

# Mitigating the Impact of Extraordinary Increases in Property Tax and Insurance Costs on Residential Landlords in BC

A reminder about landlord rights to additional rent increases under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*



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Recent escalations in property taxes, as well as the looming strata property insurance crisis, mean that residential landlords in British Columbia have recently been subject to increases in operating costs that are beyond their control. These circumstances are a good reminder to landlords that they have rights under the *Residential Tenancy Act* (the “RTA”) and the *Manufactured Home Park Tenancy Act* (the “MHPTA”) to increase rents beyond the prescribed maximum allowable standard increase in a year.

Under the RTA, a residential landlord has the right to apply for an additional rent increase beyond the standard maximum allowable increase under circumstances which include where the landlord:

1. has completed significant repairs or renovations to the residential property in which the rental unit is located that:
  - a. could not have been foreseen under reasonable circumstances, and

- b. will not recur within a time period that is reasonable for the repair or renovation;
2. has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property; and
3. 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.



Under the MHPTA, residential landlords have these same rights, except there is no requirement that the significant repair or renovation to the park be one that could not have been foreseen under reasonable circumstances. Therefore, a landlord of a manufactured home park may pass through capital expenditures more easily than a landlord of other residential property like an apartment building because there is no need to prove that the expenditure in question could not have been foreseen under reasonable circumstances.

There are no decisions of the B.C. Supreme Court or the Court of Appeal concerning additional rent increase applications due to extraordinary increases in operating costs, and decisions of the Residential Tenancy Branch of B.C. (the “RTB”) lack precedential value. However, the RTB does publish a policy guideline on the subject, found here: <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/g137.pdf>

In summary, the landlord has to submit its claim to arbitration before the RTB, and provide evidence including an audited or certified financial statement that: (i) summarizes the financial condition of the landlord, (ii) includes a balance sheet, (iii) includes a statement of profit and loss, and (iv) is signed by an individual authorized to sign audited financial statements, certified by a professional accountant, or accompanied by a sworn affidavit from the landlord.

Additionally, the landlord must show what costs have increased, provide documentary evidence of the increase, and must prove that the increase is “extraordinary”, meaning going beyond what is usual or regular, or exceptional to a marked extent. It is a fact sensitive analysis, and what is extraordinary in one case will not necessarily be extraordinary in another, particularly if the landlord has not been diligently increasing the rent every year using the standard allowable increase permitted in a given year.

It may be that recent substantial increases in uncontrollable costs like property taxes and insurance amount to extraordinary rent increases to which an additional rent increase application is appropriate. However, arbitrations before the RTB of this kind are unpredictable, particularly since there are few guidelines directing how arbitrators may impose additional rent increases, because the manner in how rent increases are phased in can be discretionary, and because the analysis the arbitrator will undertake is fact sensitive. Typically, applications of this kind will be hotly contested as well. It is therefore prudent to seek professional advice before going to the cost and expense of an additional rent increase application.

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