



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

On April 30, 2024 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.

Preliminary Matter – Tenant attendance at the hearing

The Landlord testified that they served the Tenants (hereinafter, referred to as the “Tenant”) with copies of the Notice of Dispute Resolution Proceeding package and their supporting evidence. The Landlord’s proof of this service was a registered mail tracking number for the mail they sent to the Tenant in the rental unit.

Based on the Landlord’s correct service of the Tenant of the date and time and contact information for the scheduled hearing, I proceeded with the hearing without the Tenant’s calling in.

The Tenant prepared a single document in response to the Landlord’s Application and provided that to the Residential Tenancy Branch on June 19, 2024. The Landlord confirmed they did not separately receive a copy of this document from the Tenant. For the reason of its non-disclosure by the Tenant, I give this document no consideration in this hearing process.

Preliminary Issue – Landlord’s Application amendment

The Landlord provided the completed Application form that they signed on April 30, 2024.

The Application on page 2 instructs an applicant to select applicable reasons for an additional rent increase. On page 2 of the Application form, the Landlord selected the applicable reason for an additional rent increase:

- The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property (complete sections 5, 6, 9, 10 and 11)

The Landlord did not select the following reason for an additional rent increase

- 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 (complete sections, 5, 7, 9, 10 and 11)

because they indicated they did not purchase the property, instead they built it 25 years ago and had been renting it out.

As set out in the Residential Tenancy Policy Guideline specific to this topic¹, “Financing cost refers to the costs directly attributable to borrowing money, usually in the form of a mortgage.” Interest payments are a financing cost. I distinguish between “purchasing” a property and “financing” a property, finding that the mortgage costs the Landlord provided for in their evidence are *financing* costs, and not operating costs.

The Act s. 64 permits me to amend an application for dispute resolution. In line with the Landlord’s submitted information both on the Application form and in their evidence, I amended the Landlord’s Application to include the reason centering on an increase in financial costs because the Landlord presented information about their financing of the rental unit property.

Issues to be Decided

- a. Is the Landlord entitled to impose an additional rent increase for the increase in eligible operating expenses of the residential property?
- b. Is the Landlord entitled to impose an additional rent increase for the increase in eligible financing costs?

Background and Evidence

I have considered the Landlord’s document evidence, and their testimony in the hearing. I reproduce herein the details that are only relevant and important to the Landlord’s Application.

¹ Residential Tenancy Policy Guideline 37D: Additional Rent Increase for Expenditures

The tenancy agreement began in August 2021, and continues as of the date of this hearing on a month-to-month basis. As of the date of this hearing, the current agreement between the Landlord and the Tenant has the rent amount at \$3,162 per month, as of August 1, 2023. The Landlord presented that they served another notice of rent increase on the required form to the Tenant to advise of another rent increase for August 1, 2024, at \$3,272.67.

On September 13, 2023 the Landlord provided information to the Tenant directly on their “dramatic rising mortgage” and other expense. They attempted to reach a settlement for a mutually-agreed-to rent increase with the Tenant; however, the email record shows the Tenant did not accept this. In this discussion, the Landlord set out a total monthly additional expenses amount of \$1,127.11, based on increases in “old” vs. “new” mortgage payments, the increase in insurance of the rental unit property, and the increase annual property tax.

a. increase in operating costs

On the Landlord’s Application, they provided data on operating cost expenses from July 2021 through each fiscal year to June 2024. This sets out the following net changes:

- property taxes: \$438.58 -- shown in property tax notices for each year 2020 through to 2023, including a 2023 property tax assessment notice
- insurance: - \$248.85 – shown in insurance premium information for each year 2019 through to 2023
- landscaping: -\$22.75 – monthly landscaping maintenance costs invoiced to the Landlord.

On page 4 of the Application form, the Landlord provided a total of total rent for fiscal years July 2021 through to June 2024, versus the total operating costs inclusive of mortgage. Over this time period, the total operating costs increased from \$44,694.84 to \$54,277.97.

b. increase in financing costs

The Landlord presented on their Application that their mortgage increased over three consecutive fiscal years at a net change of \$9,701.88.

On the Application, the Landlord did not provide information regarding interest rate changes and the impact on operating costs.

In the hearing, the Landlord referred to the “mortgage new rate” and the unforeseen first mortgage interest rate rise. They reiterated that they did not purchase this property; rather,

they built the rental unit property 25 years ago and rented it. They re-financed this rental property because of their purchase of another property nearby. They described planning as best they could financially in 2019, yet they had no way to forecast new financing regulations and requirements.

In the evidence the Landlord provided a 2020 annual mortgage statement, and a 2023 mortgage renewal confirmation, showing the ongoing monthly payment amount starting on July 1, 2023.

In the Landlord's evidence is their brief description of this issue in their email message to the Tenant on September 13, 2023: the old mortgage payment was \$3,019.56, then increased to \$3,828.05, which is an increase of \$808.49 monthly.

In sum, the large proportion of the Landlord's request for a rent increase in this Application is based on the impact of financing to them.

The Landlord requests a rent increase of \$808.49 that would bring the amount of monthly rent to \$3,970.49. This is an addition of the 3.5% permitted annual rent increase, plus an additional rent increase of 22.06%, for a total rent increase percentage of 22.56%.

Analysis

The *Act* s. 43(3) sets out the following:

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.

The *Regulation* s. 23(1)(a) and (b) provide as follows:

A landlord may apply under section 43(3) [*additional rent increase*] of the Act for an additional rent increase . . . 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;

a. increase in operating costs

The *Regulation* clearly sets out that there must be an extraordinary increase in operating expenses, meaning very unusual or exceptional.

I find that property taxes are considered operating expenses; however, what the Landlord presented does not represent an extraordinary increase in this amount. I find an increase of this amount is what can be accounted for in a statute-driven annual rent increase (as per s. 43 of the *Act*), which itself is driven by the inflation rate².

I find that the Landlord's insurance costs are operating expenses. I find that the landscaping costs are operating expenses in that they are for routine repair and maintenance at the residential property. The Landlord presented a negative net change for each of these items in section 6 of their Application; therefore, I find these amounts, as presented and verified in the Landlord's evidence, do not represent extraordinary increases in operating expenses.

In sum, I find the Landlord did not show there was a financial loss to them from an extraordinary increase in the operating expenses of the rental property. I refuse this part of the Landlord's Application.

b. increase in financing costs

The Policy Guideline specifies some basic guidelines and criteria for consideration of a Landlord's financial loss because of financing costs for purchasing property:

A landlord can apply for an additional rent increase if 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 financial loss must result from something that the landlord could not foresee under reasonable circumstances.

The landlord must provide evidence of the new financing costs . . . and the resulting financial loss.

For this part of the Landlord's Application, the Landlord did not provide information in section 7 of the Application. I find there is insufficient evidence about the change in interest rates, and it

² defined in s. 22(1) of the *Regulation* as the 12 month average percent change in the all-items Consumer Price Index

is not my role to make that inference or assumption from the Landlord's mortgage information without this key data in order to make a definitive finding on an actual financial loss.

For this reason, I refuse this part of the Landlord's Application.

Conclusion

As per s. 23(4)(b) of the *Regulation*, I refuse the Landlord's Application in its entirety.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 1, 2024

Residential Tenancy Branch