



Minutes - Final

Rent Stabilization Appeal Hearings

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3:00 PM

Room 330 City Hall & Court House

- 2 [RLH RSA 22-2](#) Appeal of Jack Cann, Housing Justice Center, representing Katherine Banbury, to a Rent Stabilization Determination at 720 SEVENTH STREET EAST #330.

Sponsors: Prince

Lay over to RSLH Thursday, September 1, 2022 at 9:00 AM. For further discussion.

*Katherine Banbury, tenant and Jack Cann, tenant representative, appeared
Owen Metz – property owner representative and Tammera Diehm, counsel to property owner, appeared
Rent Stabilization Staff: Lynn Ferkinhoff and Department of Safety & Inspections (DSI) Angie Wiese appeared*

Moermond: I am going to turn it back to staff and I will invite you back up Mr. Cann with your client for this property who is Ms. Katherine Banbury. Staff you have a summary of this information that you've seen and I imagine that it will be largely similar to the summary you provided for the previous case, but if you could simply make a record that would be appreciated.

Ferkinhoff: On May 27th the department received an intake form for a request for exception to the 3% increase on rent per ordinance 193A. The application is part of the record and Jack Sipes is listed as the applicant representing Dominion. They were requesting an 8% increase on rent using the self-certification method. The reasons listed in the application were an unavoidable increase in operating expense, a decrease in rental income, a pattern of recent rent increase. The intake form asks applicants to enter three pieces of information from the MNOI worksheet. These include income adjusted by CPI, allowable rent increase, and allowable increase per unit per month. As part of the self certification process the applicant received a confirmation e-mail including their determination letter and a fillable flier for tenant notification. Staff also reviewed the recent inspection record. It was approved by fire safety inspections as an "A" property in January of 2020 and has 11 complaints since. There are no current inspection issues. The premise of MNOI is that an owner is entitled to the same rate of return on investment in the current year as they received in the base year. This premise assumes there is some profit margin obtained that is allowed to remain. As part of this appeal the interpretation of rental income has come into question. In the rules gross rental income is gross rents calculated as gross scheduled rent rental income at 100% occupancy and all other income or consideration received or receivable in connection with the use or occupancy of the rental unit. There are further

details about how to cover owner occupied or vacant units which are not applicable to this appeal. Our interpretation of this has been the actual income received not the income potential. Secondly the base year income or operating expenses can be adjusted for exceptional circumstances. The landlord must present evidence to rebut the presumption that the base year net operating income provided a reasonable return. For this appeal since we have not had a chance to discuss the supplemental appeal documents, staff is questioning how the proposed base year income is exceptional from 2019 or the current year. Lastly the department has not received a complaint from any residents at this property.

Moermond: You had mentioned just a moment ago 11 complaints?

Wiese: 11 complaints related to housing, not to the rent stabilization ordinance. The last statement is "not received any complaints regarding the rent stabilization ordinance" at 720 7th Street.

Moermond: For clarity's sake, with both this property and the one we just discussed, you indicated clearly on the record that these were considered to be Class "A" properties and the complaints that you mentioned, I'm assuming were marginal, this is a Class "A" building and it's the highest rating. It means it's on a 6 year reinspection cycle.

Wiese: Correct.

Moermond: So that amount of complaints would be considered to be very low or normal.

Wiese: Correct and that they have been appropriately dealt with and none are currently open. So that review and those statements are part of the department review of the warranty of habitability which is in the ordinance and in the rules and that's why it's mentioned here.

Moermond: I just wanted to be clear for someone who wasn't familiar with that terminology. What that actually translated to.

Wiese: Ok we'll clarify that for future appeals, should there be any.

Moermond: Alright so we did talk exhaustively in the first case about issues that apply to both of these buildings and your comments as well as Dominion's comments. Are there things that you would like to draw my attention to with respect to this property in particular?

Cann: Very briefly. In the first argument I made two basic points that actually the staff just summarized. One is the question of how were the MNOI worksheets done and did they use actual rental income and operating experiences. The second was how was the base year exceptional and I talked about that extensively earlier. The difference here was that, that the first issue, that is what were the actual operating experiences in the base year. It seemed highly questionable to me in the Union Flats case because there was only a partial operating year, yet they've represented the full year of operating income and expenses. That's not the case in the Cambric. There is still at though in the Cambric a discrepancy between the gross potential income in the net operating income worksheet and what you get when you add up all the actual rents in the attachment. I guess the only other point I'd make is that in the Cambric case were Dominion permitted to use the procedure they wanted to use to determine the net

operating income in the base year. It would justify a \$682.77 rent increase this year. And I point out that that's just as ridiculous in this case as the similar one was in the earlier case. That's all.

Moermond: Do you have comments, Ms. Banbury?

Banbury: In what specifically? I'm just really listening.

Moermond: You and Ms. Gray are both the appellants. If you had something to add, I'd be happy to hear it.

Banbury: Dominion has the title of affordable housing and as Jack was laying out they get a lot of public funding. As a tenant that has lived there for four years, I compare it to a revolving door. People come in they get means tested and Dominion, or HUD takes the area medium income every year that continues to go up, and we are people that don't have that kind of income to continue to pay the highest amount that Dominion uses for the HUD number. They don't have to take that highest number but they do. So I've had countless neighbors having to economically evict. They cannot afford to live there and to me affordable housing is affordable. It keeps people in their homes and that is not the case with the Cambric Domimum that I live in.

Moermond: Alright, Ms. Diehm I'll turn it over to you.

Diehm: Thank you, we have just a couple of comments. First since we can easily answer staff's question we'll go ahead and do that. In the city of Saint Paul rent stabilization landlord worksheet on page 19 it lists exceptional circumstances for the base year and I do note those differ a bit from what are in the rules but number B4 says base year rents were disproportionately low in comparison to the base year rents of comparable rental units so that's where that language is coming from. Just two other quick comments, Mr. Cann made the argument that we're looking for guaranteed return, that's not true. Our argument is that a reasonable return on investment for these properties there should be an adjustment to that base year NOI because a reasonable return on investment would be as reflected in the agreements that we have with the city and with HUD and with other federal and state regulators. They note that our worksheet justifies a \$600 or \$700 rent increase, that's not what is being proposed or what is being asked for we're talking about an \$89 rent increase and a \$96 rent increase. A comment was also made that were asking for just the maximum increases that are allowed, as we noted earlier under the HUD regulations the properties would be looking at a 12% increase and the landlord has only increased the rent 8%, so it is not at the maximum level that's allowed. They have come in at the 8% which again is \$89 for Ms. Gray and I believe \$96 for Ms. Banbury.

Metz: Hearing Officer Moermond, I'll just add I wish we could get 8% CPI. That's effectively what we're asking. Mr. Cann said we were happy with CPI. I think generally most landlords are happy with CPI and that's effectively what they 8% is under the self-certification. I think one of the struggles we've had in following the rules is there isn't a clear process as we looked at it so we submitted the self certification. It's not a clear process to establish those base year rents other than through the MNOI worksheet. That process describes five different circumstances, we meet three of those five in order to adjust that base year rent. There's not a separate process on the city's website and how to follow that. So to be expedient we just went with the 8% which is as Tammy mentioned is less than the 12% we're entitled to under our agreements with the city and HUD. The only way for us to describe those was through this process was as Ms. Wiese mentioned we will certainly follow up with that

information to answer those questions to show where that that information was coming from. And to Mr Cann's point we're not asking for enormous cash flow we're asking to follow our existing agreements. We have these agreements in place, we're asking to abide by those and follow the rules that were put in front of us. That that's very different than asking for enormous cash flow. I just wanted to clarify that.

Moermond: Before you leave I just want to clarify one thing for the record, and we should probably clean this up in the record for the previous case as well, is that the agreement is not with the city of Saint Paul per se it's with the city's housing and redevelopment authority which is a slightly different legal entity. So I just want to put that on the record that it is the HRA.

Metz: Hearing Officer Moermond, we did, and I think it was in our response but if it wasn't we can clarify it too, on Union Flats, as Mr. Cann mentioned, it was a partial year in 2019. It's only a 3 year old building so 2019 was not a full year, we used 2020 in order to have a 12 month process of stable operating expenses and income. That was the information we used in the form not having a full year in 2019, so just want to make that clear for the record.

Moermond: Ok thank you. I'm going to ask Mr. Cann if he has any other comments and then I'll ask the audience generally if there's anyone who wants to comment on this property as well. Mr. Cann?

Cann: When I quoted the numbers that they put into that operating income worksheet showing for Cambric for instance is a \$682 permissible rent increase, I wasn't suggesting that they were asking for that level of increase. What I was suggesting is that that is where their argument about what's permissible leads. It's obvious that's where it leads because that's what they showed. I quoted the ridiculously high number to point out how ridiculous their argument is. They have not ever in any of this discussion or any of their submissions indicated that they require any kind of exception at all to obtain a reasonable return on their investment as the rules define it. I guess the only other point I'd make is that if they use the 2020 operating experience to calculate the net operating income, of course they should have said it in the worksheet, but it also means that they don't get to use two years of inflation. They only get to use one year of inflation. They can't use the 6.05% number because they're not using 2019 as the base. Right?

Moermond: Alright is there anyone else here who'd like to testify on 720 7th St. Ok do staff have any questions on this property to put on the record at this time? I have very few comments myself at this juncture. What I will say is that I want to express my appreciation to the tenants, to appellant's representation, to the property owner, to city staff - this is an entirely new process that we are looking at. This is literally the second and third appeal that we've dealt with for the rent stabilization ordinance and its implementation. So very early days. We are charting a path, we are learning from that. I'm sure that what we learn will be used to fine tune the machinery of the ordinance moving forward. That being said we do need some time to evaluate the numbers, to evaluate the statements, I would personally like to connect with the housing and redevelopment authority's attorneys in this matter, and I think that to do due diligence is going to take just a little bit of time and communication back and forth. So I'm going to lay this matter over, which you could probably have guessed at the very beginning. There is just a half inch file on each one of these cases right now and it merits further examination. Today is July 19th and trying to take into account the ability of Dominion to provide any updated information and we should have not only the questions put on the record today but any additional questions we will have rounded up

by shall we say Friday morning? And that will go out in a piece of correspondence that's a follow up to all the interested parties in this. So we will confirm that this case is being laid over confirm with the open questions are the deadline by which we'd like to get the materials back again. All the materials will become part of the public record, so all that being said could you have materials back by 29th or August 5th? With given the complexity of the discussion we've had so far.

Metz: I will say without knowing what the questions are for sure, we're usually pretty quick to respond. So we would do our best to respond by the 29th. When will the hearing date be then?

Moermond: Well what I'm thinking is if you were able to respond by the 29th I would want to allow Mr. Cann to be able to review those materials, give him a good week. And to have staff be able to review things as well. I'm going to actually continue this to August 16th. We're going to go out that far, I would like to have staff be able to complete their determination, their recommendation on this and that might require additional correspondence that would be passing through my office but it is a cumbersome communication process and I want to take that into account and make sure that everybody does have the ability... and I'm going to ask you to come back up to the mic which I should have done a moment ago and did not.

Metz: Hearing Officer Moermond, I believe Tammy's on vacation on August 16th unfortunately and I have a City Council meeting already planned, I can try to rearrange. Is there any way to do it later in that week by chance or does it have to be a Tuesday?

Moermond: Let me check something. Actually we could do Thursday morning on August 18th. Yes Mr. Cann?

Cann: I am on vacation for two week starting August 13th.

Metz: For what it's worth we're happy to do the week before if that's helpful.

Moermond: Alright we'll say the morning of Thursday, August 11th and that will... no? [discussion off mic about vacations] And the 9th was booked for your Ms. Diehm? Alright are people on September 1st? Thursday September 1st at 9:00 AM. With your permission Ms. Diehm, I'm going to include your comments from the first hearing into the second hearing. We will somehow make note of that and similarly with your comments Mr. Cann, so that if someone were to open one of the files in particular the second file they would see the substance of the argument from the previous case and how it might apply. Just so that the information shows up in both places as it was intended. Alright, again, thank you.

Laid Over to the Rent Stabilization Appeal Hearings due back on 9/1/2022