way of conference call, the Tenant did not. The Landlord who attended the hearing was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Commencement of the hearing:** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

### Issue to be Decided

Is the Landlord entitled to impose an additional rent increase for their increase in eligible operating expenses?

## Background and Evidence

I have considered the documentary evidence of the Landlord, as well as the Landlord's testimony. I include only that evidence that is relevant to the Landlord's Application.

The tenancy agreement began October 15, 2017, and continues as of the date of the hearing on a month-to-month basis. The current monthly rent remains at the initial rental rate of \$1,600.00, due on the first day of the month. The Landlord explained that he had not previously increased the rental rate since 2017 because he felt it was not necessary and that as long as he was earning a profit, he did not want to unnecessarily charge a tenant more in rent. However, he stated over the past couple of years, the costs associated with the rental property compelled an increase in the rental rate to keep pace with these higher costs. The Tenant's monthly rent includes the cost of utilities. The Landlord requested a rent increase of \$400.00 from the Tenant, but stated the Tenant would not agree to a rent increase other than that provided under the Act and regulations.

The Landlord explained that the property consists of a building with a commercial business (restaurant) on the main floor and the rental unit on the second floor. The rental unit is 1,104 square feet and is a two-bedroom, one bath configuration. Additionally, on the same parcel of property, the Landlord stated there is a 2-bay car wash (self-serve style), and an L-shaped building (used for commercial purposes). The Landlord also testified that in December 2022 the fire suppression sprinkler system for the building froze, and upon thaw, burst and caused water damage in the rental unit. A restoration company was retained to repair the damage, but there have since been additional leaks resulting from alleged poor repair by the company resulted. The Landlord noted that the Tenant was not charged rent (and hence a loss of income to the Landlord) during the remediation period.

The Landlord's application dated November 1, 2023, sets forth his total rental income for the unit over the most recent three-year period has remained constant at \$19,302.95. Over the same period, the year-over-year increase for the rental unit only (where indicated) as calculated by the Landlord for:

- property taxes - \$9,842.80;
- electric expenses for the rental unit (separately metered) - \$2,115.57;
- insurance premiums (property and liability; pro-rated based on square footage) – decreased by \$361.76;

- water and sewer costs (one-half the meter for restaurant and rental unit) - \$639.34; and,
- gas and oil (the Landlord's automobile expense for travel to the property) - \$1,428.57.

The Landlord's application provides that the net increase in operating expenses is \$13,664.52. The Landlord has requested a rent increase of \$400.00 per month, equivalent to 20.2%, plus the statutorily permissible 2% increase, for a total rent increase of 22.2%.

With regard to the property taxes, the Landlord explained that the requested property tax increase included as part of the rent increase for the rental unit is based on square footage between the rental unit and the square footage for the total commercial space (which the Landlord stated totaled 6,478 square feet). The Landlord characterized the property tax increase as "insurmountable" without an increase in rent. The Landlord stated that the property tax increase was 116% for the period 2022 to 2023. The Landlord provided copies of the property tax statements for the property over the prior three years.

The Landlord provided in evidence copies of unaudited profit and loss statements for the period 2021-2022. The Landlord's increased operating expenses set forth on the profit and loss statements were attributed to increased costs for operating expenses the Landlord pro-rated for the rental unit for accounting (bookkeeper) charges, shop supplies, professional fees (for lawyers), fuel oil (gas and propane), repairs and maintenance (for instance, repair of a broken pipe in the rental unit), telephone and internet charges, a dyke tax (imposed by municipal government), management fees (which include the Landlord's wage), and electric charges. The Landlord provided copies of the dyke tax notice for the property. The Landlord stated that tax is based on a property's value but utilizes a different mill rate.

The Landlord provided testimony as to local rental rates for comparable residential units: a two-bedroom that included utilities in the same area had a rental rate of \$3,000.00 per month; a one-bedroom that included utilities was rented at \$1,900.00 per month while another one-bedroom that did not include utilities was rented at \$1,200.00 per month; and a three-bedroom with a wash machine and dryer in the unit including utilities was \$2,900.00 per month. The Landlord stated his requested rent increase was within these parameters for comparable residential units.

## Analysis

The Tenancy Policy Guideline 37D: Additional Rent Increase for Expenditures, provides some guidelines and requirements for consideration of a landlord's financial loss as a result of an 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. 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. Operating expenses include utility charges (heat, hydro, water), municipal taxes (property and school taxes), recycling, sewer and garbage fees, insurance premiums, routine repair and maintenance, reasonable management fees for the management of the residential property, and the cost of leasing land for purposes directly related to the operation and use of the property. Changes in utility fees and local government levies are already captured in the annual rent increase permitted for manufactured home sites and would not be considered for additional rent increases for manufactured home sites.*

In order to prove a financial loss, policy guideline provides as follow:

*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.*

In addition, the application itself instructs applicants to attach financial statements for the last fiscal year, and if the financial statement is not audited, the applicant must provide sufficient evidence before or at the hearing, such as supporting documentation.

In this case, the Landlord's profit and loss statements were not audited and were only for the period 2021-2022, the Landlord's affirmed testimony at the hearing relying upon the financial statements as accurate. The Landlord testified that the bookkeeper had prepared the profit and loss statements, and the Landlord provided some supporting documentation for some items (such as the property taxes).

Policy Guideline 37D further provides:

*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.*

In this case, the Landlord had not increased the rental rate for the unit since the Tenant moved in in 2017. Although the Landlord's testimony was credible and laudable that he did not wish to increase the rent if he did not feel it was necessary, the purpose of the allowable annual rent increases is to capture those increasing operating costs that normally do rise from year to year, (such utility expenses, management fees and the like), without imposing a much higher increase on a tenant. These are expenses that generally increase from year to year, and the Landlord failed to capture these expenses by the permissible annual rent increase afforded to landlords under the Act and regulations.

Therefore, in this case, as the Landlord has failed to capture increasing expenditures as permitted under the Act and regulations, I find that the Landlord has not submitted sufficient evidence in support of the application for increased rent due to expenditures as set out in the policy guideline.

I therefore refuse the landlords' application due to insufficient evidence.

### Conclusion

I refuse the Landlord's Application in its entirety.

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: March 21, 2024

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Residential Tenancy Branch