

37D: Additional Rent Increase for Expenditures

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised, and new guidelines issued from time to time.

A. LEGISLATIVE FRAMEWORK

Under section 36 of the *Manufactured Home Park Tenancy Act* (MHPTA) and section 43 of the *Residential Tenancy Act* (RTA), a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations (“annual rent increase”),
- agreed to by the tenant in writing (“agreed rent increase”), or
- ordered by the director on an application in the circumstances prescribed in the regulations (“additional rent increase”).

This Policy Guideline is about annual rent increases. Information on the other permitted rent increases can be found in the following Policy Guidelines:

- Policy Guideline 37A: Annual Rent Increase
- Policy Guideline 37B: Agreed Rent Increase
- Policy Guideline 37C: Additional Rent Increase for Capital Expenditures (ARI-C)

Information that applies to all permitted rent increases is available in Policy Guideline 37: Permitted Rent Increases.

B. ADDITIONAL RENT INCREASE FOR EXPENDITURES

A landlord may apply to the director for an order approving a rent increase that is greater than the annual rent increase in the circumstances set out in regulation. Some of the circumstances prescribed in the *Manufactured Home Park Tenancy Regulation* and the *Residential Tenancy Regulation* are different.

1. **Significant repairs or renovations (MHPTA only)**

A landlord may apply to the director for an additional rent increase if they complete significant repairs or renovations to the manufactured home park in which the manufactured home site is located that are reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation.

A repair or renovation may be significant if the expected benefit of the repair or renovation can reasonably be expected to extend for at least one year, and the repair or renovation is notable or conspicuous in effect or scope, or the expenditure incurred on the repair or renovation is of a measurably large amount.

A repair or renovation may be reasonable and necessary if the repair or renovation is required to protect or restore the physical integrity of the manufactured home park; comply with municipal or provincial health, safety, or housing standards; maintain

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water, sewage, electrical, lighting, roadway, or other facilities; or promote the efficient use of energy or water.

In determining whether to exercise their discretion to grant the landlord's application, an arbitrator may consider whether the costs of the repairs or renovation were recovered by previous rent increases or whether they can or will be reimbursed by other means. If these circumstances apply, an additional rent increase will usually not be granted.

An application can be made at any time after the landlord has made the repairs or renovations and is able to provide proof of their cost. The landlord does not have to have completed paying for the repairs or renovations. A landlord could complete a major project in phases and seek an additional rent increase at the completion of each phase.

The landlord must provide evidence (e.g., invoices) of the costs of the repairs or renovations and must also provide evidence that demonstrates that the repairs or renovations were reasonable and necessary and will not recur within a time period that is reasonable for that particular repair or renovation.

2. **Financial loss from extraordinary increase in operating expenses (Both)**

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.

Operating expenses do not include capital expenditures or financing costs (both of which have separate additional rent increase provisions), fines or penalties levied for failure to meet an obligation, capital cost allowance or depreciation, and income taxes.

To prove a financial loss, a landlord must ordinarily submit into evidence an audited or

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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.

3. **Financial loss for financing costs of purchasing property or park (Both)**

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 or manufactured home park, if the financing costs could not have been foreseen under reasonable circumstances.

Financing cost refers to the costs directly attributable to borrowing money, usually in the form of a mortgage. For example, interest payments are a financing cost. Legal fees required to set up the mortgage and registration fees may also be financing costs.

The following are not considered financing costs:

- Mortgage default insurance, title insurance, or life/critical injury insurance
- Surveys, appraisals, and inspections
- Transfer, sale, or property taxes
- Prepayment charges and penalties for breaking or refinancing a mortgage

A landlord claiming financial loss from financing costs must prove they acted reasonably, meaning they exercised care, foresight, judgment, financial prudence, and

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due diligence in purchasing or financing a property.

For example, getting a pre-approval on a mortgage from a legitimate lender is a reasonable action before purchasing a property. Shopping around to get a good mortgage rate is also a reasonable action. Developing a budget or business plan based on accepted industry standards and investing enough money so that the property is expected to be cash-flow positive is reasonable.

Securing a mortgage from a B lender at a high interest rate to purchase a property that costs more than the landlord can afford would be unreasonable. Engaging in speculation is also usually unreasonable. An example of speculation is investing in a cash-flow negative property on the assumption that the rents can be raised to cover the short-fall, or the property can be sold for significantly more money in the short to medium term.

The financial loss must result from something that the landlord could not foresee under reasonable circumstances. For example, the Bank of Canada regularly adjusts the interest rate to stimulate or slow economic growth, depending on the phase of the economic cycle. If a mortgage has a low interest rate, it is reasonable to assume that the interest rate might increase by a few percent at renewal. If a landlord obtains a variable rate mortgage rather than a fixed rate mortgage it is reasonable to assume that the interest rate might increase by a few percent over the term of the mortgage. If a landlord purchased a property when interest rates were low with no cushion to sustain a reasonable hike in interest rates and financial loss resulted, an additional rent increase would likely not be granted.

Major shifts in monetary policy leading to dramatically higher interest rates or regulatory changes by government leading to higher borrowing costs may qualify as sufficiently difficult to foresee under reasonable circumstances.

The landlord must provide evidence of the new financing costs, previous financing costs (if applicable), and the resulting financial loss. In considering a landlord's financing costs, an arbitrator will not consider an increase in financing costs that is the result of a new loan or refinancing.

4. A tenant, who is a landlord, receives an additional rent increase (Both)

When a tenant sublets their apartment or manufactured home site to another tenant, they become a landlord. For example, if Tenant A rents their rental unit to Tenant B (for example, under a sublease), Tenant A becomes the landlord of Tenant B. If Tenant A receives an additional rent increase because their landlord has obtained an order permitting this from an arbitrator, then Tenant A may apply to pass the additional rent increase through to Tenant B.

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C. APPLYING FOR AN ADDITIONAL RENT INCREASE FOR EXPENDITURES

The landlord must make a single application to increase the rent for all rental units in the residential property or sites in the manufactured home park by an equal percentage. The only exception is when the applicant is a landlord who, as a tenant, has received an additional rent increase for the rental unit or site that they have sublet to another tenant.

As noted in Policy Guideline 37B, a tenant may voluntarily agree in writing to a rent increase greater than the maximum annual rent increase. Tenants that have agreed to a rent increase do not need to be named and served with the Application for Additional Rent Increase if a condition of the mutual agreement to increase rent was that the landlord will not seek to impose an additional rent increase on the tenant. Agreements must be in writing, must clearly set out the rent increase (e.g., the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

Tenants that have agreed to a rent increase do not need to be named and served with the Application for Additional Rent Increase. However, the landlord must include all rental units or sites in calculating the percentage of the rent increase that will apply to each unit or site, even if they are not part of the application. Each tenant named on the application must be served with a copy of the Application and hearing package. Any evidence used in support of the Application for Additional Rent Increase must be given to each of the named tenants.

In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors and will determine how much weight to give to each of the factors:

- the rent payable for similar rental units or similar sites in the property or park immediately before the proposed increase is intended to come into effect;
- the rent history for the affected rental unit or site for the three years preceding the date of the application;
- any change in a service or facility that the landlord has provided in the 12 months preceding the date of the application;
- any relevant and reasonable change in operating expenses and capital expenditures in the 3 years preceding the date of the application, and the relationship between that change and the additional rent increase applied for;
- a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation⁷;

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- whether and to what extent an increase in costs for the repair or maintenance of the property results from inadequate repair or maintenance in the past;
- whether a previously approved rent increase, or a portion of a rent increase, that is reasonably attributable to the costs of performing a landlord's obligation under the Legislation has not been fulfilled;
- whether an arbitrator has set aside a notice to end a tenancy within the six months preceding the date of the application; and
- whether an arbitrator has found, in a previous application for an additional rent increase, that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.

As an arbitrator must consider all of these factors, a landlord applying for an additional rent increase should submit evidence or make submissions that addresses each of these. Arbitrators may also review the Residential Tenancy Branch's records in relation to those factors that relate to previous applications heard and determined by an arbitrator. If an arbitrator does not have sufficient evidence or submissions to consider a required factor, the application for an additional rent increase may be adjourned or dismissed. In some circumstances, an arbitrator may order the landlord to provide any records the arbitrator considers necessary to properly consider the application or may issue a summons to any person for such records.

An arbitrator may also consider any other factors that they determine are relevant to the application before them. Relevant submissions and evidence from affected tenants will also be considered by the arbitrator before making their decision.

D. ARBITRATOR'S POWERS

In considering an application for an additional rent increase, an arbitrator may:

- grant the application, in full or in part;
- refuse the application (i.e., dismiss the application);
- order that the increase granted be phased in over a period of time; or
- order that the effective date of the increase is conditional on the landlord's compliance with an arbitrator's order respecting the residential property or manufactured home site.

The arbitrator's order will set out the percentage of the approved rent increase. The amount will include the annual rent increase and the additional amount. A refusal of the application will result in an order for the amount of the Annual Rent Increase.

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If all parties to the dispute resolution proceedings attend the hearing and reach an agreement with respect to an additional rent increase, the arbitrator may record it in a binding settlement agreement.

E. DISPUTING A PROPOSED RENT INCREASE

A tenant cannot dispute an additional rent increase amount ordered by an arbitrator. A tenant is not required to pay an additional rent increase until served with the Notice of Rent Increase and a copy of the arbitrator's order granting the additional rent increase. An affected tenant will receive notice of a landlord's application for an additional rent increase and will have an opportunity to provide evidence and make submissions. Tenants may choose to be represented by one or more of the tenants named in the application or by an advocate.

If a landlord collects an unlawful rent increase, the tenant may deduct the increase from their rent, or apply for a monetary order for the excess rent collected.

F. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	Am	New Policy Guideline. Adapted from previous version of Policy Guideline 37.	2023-02-17

Change notations

am = text amended or changed

del = text deleted

new = new section added