ADDITIONAL RENT INCREASE FOR FINANCIAL LOSS DUE TO UNFORSEEN EVENTS

The *Residential Tenancy Act* (the "Act") allows a landlord to apply to the Residential Tenancy Branch (the "RTB") to increase the rent by a percentage greater than the amount prescribed by the RTB. These applications are broadly categorised into two being, an application for additional rent increase for expenses, and an application for additional rent increase for capital expenditures. An application to increase rent for financial losses due to unforeseen events falls within the former. The maximum rent increase allowed for 2024 is 3.5%, for 2025, the maximum is 3%.

In a recent RTB Decision, the RTB awarded a landlord a 23.5% rent increase on the landlord's application for additional rent increase for expenses. The landlord's application was on the basis that the landlord incurred a financial loss for the financing cost of purchasing the residential property and that the financing cost could not have been foreseen under reasonable circumstances.

In this case, the Landlord purchased the four-plex residential building in October 2021. The initial interest rate on the mortgage loan was 1.9%. By July 2023, the interest rate had gone up to 6.65%. The Landlord approached the tenants for a rent increase by mutual agreement to which the tenants refused. The landlord then applied to the RTB for an order allowing the additional rent increase. The Landlord testified that it had always used a variable mortgage interest rate and that despite having a cushion to absorb rate variability, the current rate was unprecedented and caused significant financial loss. The landlord's evidence showed that the financing cost incurred in the current fiscal year was $80,058.99, compared to $45,722.44 incurred in the previous fiscal year.

The RTB found that the landlord experienced a dramatic increase in interest rate which made managing the property unsustainable. The RTB accepted that over the years the variable interest rate had been stable and there was no indication that the rate would rapidly increase to a substantial amount. The reaction of the economy to the pandemic was not reasonably foreseeable and the landlord took reasonable precautions by accessing the mortgage through a recognized lender. Despite the landlord's exercised care, foresight, judgement and financial prudence, significant increases in the mortgage

interest rates occurred, due to unforeseen events. As such, the landlord was awarded the additional rent increase of 23.5%.

Landlords who wish to make an application for additional rent increase for financial loss must take note of the relevant provisions and comply with their requirements. Section 43(3) RTA provides the authority for a landlord to request approval from the RTB for a rent increase in an amount that is greater than the amount calculated under the Residential Tenancy Regulations (the "Regulations"). Section 23(3) of the Regulations provides the factors the RTB must consider when determining whether to grant the landlord's application for additional rent increase due to financial loss. RTB Policy Guideline 37D is designed to assist the parties understand the issues related to the application and the information or evidence required to enable the RTB reach a decision.

Landlords must be prepared to disclose evidence showing that:

a. the financial loss derives directly from the financing cost of purchasing the residential property;

b. the financial cost was unforeseeable under reasonable circumstances; and

c. the landlord acted reasonably and took steps to mitigate the likelihood or effect of a financial loss arising directly from the financial cost.

Landlords must note that financial loss do not include the cost of mortgage default insurance, title insurance, Surveys, appraisals, inspections, property taxes and penalties for breaking or refinancing a mortgage.

Keeping proper accounting records, budget records and correspondence with alternative lenders for cheaper interest rates, show that the landlord acted reasonably to prevent a financial loss.

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