



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ARI, O

### Introduction

This hearing dealt with an Application for an Additional Rent Increased filed by the Landlords.

The parties appeared at the teleconference hearing. Each Tenant was canvassed and confirmed that they wished to be represented by their Agent as named on the cover page of this decision. Each Tenant named as Respondent in this application is listed on the cover page with their unit number of their rental unit displayed in brackets behind their name. The Tenant from unit (11) confirmed the correct spelling of her first name and requested that it be displayed correctly in my decision. The Tenants were advised that they could listen in on the teleconference hearing and their Agent would be the only person providing oral testimony during the hearing. Each Tenant would be given instructions at the end of the hearing on how they could provide their final comments in writing.

The parties acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Landlords met the burden of proof to obtain an Order to increase the Respondent Tenants' monthly rent over and above the legislated amount.

### Background and Evidence

Landlord (1) began the testimony by confirming they are seeking an Order to increase rents of the 1 bedroom units to \$525.00 per month, 2 bedroom units to \$595.00 per month, and 3 bedroom units to \$795.00 per month as the 3 bedroom units are 1200 square feet. He confirmed their application was based on the following three reasons:

- A) Rent is lower than comparable units or sites

- B) They have completed significant repairs or renovations
- C) They have suffered an extraordinary increase in operating costs

In support of their application for reasons that rent is lower than comparable units or sites Landlord (1) referenced their evidence which included three pages of advertisements for apartments for rent in their area. The first page included a listing for two apartments listing rents as: 1 bedroom \$750.00; 2 bedrooms \$800.00; and 3 bedrooms \$900.00. The second page included a listing for one apartment building listing rates for 1 and 2 bedrooms between \$600 - \$850 (depending on services and size of suites) [sic]. The third page consisted of a photocopy of a newspaper classified section dated November 26, 2010 where the Landlord had put a bracket around five advertisements which list rents ranging from \$650 to \$950. He pointed out that some of these advertisements were for a town home.

Landlord (1) clarified that he had erred in his written submission where he originally stated that the Landlord pays for electricity. He wanted to clarify that they pay for hot water and heat and not electricity but he also wanted to add that cable television is paid for by the Landlord.

He then moved onto the second reason for making this application and stated that they have completed significant repairs or renovations when they redid the sewer system. They had past sewer issues in the apartment building where there was a very old pump having to pump the septic. This pump actually shut down one time. They purchased a secondary pump, created a new parking lot, and removed the swimming pool because it was a hazard. He confirmed this property had an apartment building and town houses.

Sometime after purchasing the property the owners decided to change the town houses into strata units. They began the required work back in late 2007. Landlord (1) stated that the sewer project was to separate the town houses from the apartment sewer and to separate the hot water. When I asked what evidence was before me to support that there were previous issues with the apartment sewer Landlord (1) stated that I should trust his word that the apartments benefited from the sewer. The old system had the sewage being pumped into the apartment and then out and after the new system was installed it pumped the town house sewage into the river. They are also working on a storm sewer project that will assist in the reduction of erosion on the bank of the river. Both the apartment and the town houses are built on the bank of the river.

Landlord (1) continued his testimony by moving onto the third reason for making their application which is they have suffered an extraordinary increase in operating costs. He advised that ever since they have owned this property from about 2005 or late 2004

they have suffered a loss and this year it was their biggest loss. He referred to the financial statements provided in evidence and noted that in 2007 they lost \$47,000.00 and in 2008 their loss was \$34,000.00. He confirmed these financial statements represent both the apartment costs and the town house costs, including all of the work which had to be completed in order to have the town houses converted to strata units. He estimates that 60% of the items on this financial statement represent the apartment and 50% represents the town houses because there are 21 apartments.

Landlord(2) testified and stated that he was concerned that I attacked the veracity of Landlord (1) when I asked what evidence I had before me to support his statement that the apartment was experiencing problems with the septic system. I explained to Landlord (2) that the Landlords bear the burden of proof to support their application and they are required to point me to their evidence when providing testimony, therefore I was not attacking the veracity of Landlord (1); rather I was performing the duties of my job in managing the hearing process.

Landlord (2) continued by stating the sewer problems were major. The septic from the town houses was not pumped into the apartment but were pumped into the same holding basin as septic from the apartment was. He also wanted to clarify that the sewage is not being pumped into the river; rather they tied their new sewage lines into a city line that runs parallel to the river bank.

Landlord (3) was then given the opportunity to provide evidence. He advised that they had ownership of the buildings since June 2004.

The Tenants' Agent (later referred to as the Agent) provided his testimony and began by responding to the comparable rental units provided by the Landlords. The first two apartment buildings referenced by the Landlords are the two highest priced apartments in their area and cannot be compared to their units as they are newer, nicer looking, have modern security, and elevators.

Their apartment building is about fifty years old and has no security. Anyone can walk right into the building. There are three other older buildings in their area that would be comparable to their units however when he contacted the managers of those buildings they did not want to tell him what their long term tenants are currently paying. He argued that all of the Tenants named in this dispute are long term tenants so of course their rents will be lower than brand new tenants because the Landlords can charge the new tenants anything they want. He also stated that not all the 3 bedroom units are 1,200 square feet, only a few are. He questioned why they would have to pay more

because the Landlords either failed to issue annual rent increases or issued them and chose to rescind them as they did on December 17, 2010.

The Agent stated that he has resided at this property for over 32 years and in that time he is aware of only one time that the sewer backed up into the apartment building. He has seen where people in the town houses have plugged their systems by flushing things they should not have, but there were no other problems.

He argued that the Landlords increase for repairs or renovations all have to do with their plan to change the town houses to strata and that work began about three years ago. He said that is the only reason the sewer system was changed because they were required to have everything separate for strata units. As for removal of the pool, he was the caretaker of the pool and it was never a hazard. They simply wanted it gone for the strata conversion.

The Agent referred to the financial statements and noted that the accountant's covering letter includes the following two statements:

“...in respect of these financial statements and according, I express no assurance thereon.”

“Readers are cautioned these statements may not be appropriate for their purposes”.

He questioned if the large expenses were related to costs incurred by the resident manager who was stealing from the Landlords. They informed the Landlords on several occasions about the manager stealing however the Landlords chose to let him stay on until long after he had cost the Landlords a large amount of money.

Furthermore he feels Landlord (2) was harassing people into agreeing to the rent increase prior to this hearing. He states that Landlord (2) approached them and if they refused to sign agreement of rent increase then he would call them several times in the evening trying to convince them to sign. Two Tenants that signed have since filed applications for dispute resolution. The Agent asked that I refer to his written statement for the rest of his submission as he was beginning to be upset about this matter.

Landlord (1) responded by stating they had issued rent increases in the past and the latest one was July 2009 and had issued increases in most of the previous years. He confirmed there were some mismanagement issues by their caretaker which they have since taken care of.

Landlord (3) confirmed that since owning the property in 2004, they have implemented rent increases in 2006, 2007, and 2009.

Landlord (2) responded to the Agent's comments about their accountant's covering letter stating that the Agent is an accountant so should be aware of declarations made by accountants when the statements are unaudited. He commented on the increase in management fees (\$30,000.00) and repairs and maintenance fees (\$120,000) and confirmed these were costs associated with the work done to the sewer system and making the town houses ready for strata. He stated that he did not harass the Tenants into signing a rent increase. He never approached anyone more than twice.

Landlord (1) confirmed the strata work commenced in 2007 and advised the \$39,000 in utilities and telephone consists of natural gas, electricity, water, and sewage. He also stated that about \$6,700.00 of that is for cable television which is provided to the Tenants for free.

In closing Landlord (3) confirmed the sewage costs were incurred to acquire strata title but that the apartment still benefited from this project. Landlord (2) clarified that the apartments used as comparables were not all newer units they just look similar to newer units.

In his closing remarks the Agent stated that those other units are nice and clean, have security systems and elevators. Most of the Tenants named in this application are long term tenants, some as long as 37 or 38 years so of course they would not be paying current rent. You will not find tenants who all pay the same rent because they start their tenancies at different times. It is not the Tenants fault that the Landlords did not issue rent increases every year. He questions why they did not listen to the Tenant's complaints about the caretaker stealing and asked if this is where they really lost their money and if so why would the Tenants have to pay for that.

After the closing remarks the Tenants were advised that they had one opportunity to provide a written response to the Landlords' testimony. Their response must be provided to their Agent on or before May 18, 2011. The Agent is required to forward the written statements to the *Residential Tenancy Branch* and Landlord (1) no later than May 18, 2011.

The Landlords have one opportunity to provide a written response to the Tenants statements. The Landlord's response is to be sent to the *Residential Tenancy Branch* and the Agent, with enough copies for each Tenant, no later than May 30, 2011.

### Analysis

As per the instructions listed above the Tenants and their Agent submitted additional written submission on May 16, 2011 which consisted of: (1) a three page typed submission from the Agent; and (2) a four page submission from the Tenant in unit 3; and (3) a one page written submission from the Tenant in unit 12; and (4) a one page typed submission from the Tenant in unit 11; and (5) a one page typed submission from the Tenant in unit 18; and (6) three groups of photographs taken of (a) the Tenants' rental building The Edgewater; and (b) photos from the two comparable buildings used by the Landlords The Brentwood and The Francesco's.

The Landlords' final submission consisted of a two page typed submission that was issued in response to the Tenants' submission and was sent to the *Residential Tenancy Branch* May 27, 2011.

I have carefully considered the foregoing testimony, all relevant written submissions, and the photographic evidence.

Section 43 (3) of the Act provides 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 *Residential Tenancy Regulation 23 (1)* provides that a landlord may apply for under section 43 (3) of the Act *[additional rent increase]* if one or more of the following apply:

**(a)** after the rent increase allowed under section 22 *[annual rent increase]*, the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit;

**(b)** the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

- (i) could not have been foreseen under reasonable circumstances, and
- (ii) will not recur within a time period that is reasonable for the repair or renovation;

**(c)** the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

(d) 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;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

In this case the Landlords have made application for an additional rent increase under sections 23(1) (a), (b), and (c), as listed above, for eleven units out of a total of twenty one units. In this instance, the Landlords have the burden to prove they meet the requirements for being granted an additional rent increase as set forth in the *Residential Tenancy Regulation* and the *Residential Tenancy Policy Guideline # 37*.

Section 23 (2) of the *Residential Tenancy Regulation* states that an additional rent increase applied for under paragraphs (b), (c), or (d) the landlord must make a single application to increase the rent for ***all rental units in the residential property by an equal percentage amount***. (Emphasis added by me)

In the matter before me the Landlords have sought three different amounts of increase and have applied for only eleven of the twenty one units. Therefore I find the Landlords' application must fail under sections 23(1) (b) and (c) as per Section 23 (2) of the *Residential Tenancy Regulation*.

The third reason the Landlords applied for an additional rent increase was under section 23(1)(a) of the *Regulation*, which provides that after the rent increase allowed under section 22 [*annual rent increase*], the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit.

The Landlords provided testimony that they have owned the property since 2004 and have implemented rent increases in 2006, 2007, and 2009. The Tenants provided opposing evidence that they have received rent increases in 2006, 2007, 2008, 2009, and 2010 however the 2010 was rescinded by the Landlords after it was issued.

The Landlords relied solely on their testimony to support that the units used for comparison are comparable units to those eleven they have made application for rent increase. They stated that their three bedroom units were much larger, approximately 1200 square feet, and their building was of the same era and condition as the two comparable units used. In their final written submission they state "Long term rents in other buildings in (city name) are not market rates. The best comparison to market rates is the actual rates we are getting in this building."

The Tenants provided opposing testimony and photographic evidence to support their rental property is not of the same condition or state of repair as those used for comparison by the Landlords. Specifically they provided photographic evidence to

support their testimony that the comparable units are more modern with elevators, are completely secured premises, and are clean and well maintained. They provided photographic evidence to support their units are located in an unsecure building that has no elevator and in some areas such as hallways and lawns are in various states of disrepair. Furthermore the Tenants noted that the two buildings used as comparables are the two most expensive rental properties in the area.

Section 37 of the *Residential Tenancy Policy Guideline #37* states that additional rent increases under the section of “Significantly lower rent” will be granted only in **exceptional circumstances** and that it is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord’s recent success at renting out similar units at a higher rate.

As noted on the Landlords’ application they have applied for rent increases as follows:

#### SECTION “E”: RENT LOWER THAN COMPARABLE UNITS OR SITES

Rent Before Increase	# of Units	Permitted Rent Increase	Comparable Rent	Additional Increase Requested	% of Increase Requested	[sic] means copied as written
439	1	10.10	525	75.90	20%	[sic]
494.4	5	11.37	595	89.23	20%	[sic]
568	6	13.03	798	213.94	40%	[sic]

The above information as taken from the Landlords’ application would not meet the requirements of the Act as some of the amounts listed as the current allowable 2.3 % increase have been rounded up, which would be a contravention of section 43(1)(a) of the Act. Also the percentages applied for do not equal the additional increases requested. I have created a table below which lists the corrected amounts in italic and bold font.

Rent Before Increase	# of Units	Permitted Rent Increase	Comparable Rent	Additional Increase Requested	% of Increase Requested	Corrected in <i><b>Italic Bold</b></i>
439	1	<del>40.10</del> <b>10.09</b>	525	75.90 <b>87.80</b>	<b>17.29%</b> 20%	Corrected
494.4	5	11.37	595	89.23 <b>98.88</b>	<b>18.05 %</b> 20%	Corrected
568	6	<del>43.03</del> <b>13.06</b>	798	213.94 <b>227.20</b>	<b>37.666 %</b> 40%	Corrected

The onus lies with the Landlord to provide accurate information on their application. In the presence of contradictory information on the application for additional rent increase it is unclear if the Landlords are seeking additional rent increases of \$75.90, \$89.23, and \$213.94 based on the amounts listed under additional increase requested in section "E" of the application; or if they are seeking increases of \$87.80 \$98.88, \$227.20 based on the percentages listed.

Also, the Landlords have indicated they are seeking increases for twelve units above and only provided information pertaining to eleven units. The Landlords have completed section "K" of the application listing the eleven units, their current rent, and the amounts requested as an increase. I note that there are nine different "current rent" amounts listed in section "K" while there are only three indicated in section "E" above, and the percentage amounts do not equal 20% or 40%.

In the presence of opposing evidence provided by the Tenants and in the presence of contradictory information provided on the Landlords' application, I find the Landlords have provided insufficient evidence to meet the burden of proof that the rents for the eleven tenants listed in the application, are significantly lower than comparable units. Based on the aforementioned I find the Landlords' application must fail under section 23(1)(a) of the *Residential Tenancy Regulation*.

### Conclusion

I HEREBY DISMISS the Landlords' application for additional rent increase, without leave to reapply.

Having dismissed the Landlords' application for additional rent increase, the Landlord is at liberty to issue a rent increase for 2011, in accordance with the legislated amount of 2.3 %, pursuant to the *Residential Tenancy Policy Guideline # 37*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 6, 2011.

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Residential Tenancy Branch