



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Code      ARI-E

### **Introduction**

This hearing concerned an application filed by the Landlord pursuant to section 43, *Residential Tenancy Act* (the “Act”) for an additional rent increase because the Landlord’s eligible financial, operational or rent expenses have increased.

Both Tenants appeared for the hearing. There was no dispute regarding the Landlord’s service of the proceeding package and copies of her evidence, nor with the Tenants’ service of their evidence to the Landlord. Each party acknowledged receipt of the other party’s evidence and an opportunity to review prior to the hearing.

### **Issue for Decision**

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

### **Background and Evidence**

The subject property is a condo unit. The Landlord purchased the unit on April 27, 2022. The Landlord stated that she purchased the unit so she could move closer to family members. However, she had a change in circumstances and did not move, instead renting the property to the Tenants for a four-year term commencing July 15, 2022 to June 30, 2026. A copy of the tenancy agreement was provided in evidence.

The Landlord presented evidence that she financed the purchase with a 5-year variable interest rate mortgage. She testified that at the time she financed, her banker or mortgage broker assured her that interest rates would remain low, and that there was widespread consensus for this opinion. However, over the course of the prior two years since purchasing the rental unit, interest rates have been steadily increasing. The Landlord provided copies of her mortgage statements as evidence in support of her

position. The current monthly mortgage payment is \$6,840.12, an increase from \$4,080.11 when the Landlord purchased the property.

The Landlord provided a statement of her operating costs on her application for dispute resolution. The Landlord states that her operating costs in fiscal year (FY) 2023 are \$92,964.00 with income (rent) in the amount of \$44,770.00. This is compared to FY 2022 where operating costs were \$53,210.00 and rental income was \$22,200.00, with additional costs of \$12,700.00. The Landlord set forth her current monthly operating costs as: (i) \$6,840.12 mortgage payment; (ii) \$732.61 strata fee; (iii) \$450.00 property tax; and, (iv) \$55.00 insurance, for a total of \$8,023.28. Deducting the monthly rental income, the Landlord is currently operating at a deficit of \$4,249.28 per month (which will be reduced to \$4,117.28 as of August 1, 2024, when a properly noticed rent increase goes into effect). The Landlord stated when she entered into the lease with the Tenants, the approximate monthly operating deficit for the rental unit was \$1,400.00. In order to make-up the monthly shortfall, the Landlord applied for a 25% increase, or \$1,075.00, in the Tenants' monthly rent. The Landlord stated she cannot afford the monthly loss due to the increased mortgage rates.

The Tenants, and their family member advocate, testified that when entering into the tenancy agreement, they were seeking stability. Hence, they requested the 4-year lease term. Additionally, they stated that they are both retired, on a fixed income, and are unable to meet the 25% rent increase requested by the Landlord.

The Landlord stated that she is "not used to being a landlord," and when she entered into the 4-year lease term, she was "trying to be nice" to the Tenants. She stated she held the unit for them for one month as they were relocating from out-of-province, and made improvements to the unit prior to the start of the tenancy. The Landlord submitted into evidence invoices for painting and window coverings to make the unit satisfactory to the Tenants. The Landlord further testified that at the time of leasing to the Tenants, she was requesting monthly rent of \$4,500.00 but reduced it for the sake of the Tenants as they "seemed nice" and she wanted tenants who would take care of the unit. The Landlord noted that smaller units are renting for \$2,600.00 per month. The Landlord also noted that the rate increase was sudden and unanticipated based upon what she had been told when obtaining financing for the unit.

The Tenants noted that the purpose of the annual rent increase permitted by the Act and regulation is intended to assist landlords in covering increasing operating expenses.

## **Analysis**

Section 43(3) of the Act states that in the circumstances prescribed in the regulations, 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.

Sections 23(1)(a) and (b) of the Regulation states:

- (1) A landlord may apply under section 43 (3) [additional rent increase] of the Act for an additional rent increase, other than for eligible capital expenditures, if one or more of the following apply:
  - (a) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;
  - b) 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....

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, while the Landlord submitted evidence of the increase in the variable rate of her mortgage, and hence monthly mortgage payments since the tenancy was entered into, the Landlord did not provide an audited or certified financial statement, as noted in Policy Guideline 37D. 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.

Audited or certified financial statements also assure that a requested rent increase to cover an extraordinary increase in operating expenses does not operate as a windfall to the landlord in exorbitant profits.

Section 23(1)(b) and (d) requires that the landlord provide evidence to show the rent history for the affected rental unit and the change in operating expenses and capital expenditures in the 3 years preceding the date of the application. However, this documentation was not provided by the Landlord.

Consequently, I find the Landlord has not provided sufficient evidence to prove the rent history for the affected unit and the change in operating expenses and capital expenditures in the 3 years preceding the date of this application.

While I accept that the Landlord's operating expenses have increased, I am not satisfied 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 the primary increase in operating costs is attributable to rising mortgage interest rates. Under section 23(1)(b), the landlord must act reasonably in incurring the financial loss for the 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. While the Landlord may have detrimentally relied on her banker's or mortgage broker's assessment of the market, that is not necessarily a justifiable reliance considering that mortgage rates often increase and low interest rates do remain so indefinitely.

Moreover, in this case the mortgage rates have been increasing steadily since the Landlord purchased the property as opposed to a sudden, wholly unexpected and extraordinary increase as described in the Policy Guideline.

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

## **Conclusion**

The Landlord's application 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 *Residential Tenancy Act*.

Dated: June 30, 2024

---

Residential Tenancy Branch