



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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### Introduction

This matter dealt with an application by the Landlord for an Order authorizing her to increase the Tenants' rent in an amount that is greater than permitted under the Regulations to the Act

### Issue(s) to be Decided

1. Is the Landlord entitled to an additional rent increase?

### Background and Evidence

This month-to-month tenancy started on August 31, 2005. At the beginning of the tenancy rent was \$650.00 per month. The Tenants verbally agreed to a rent increase to \$700.00 effective October 1, 2008. The Parties entered into a written tenancy agreement on November 1, 2010 under which rent remained at \$700.00 per month. The Tenants also verbally agreed to a rent increase to \$721.00 per month effective March 1, 2011. Municipal utilities (ie. water and sewer) are included in the rent.

The rental property is a single family dwelling that was built in the 1930s or 1940s with a fenced yard. It has 2 levels; the main floor contains a kitchen, living room and an enclosed porch which contains a washer and dryer. The upper floor has two bedrooms one of which was divided off into a further bedroom for a total of three bedrooms. The main floor is approximately 700 square feet in area and the upper floor is approximately 500 square feet in area. The Landlord purchased the rental property in July 2004 and made a number of renovations including new paint throughout, new linoleum flooring in the kitchen and carpeting elsewhere, new washer, dryer, kitchen cupboards, windows (with the exception of the kitchen) and reinforcing foundation beams.

The Landlord seeks an additional rent increase on the following grounds:

- After the rent increase permitted by the Regulation, the rent for the rental unit is significantly lower than rent payable for other rental units similar to and in the same geographic area as the rental unit; and
- 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.

In support of the first ground of her application, the Landlord provided copies of several advertisements from a local online publication as comparable properties. The Landlord admitted that many of these comparable properties were not within the same geographic area (or within a one kilometre radius) as the rental unit. The Landlord argued that there were few comparables within the same geographic area, however she also admitted that she was unaware of the amenities of each property or what was included in the rent (other than what was specified in the advertisements). The Landlord said she was personally familiar with only one of the comparable properties which she claimed was in the same geographic area as the rental unit. The Landlord said she believed this house was built in the late 1970s and was being advertised for \$2,000.00 which included utilities.

The Tenant claimed that while she did not look at the Landlord's comparables closely, she believed that the rental unit was much smaller and older than all of those relied on by the Landlord. The Tenant admitted that rents and water rates in the community have risen significantly in the last few years. However, the Tenant also argued that the large increase (ie. to \$1,175.00) that the Landlord is now seeking to recover includes amounts for rent increases that she failed to pursue in previous years.

In support of the second ground of her application, the Landlord provided copies of her mortgage statements for the years, 2009, 2010 and 2011 which include the amount paid for interest each year. The Landlord argued that these costs together with her expenses for property taxes, municipal utilities, insurance and for a property manager exceeded her annual rental income for the property. The Tenant argued that this ground was not relevant given that the Landlord already had the mortgage and was incurring financing costs before the tenancy started.

### Analysis

RTB Policy Guideline #37 (Rent Increases) at p. 6 sets out the criteria an applicant must address on an application for an additional rent increase on the ground of "significantly lower rent" as follows:

***"Specific and detailed information*** [emphasis added], such as rents for similar residential properties in the immediate geographical area with similar amenities should be part of the evidence provided by the Landlord."

The Landlord relied on brief advertisements in a local publication for her comparables. However, most of these comparables were not located in the same geographic area and were much newer. Furthermore, the Landlord had no knowledge of the amenities these properties offered or what was included in rent. In short, the Landlord said she had personal knowledge of only one comparable on which she relied. However, this comparable property is approximately 40 years newer and there was no evidence of its

size compared to the rental unit. Consequently, I find that the Landlord's evidence is lacking in detail and for that reason, I find that there is insufficient evidence to support her application for a rent increase on the ground that rent for the rental unit is significantly lower than rent payable for other rental units similar to and in the same geographic area as the rental unit.

RTB Policy Guideline #37 at p. 11 sets out the criteria an applicant must address on the grounds of "financial loss due to financing costs" as follows:

"The Landlord must provide evidence of the new financing costs, the previous financing costs and the impact on the landlord's financial position. The Landlord must also explain why the financing costs could not have been foreseen under reasonable circumstances."

The Landlord's mortgage documents show that the Landlord has had a fixed rate mortgage and that her interest payments (or financing costs) have not increased. Consequently, I find that the Landlord cannot succeed on this ground. Furthermore, I find that this ground would also not succeed for the reason that the Landlord would have known prior to the tenancy starting what her costs of financing would be.

The Landlord argued during the hearing that she intended to rely on the ground "of a financial loss due to an extraordinary increase in operating expenses" but was persuaded by an Information Officer at the Residential Tenancy Branch to select the box relating regarding financial loss due to financing costs instead. Whether or not this is the case, at the end of the day, a Party is responsible for ensuring that their application contains the remedy they are seeking. In this case, the Landlord's application did not indicate that she was alleging a financial loss due to an extraordinary increase in operating expenses and therefore it would be unfair to now require the Tenants to respond to that allegation when they have had no notice of it.

### Conclusion

The Landlord's application is dismissed with leave to reapply. 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: May 08, 2012.

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Residential Tenancy Branch