Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ADRI O
DRI MNDC O FF

Introduction

This hearing dealt with Applications for Dispute Resolution by both the Landlord and the Tenants that were joined to be heard together as cross applications as agreed by both parties. The hearing convened on February 28, 2012 for a one hour session; reconvened on May 9, 2012 for five and one half hours; and reconvened for the current session on June 11, 2012 for ninety minutes.

The Landlord filed seeking an Order to allow an additional rent increase.

The Tenants filed seeking an Order to dismiss the Landlord's application for an additional rent increase, for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for other reasons.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me

Issue(s) to be Decided

1. Is the Landlord entitled to an Order to impose an additional rent increase, pursuant to section 43 of the *Residential Tenancy Act*?
2. Has the Landlord abused this Dispute Resolution Process?
3. Has the Landlord breached the *Residential Tenancy Act,* regulation or tenancy agreement?
4. If so, have the Tenants met the burden of proof to obtain a Monetary Order?

Background and Evidence

The parties agreed they entered into a month to month tenancy agreement that began on January 1, 1993, although the Tenants were given the option to occupy the unit in December 1992. In December 1992 the Tenants paid a security deposit of $297.00. The current rent is payable on the first of each month in the amount of $697.00 which is the result of a rent increase that became effective October 1, 2011.

The Landlord affirmed they are a public housing body who is mandated to provide affordable public housing. At the time the Tenants entered into their tenancy agreement the Landlord was governed by an agreement mandated to keep rents low for all tenants in their public housing. Then in 2010 their operating agreement changed from providing consistently low rent to a need based program whereby tenants can apply for subsidy based on their income, composition of their family, and those who do not qualify for subsidy pay market value rent.

The Landlord stated they had meetings with tenants in 2009 to inform them of upcoming changes and incremental rent increases to bring their rent closer to market value. They advised that their intent was to phase in rent increases in order to bring the rents to market value over a period of a few years so that they did not cause undue hardship on the tenants. At that time the Landlord was of the opinion that their tenancy agreements were exempt from sections 41, 42, and 43 of the Act, so they could increase rent at amounts higher than the prescribed amounts. The Tenants disputed the increase and the parties attended dispute resolution. On March 21, 2011 the Dispute Resolution Officer put forth a decision that the Tenants' tenancy agreement was not exempt from sections 41, 42, and 43 of the Act and therefore the Landlord must comply with the prescribed rent increase amounts and was at liberty to make application for an additional rent increase in accordance with the Act.

Landlord's Submission

The Landlord submitted that because they were previously mandated to provide public housing with low rents the Tenants' rent was not increased annually. This has resulted in the Tenants' current monthly rent being significantly lower than market value rent.

The Landlord advised that the Tenants' current rent after the legislated 2012 rent increase is applied would be $726.97. They argued that $726.97 is significantly lower than market value rent for similar units, in the same geographic area, as established by the totality of their evidence.

The Landlord submitted that the statutory requirements of regulation 23 stipulate a two part test that must be applied when considering an application for additional rent increase: (1) the rent is significantly lower than rent payable for other rental units that are similar to [not identical to]; and (2) are in the same geographic areas as the rental unit.

The Landlord asserted that their submissions for similar units were within a reasonable radius of the Tenants' rental unit and that the Tenants' submissions support this area. The Landlords argued that the industrial zone, proximity to the port, railway, W.C. plant, heavy traffic and noise were all the same in their similar units as that provided in the Tenants' submission of similar units; albeit they were displayed from a different direction. Therefore they are of the opinion that they have met part (2) of the statutory requirement.

The Landlord relied on their evidence from several sources in support of meeting the first test of providing examples of rents for similar units which included the following:

(1) Copies of internet advertisements and photographs for one bedroom rental units in the same geographic area; and
(2) Copies of internet advertisements and photographs for two bedroom rental units in the same geographic area; and
(3) Rental summaries from units in the same townhouse complex as the Tenants' unit; and
(4) A private appraisal commissioned by the Landlord conducted on November 22, 2012 and written December 20, 2011, by a certified appraiser; and
(5) The Fall 2011 CMHC Rental Market Report; and

The Landlord advised that they had attempted to include photographs of the Tenants' unit as evidence however the Tenants would not allow photos to be taken of the inside of their rental unit.

The Landlord submitted that the Tenants' rental unit is a townhouse style wood frame building built in approximately 1976 with two floors, approximately 805 square feet, two bedrooms, one bathroom, two entrances (one to the exterior fenced yard and one into a common shared hallway). Pets are allowed, shared laundry is provided, storage is available in the building basement, there is no policy on smoking, and parking is provided and included in the rent.

The Landlord acknowledged that other rental units of the exact building style (townhouse two level styles) do not exist in this geographic area. Rather other similar

units available for rent consist of apartment style buildings. The Landlord submitted that the Tenants' rental unit is considered similar to the apartment style buildings as they each have a yard or fenced space, an entrance through a common hallway, a shared roof, shared laundry, common walls, common areas, storage in the building basement, and are rental units of similar age and construction.

During their oral submission the Landlord's Agents pointed to advertisements and photographs in their evidence of one and two bedroom apartment style rental units which are similar to the Tenants' unit as noted in the chart below. The Area Manager S. P. affirmed that she had physically attended each of these units and viewed them from the exterior of the building. She submitted that each of these units have similar green space and are of similar age and character, have similar ambiance, and are in the same geographic area. She acknowledged that she did not view the units from the inside and that they had relied on her experience when viewing the photographs that were provided in the rental advertisements to assess similarities such as character and age of the interior decor.

Rental Unit compared to Tenants 2 bed 1 bath 805 sq ft	**Additional Similarities than what is noted above**	**Differences**	**Rent**
2254 McGill St 1 bed 1 bath 650 sq ft	Similar bath decor Above ground	Smaller, 1 bed, apartment style, charged for parking $20	$930.00
N. Nanaimo 1 bed 1 bath 760 sq ft	Similar age, 1 bath, above ground	Closer to noisy streets & port, smaller 1 bed, apartment style, upgraded cosmetics (flooring & cabinets) No mention of parking	$980.00
Garden @ Cambridge 1 bed 1 bath 700 sq ft	Similar age, 1 bath, above ground	Smaller 1 bed, no pets, no smoking,	$1,000
NNanaimo&Cambridge 1 bed 1 bath 540 Sq ft	Very similar age, 1 bath, above ground, similar age of bath decor	Smaller 1 bed, no mention of parking	$875
2033 Triumph St 2 bed 1 bath 860 sq ft	2 bed, 1 bath, similar size (55 more sq ft), parking, directly across the street from Tenants' unit – exact	Heat included, no pets, no smoking, a little larger	$1,550

	neighbourhood , similar kitchen		
Oxford St. @N Garden 2 bed 1 bath 800 sq ft	Kitchen identical to Tenants', bath decor very similar, above ground, built 1977, similar size	1 level not 2, no pets, no smoking, busier streets,	$1,250
2225 Triumph 2 bed 1 bath 1000 sq ft	Built 1978, above ground, only 1 ½ blocks away	No mention of parking, about 200 sq ft larger	$1,700
101,2254 McGill 1 bath (no mention of size or # of bedrooms	Kitchen appears to be similar age, above ground	Size unknown, $20.00 monthly parking charge	$1,250

The Landlord submitted that in addition to the above noted similarities, the Tenants' unit offers additional amenities such as two levels, an exterior entrance, parking, pets, no policy on smoking, a fenced private yard, and in some cases has more square footage and an additional bedroom. The Landlord argued that because of these additional amenities it would be reasonable to conclude that the Tenants' townhouse style rental unit would be more desirable and would command a higher market value rent.

The Landlord noted that their submissions of similar units have been criticized by the Tenants as not being similar enough or not identical. They referenced how similar units are defined in the *Residential Tenancy Branch Policy Guideline #37* and argued that there will always be differences when comparing units. The Landlord stated that the intention of the Act was not to consider identical rental units as this would create an impossibility [emphasis added]. Furthermore, they noted that Policy Guideline # 37 does not stipulate how many of the items being compared (size, age of unit and building, construction, interior and exterior ambiance including view, sense of community) must be similar. They assert that they are required to provide units which are in the same geographic area that have different types of similarities and that they are to note differences so that market value can be determined based on the totality of the evidence provided.

The Landlord turned to their evidence of 2 bedroom one bath rental units that have been recently rented in the same townhouse complex where the Tenants reside and noted how even these units have differences (as noted below) even though they were once identical. The similarities include: exact same neighbourhood, building style, age,

size, character, neighbourhood, ambiance, and the differences only pertain to upgrades to cabinets, fixtures, and flooring on the interior. The Landlord acknowledged that these units have had face lifts and would therefore command a higher market value rent of approximately $1,000.00 in today's market. They further asserted that because the Tenants' unit has not had a face lift that their unit would command a lower market value rent of approximately $900.00 per month. The Landlord also noted that the following rental amounts would be higher if these rents had been increased each year in accordance with the legislative amounts.

Date of New Tenancy at Semlin	Amount of Rent Charged at onset	Differences involve updates to unit prior to onset of new tenancy
April 2009	$900.00	New kitchen, bathroom, paint, curtains, carpet/laminate
February 2010	$930.00	New kitchen, bathroom, paint curtains and carpet/laminate
August 2010	$930.00	New kitchen, bathroom paint, curtains and carpet/laminate
July 2011	$935	New kitchen, bathroom, paint, curtains and carpet/laminate

The Landlords argued they provided various reports and samples of units to provide a broader view of the overall market picture and not just those units which exist in the Tenants' building. They did not provide an oral presentation for the CMCH report as it is there for review and to show the Landlord did their best to look at a broad amount of sources to determine the current market value of the Tenants' unit based on the totality of the evidence.

The Landlord agreed there are differences between apartments and townhouses however there are also similarities. They questioned if the differences have a real effect on the value of rent. The Landlord argued that each individual difference does not have a significant effect on market value which they believe is indicated by the statutory requirements which only requires sample rents to be drawn from similar units and not identical units.

The Landlords stated they provided samples of four units that are significantly similar, those units listed above which are in the same complex, and noted that these rents began at $900.00 in 2009 and are progressively higher each year, with the only difference being that these units have had a facelift which add cosmetic value. They argued that the absence of vacancies in this building and the presence of experienced

renters wanting to live here is proof that a fair market rent is being charged to new tenants.

The Landlord has never denied the Tenants a facelift to their unit and has continued to repair and maintain the unit, as required, throughout their tenancy. They acknowledge that bringing the rent up to market value may pose a financial hardship on the Tenants which is why they have offered to phase in the rent increase and offered the Tenants the opportunity to apply for a subsidy.

Tenants' Submission

The Tenant submitted that the Landlord ignored lower advertised rental units and pointed to their evidence which included a couple of advertisements for units at a lower amount. They note that the Landlord's Agent did not go inside any of the units listed above and questioned how she could determine that they were similar if they did not view the inside.

The Tenant submitted a sample advertisement in evidence at tab 12 and argued this unit was for a completely renovated apartment style 1 bedroom unit going for $580.00. He refuted the Landlord's submission that when they contacted the manager of this building they were told this was a false advertisement and questioned if the Landlord considered this may have been a current tenant advertising to sublet his lease rather than a false advertisement.

The Tenant asserted that the appraisal report is without merit as it includes co-operative rental units which are specifically exempt from the *Residential Tenancy Act*. He also questioned validity of the report as the Landlord provided the appraiser with the statutory requirements which were to be used when looking for similar units and the appraiser noted in several places throughout the report it was difficult to find comparables and that he considered units that were distinguished as being "not similar". As a result, the Tenant submits that the Landlord's evidence should be considered false and misleading. He further submits that some of the samples provided were fictitious and that the onus lies with the Landlord to prove the truthfulness.

The Tenant pointed to his evidence which included paragraphs taken from previous Judicial Review decisions which speak to the statutory requirements of section 23 of the Regulation. He asserts that the test to provide samples that are similar is high and that "all" of the items must be similar in order to meet the statutory requirement. He asserts that because the Landlord knew they had not met this requirement and still proceeded with filing their application that they have abused the processed. He further asserts that

because the information provided in the appraisers report involves units that do not fall under the *Residential Tenancy Act*, fails to speak to utilities, and does not consider the possible presence of asbestos, that their application should be considered frivolous. He suggests that no comparables were provided by the Landlord and therefore their application should be denied.

The Tenants seek damages under the tort of abuse of process, and for other items which include: a) a finding that the Landlord has submitted false or misleading evidence in support of the Landlord's application; b) injunctive relief in the nature of mandamus or prohibition to have the Landlord comply with their operating agreement with a third party not named in this dispute; and c) to recover the cost of the filing fee for their application. The Tenants withdrew their request for injunctive relief in the nature of mandamus or prohibition against the third party who entered into an operating agreement with the Landlord to enforce the terms of their agreement and apply sanctions as necessary.

The Tenant alleged that the Landlord is applying for an additional rent increase which breaches their operating agreement that stipulates rents will not be raised higher than 7.4%. He asserts that the Landlord has breached proximity and their duty of care, as they are a government body, therefore committing an act of negligence. He further alleged that the Landlord's application is with malice and is retaliatory against the Tenant because he has assisted other tenants in fighting their rent increase.

The Tenant confirmed that the Landlord has not breached the Act but that they have breached the spirit and purpose of the Act. He asserts that the Landlord has not used the Act as it is intended to be used and that this application is an act of retribution and is meritless. As a result, he is of the opinion that his costs are no longer normal costs and that they have become injury damages which he is claiming under the law of Tort of abuse of process.

Landlord's closing remarks

The Landlord submitted that the Tenants' submissions are based on bald allegation, accusations, and speculation and not on evidence. The Tenants are relying on reading between the lines, reading minds, and breaches in spirit. The Landlord argued that allegations of malicious intent are serious allegations which need more than accusations to prove. The Landlord requested that consideration be given to the Tenants' actions of preventing the Landlord from taking photos of the inside of their rental unit to submit as evidence of the condition of their unit.

The Landlord asserted that their application is not in retaliation and the Tenants have not been singled out; rather it is in chronological sequence of events, as supported by their evidence. These Tenants are the first to have an additional rent increase application brought against them but that is because they are the first Tenants to receive a decision on the previous rent increase dispute. The Landlord argued that these Tenants cannot have it both ways; rents that are governed by sections 41, 42, and 43 of the Act and somehow being exempt from the Landlord's right to make application for an additional rent increase under section 43 of the Act. They asserted that their application was brought forth in accordance with the Act and is not an abuse of the process.

Furthermore the Landlord argued there has been no evidence of negligence. They refute the Tenants' argument that there has been a breach of the duty of care or the standard of care as there is no relevance in this case.

The Landlord asserts that by submitting a broad source of evidence they have provided a better way to have their evidence weighed rather than with providing a minimal amount. They argued that the totality of their evidence should be considered in order to determine which units could be considered similar as required by the statutory regulation.

The Landlord submits that they have proven the exceptional circumstance of why rents have been kept below market value and that they have provided samples of similar units, in the same geographic area, that have rents valued at over $900.00 which are significantly higher than the Tenants' rent after the 2012 allowable increase which would be $726.97.

Tenants' closing remarks

The Tenant asserted the Landlord's application should be considered frivolous; an abuse of process; a breach of tort; and a breach of the duty of care owed by the Landlord; and therefore the application should be dismissed pursuant to section 62 of the Act.

The Tenant argued the appraiser's report displayed no comparables as it relies on cooperative units not covered by the Act. He then argued that a reasonable person would have concluded the application would have no merit and would have abandoned the attempt.

The Tenant submitted that this application is retaliatory against them as he has assisted other tenants in disputing their rent increases. The Tenant point to fact that the Landlord has made no applications against other tenants for additional rent increases.

The Tenant argued that based on the totality of the aforementioned this application should be dismissed and the Tenants should be granted damages as requested.

Analysis

After carefully considering the aforementioned and the volumes of documentary evidence submitted by each party I make the following findings based on a balance of probabilities:

Landlord's application

The Landlord has made application for an additional rent increase pursuant to Section 43(3) of the Act and section 23(1) of the regulation. Section 23 (1) (a) of the regulation provides that a landlord may apply under section 43 (3) of the Act *[additional rent increase]* if 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.

Based on the aforementioned, I find the Landlord filed an Application for Dispute Resolution to seek an additional rent increase within the requirements set forth under the Act. I further find there is insufficient evidence to support the Landlord abused this process.

The burden of proof of market value rent lies with the Landlord who has to meet the high statutory requirement of proving that rent being charge for similar units in the same geographic area are significantly higher than the Tenant's rent. Section 37 of the *Residential Tenancy Policy Guideline* # 37 stipulates that:

- An application must be based on the **projected rent** after the allowable rent increase is added; and
- Additional rent increases under this section will be granted only in **exceptional circumstances**; and
- **"Similar units"** means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community; and

- The **"same geographic area"** means the area located within a reasonable kilometer radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject unit, such as proximity to a prominent landscape feature (e.g., park, shopping mall, water body) or other representative point within an area.

Projected rent - In this case the current monthly rent is $697.00 and after the 2012 rent increase of 4.3% allowed under the Regulation is applied the Tenants' monthly rent will be **$726.97**.

Exceptional circumstances - To determine the exceptional circumstances I must consider the relevant circumstances of the tenancy, the duration of the tenancy, and the frequency and amount of rent increases given during the tenancy.

Upon review of the evidence I find it supports that in this case rents were kept artificially low due to the Landlord's previous operating agreement and mandate. Furthermore, rents have not been increased annually as the Landlord transitioned over to their new operating mandate. Accordingly, I find there are exceptional circumstances which have kept the Tenants' rent below market value.

Similar units – In determining market value rent section 23 (1) of the Regulation stipulates that I must consider if the Tenants' projected 2012 rent is significantly lower than the rent payable for other rental units that are ***similar*** to the Tenants' unit [emphasis added].

Funk & Wagnalls Standard College Dictionary (1974) defines "similar" as:

1. *Bearing resemblance to one another or to something else; like,* ***but not completely identical*** [emphasis added];
2. *Of like characteristic, nature, or degree; of the same scope, order or purpose.*

Funk & Wagnalls Standard College Dictionary (1974) defines "identical" as:

1. *One and the same; the very same*
2. *Alike or equal in every respect*

Black's Law Dictionary Seventh Edition (1999) defines "comparable" as:

> *A piece of property used as a comparison to determine the value of a similar piece of property.*

As noted above, *Residential Tenancy Policy Guideline* # 37 indicates that when determining what is a similar unit I must consider units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

Notwithstanding the Tenant's argument that similar units must be the same in all these areas, I accept the Landlord's argument that if all items must be the same the units used as comparables would have to be identical and not similar. Therefore, I find that in order to determine market value rent of the Tenants' unit I must consider rents currently being charged for other units in the same geographic area while comparing the other unit's size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community and considering all similarities and differences.

In cases where the units are similar in some areas and not others consideration will be given based on the following reasonable person test and balance of probabilities: (a) if two units were similar in all areas except for size, it would be reasonable to conclude that on a balance of probabilities the larger unit would command a higher market rent than the smaller unit and (b) similarly, if rent for one unit included parking and a fenced private yard it would demand a higher market value rent than another unit that did not include parking or a yard.

Upon review of the evidence provided as samples of similar units I note that the Tenants submitted only one internet advertisement for a unit advertised at $580.00 which was refuted by the Landlords. The Tenant argued that this advertisement may have been a current tenant looking to sublease. If that were the case, this rent amount could not be considered as a comparable as there is insufficient evidence to prove what the actual rent was and there is no proof to indicate if the person advertising the unit was considering paying the difference between the actual rent and the amount they were advertising it for.

Same geographic area – In determining the market value rent I have considered the broad sampling of units provided and accept there were all within the same geographic area as the Tenants' unit.

Calculation of Market Value Rent

After consideration of the above definitions, the arguments put forth by each party, and a review of the broad plethora of evidence submitted as samples to be compared with the Tenants' unit, I found sample rents to range from $875.00 to $1,700.00.

After reviewing the CMHC 2011 Report, the Appraiser's report, and other samples, I fine tuned my considerations to specific significantly similar units located in the same complex as the Tenants' unit and the 2 bedroom apartment style units as listed below.

When considering similarities and differences of sample units, I find the following units to be either (A) significantly similar or (B) similar to the Tenants' unit, with noted differences to be considered when determining the Tenants' market value rent.

In order to calculate the market value rent I have utilized the median rate and not the mean or average rate to ensure that artificially lower or higher rents do not skew the calculation of market value rent. I have also calculated the median rate of the (A) significantly similar units separately from the (B) similar units and then took the median rate of the two. That is because I have determined that the current market value rents for the significantly similar units, which are all located in the Tenants' complex, still reflect a slightly lower than market value rent due to the Landlord's transition from mandated low rents over to a needs based rental structure.

A. ***Significantly* similar -** Units of the exact same size and floor plan with the same services, as they are located in the same townhouse complex as the Tenants' unit. The differences relate to cosmetic face lifts or updating of kitchen, bathroom, paint, and flooring.

***Significantly* similar units**

Date of New Tenancy at Semlin	Amount of Rent Charged at onset	Differences involve updates to unit prior to onset of new tenancy	Current Market Value Rent if Legislated Increases were Imposed Annually
April 2009	$900.00	New kitchen, bathroom, paint, curtains, carpet/laminate	2010 - $928.80 2011 – $950.16 ***2012 - $991.01***
February 2010	$930.00	New kitchen, bathroom, paint curtains and carpet/laminate	2011 - $951.39 ***2012 - $992.29***
August 2010	$930.00	New kitchen, bathroom paint, curtains and carpet/laminate	2011 - $951.39 **2012 - $992.29**

July 2011	$935	New kitchen, bathroom, paint, curtains and carpet/laminate	***2012 - $975.20***

Based on the aforementioned, the median market value rent for significantly similar units that have undergone a facelift or updating is $991.01**.** I accept the Landlord's submission that the significantly similar units would demand a higher market value rent than the Tenants' unit of approximately $100.00 per month after considering the updating they have undergone. This would drop the median market value rent down to **$891.01** for units, such as the Tenants', who have not undergone updating.

B. **Similar units -** Notwithstanding the Tenants' arguments that the following samples are not similar enough because they are apartment style rental units and not townhouses; I accept the Landlord's argument that the statutory requirement allows me to consider similarities of these units as long as I take into consideration the differences between townhouses and apartments when looking at the market rent in comparison to the Tenants' current rent.

Similar Units

Rental Unit compared to Tenants 2 bed 1 bath 805 sq ft	**Additional Similarities than what is noted above**	**Differences**	**Rent**
2033 Triumph St 2 bed 1 bath 860 sq ft	2 bed, 1 bath, similar size (55 more sq ft), parking, directly across the street from Tenants' unit – exact neighbourhood , similar kitchen	Heat included, no pets, no smoking, a little larger	$1,550
Oxford St. @N Garden 2 bed 1 bath 800 sq ft	**Kitchen identical to Tenants', bath decor very similar, above ground, built 1977, similar size**	**1 level not 2, no pets, no smoking, busier streets,**	**$1,250**
2225 Triumph 2 bed 1 bath 1000 sq ft	Built 1978, above ground, only 1 ½ blocks away	No mention of parking, about 200 sq ft larger	$1,700
101,2254 McGill 1 bath (no mention of size or # of bedrooms	Kitchen appears to be similar age, above ground	Size unknown, $20.00 monthly parking charge	$1,250

When considering the similar units, I accept the Landlord's assertion that it is reasonable to conclude that units of similar age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community, that have less square footage and have less desirable qualities such as paid parking, no private fenced yard, and only one common entrance into the unit, would demand a lower market value rent than units located in the Tenants' complex which has two entrances, two floors, and a private fenced yard.

When calculating the median market value rent of the similar units listed above I did not consider the unit being rented for $1,700.00 as this unit is significantly larger, nor did I include the last unit rented at $1,250.00 per month as there is no indication of the number of bedrooms or the size of this unit. Furthermore, I took into account that the first unit listed at $1,550.00 was 55 sq ft larger, and while it had numerous other similarities, it was not similar enough to utilize in my calculation. Therefore, I considered only one of the above units as being similar as it was a 2 bed, 1 bath, unit almost the same size (5 sq ft difference), identical kitchen, very similar bath decor, above ground unit built in 1977. I accept that it is reasonable to conclude that the differences of being an apartment not a townhouse and being closer to busier streets decrease the market value and not increase it. Therefore I considered the median rent of similar units to be **$1,250.00**.

To determine the market value rent of the Tenants' unit I calculated the median rate between (A) significantly similar units $891.01 and (b) similar units $1,250.00, which is **$1,070.50.**

As per the aforementioned, I find the 2012 current market value rent of the Tenants' unit to be **$1,070.50**, pursuant to the statutory requirements set out by the Regulation**.** The Landlords have filed seeking an additional rent increase bringing the Tenants' rent within market value and increasing it to $900.00. Accordingly, I find the Landlord has been successful with their application.

Tenants' application

Findings pertaining to the Landlord's application for an additional rent increase have been made and listed above. Accordingly I dismiss the Tenants' request to dismiss the Landlord's application.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7

and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove all of the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Tenants seek damages in the amount of $5,000.00 under the tort of Abuse of Process. Notwithstanding the Tenants' argument that the Landlord breached "the spirit and purpose of section 43 of the Act" and there acknowledgement that there has been no actual breach of the Act, I found above that the Landlord made application for an additional rent increase in compliance with section 43 of the Act. Accordingly, I find there to be insufficient evidence to prove the Landlord breached the Act or abused the process. Therefore, I find the Tenants did not meet the burden of proof for damage or loss, as listed above, and I dismiss their claim for monetary compensation.

The Tenants seek a finding that the Landlord has submitted false or misleading evidence in support of the Landlord's application. The Landlord refuted this allegation by pointing out they made no willful attempt to mislead or provide false information.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Tenants have the burden to prove the Landlord willfully provided false or misleading evidence. Accordingly, the arguments put forth by the Tenants are disputed by the Landlord and I find the disputed evidence insufficient to meet the Tenants' burden of proof and their request for a finding against the Landlord is dismissed.

This tribunal was convened to hear matters pertaining to the tenancy agreement between the Landlord and Tenants as governed under the *Residential Tenancy Act.* Accordingly, no findings of fact or law have been made pertaining to the Tenants' request for injunctive relief in the nature of mandamus or prohibition to have the Landlord comply with an operating agreement they may or may not have with a third party, for want of jurisdiction.

The Tenants withdrew their request for injunctive relief in the nature of mandamus or prohibition against the third party who entered into an operating agreement with the Landlord.

The Tenants have not been successful with their application; therefore I find they must bear the burden of their own costs.

Conclusion

I decline to make findings of fact or law pertaining to the Tenants' request for injunctive relief in the nature of mandamus or prohibition to have the Landlord comply with an operating agreement they may or may not have with a third party, for want of jurisdiction.

The balance of the Tenants' application has been dismissed.

The Landlord is hereby granted an ORDER allowing an additional rent increase raising the Tenants' rent from the 2012 legislated increased amount of $726.97 to $900.00. I further Order this increase to be implemented in two phases allowing for 2013 legislative increase amount in order to limit the rent from falling further below the market value, as follows:

Upon 3 Months Notice of Rent Increase for 2012:	
Current Rent =	$697.00
Annual Increase 4.3%	$29.97
RTB Order- Phased in Increase	$86.52
Total rent payable effective 2012	**$813.49**

Effective twelve months later and upon 3 months Notice in 2013:	
Current Rent =	$813.49
RTB Order- Phased in Increase	$86.51
SUBTOTAL	**$900.00**
Plus Annual Increase *TBD (% x $900.00)	$XXXX
Total rent payable effective 2013	**$TBD**

TBD= To be determined once the legislative rent increase amount is announced.

The Landlord is required to serve the Tenants with three months notice of rent increase, on the prescribed form, indicating the amounts as listed above if they wish to proceed with implementing this Order.

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 25, 2012.

Residential Tenancy Branch