



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

Dispute Codes: O

### Introduction

This hearing dealt with an application by the landlord for an additional rent increase beyond the percentage allowed by the regulation. The landlord requested an order permitting additional rent increase for the reasons below:

1. Based on the fact that that the rent for 2 of the 4 rental units in the building are significantly lower than the rent payable for other rental units similar to and in the same geographic area as the rental unit in question; and
2. Based on the fact that the landlord completed significant repairs and incurred expenditures that could not be foreseen under reasonable circumstances.

The landlord and tenants appeared and gave affirmed testimony during the hearing.

### Issue(s) to be Decided

- Is an additional rent increase justified based on rent being significantly lower than other comparable units?
- Is an additional rent increase justified based on significant unforeseeable repair costs?

### Background and Evidence

The building is a strata containing 4 separate units and the landlord seeks an additional rent increase for two of these four units. The two units under dispute are each currently rented at \$852.00 per month, at which they had remained since the rent was increased the allowable amount on July 1, 2011.

The permitted rent increase under the Act for 2012 would normally be limited to 4.3%, or \$36.63, thereby entitling the landlord, with valid notification, to set the new rent at \$888.63 effective July 1, 2012. However, the landlord's application seeks an order to increase the rent for these two units from \$852.00 to \$1,000.00 per month, implementing an increase of 17.37%.

Besides the units that are the subject of the requested rent increase, there are two other units in the same building. One has recently been rented at \$1,200.00 per month. It had previously been rented for \$1,400.00 per month since 2009. The other unit has been recently been rented since March 2012 for \$1,400.00 per month. Prior to the most

recent tenancy, the rate for this unit had been \$1,000.00 per month set in 2009. The landlord is not seeking an additional increase for either of these two higher-priced units.

With respect to the landlord's submission that the rent for the two affected rental units are significantly lower than the rent for other similar rental units in the same geographic area, the landlord presented 5 comparables to support this position.

Two of the comparables put forth by the landlord were the other two units in the same complex, as described above. The rent for these two units had apparently been adjusted upwards by the landlord between tenancies. In addition to presenting the two units contained in the same building, the landlord also identified units located in two nearby duplex buildings that evidently have similar layouts and amenities. The landlord pointed out that the rents for these units reportedly ranged in price from \$1,055.00 to \$1,400.00 per month. The landlord testified that the property manager supplied this data and she was not sure whether or not utilities were included in the rents.

The landlord also included, as a comparable, a four-plex that was not comparable, having fewer amenities, such as only one bathroom, that featured rents ranging from \$850.00 to \$1,000.00 per month.

The tenant disputed that the examples given would support justifying higher rents for their units. The tenant testified that one of the units located in the same building as theirs, which was used as a comparable, was not equivalent as it had been renovated with new flooring. The tenant pointed out that the landlord was in control of setting what rental rates would be assigned for the units in the same complex and had merely adjusted the rent between tenancies to a higher rate. The tenant stated that, after one of these units in the building became vacant, the landlord had difficulty renting it, resulting in a vacancy of several months and the price had to be lowered from \$1,400.00 to \$1,200.00 per month.

With respect to the other units used as comparables, the tenant stated that they had never been inside these units and did not have any first-hand knowledge about whether they were valid as comparable units. The tenant stated that there was insufficient data supplied by the landlord to establish that the units used as comparables were similar to theirs and they believe that this should affect the weight assigned to this evidence.

The landlord's second ground in seeking an additional rent increase, that being the fact that that significant repairs had to be done that could not have been foreseen under reasonable circumstances, was also disputed by the tenants..

The landlord submitted an invoice for a roof replacement for \$19,633.60. The landlord stated that the roof was only 18 years old and the replacement was an unforeseeable expenditure that justified increasing the rent beyond the allowable amount.

The tenant did not agree that the roof replacement was an extraordinary unexpected expense and believed that the landlord should have been aware of the condition of the roof, had the landlord practiced due diligence given the advanced age of the roof, which was known by the landlord when the building was purchased.

### Analysis

The Residential Tenancy Act allows a landlord to apply for approval of a rent increase in an amount greater than the basic Annual Rent Increase and the policy intent is to allow the landlord to apply for dispute resolution only in “extraordinary” situations.

Residential Tenancy Regulation 4 sets out the limited grounds for such an application. A landlord may apply for an additional rent increase under section 23 of the Act if one or more of the following apply:

(a) after the allowable 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;

The Residential Tenancy Guidelines state that the landlord has the burden of proof and is responsible to verify that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area.

According to the Guidelines, if a landlord wishes to compare the units in the subject building to rental units in other buildings in the geographic area, the landlord will need to provide sufficient evidence, not only of rents charged in the other buildings, but also evidence showing that the state of the rental units and the amenities provided for in the tenancy agreements are comparable.

Having reviewed the evidence, I find that the landlord provided the landlord's own written testimony attesting that rent currently paid in other comparable units from the same geographical area, is significantly lower than the two units under dispute.

I find that the landlord does have valid first-hand knowledge about the rents and amenities featured other two units in the same building owned by this same landlord . However, I find that the two other units contained in the same building are not suitable as comparisons because the landlord has control over what rental rate will be charged

for these units and had the ability to set the rents at any level desired, for new tenancies. I also accept that improvements were done to one of these two units.

With respect to the other comparables presented by the landlord, I find that, other than the landlord's own testimonial data placed on a chart, the landlord did not submit any other independent evidentiary support to verify the purported rents.

In addition, the landlord did not furnish sufficient verified details with respect to what amenities, facilities and services, such as utilities, are included in the other rents. I find that the landlord's data was challenged by the tenants who took the position that the other units presented were not likely comparable to theirs and the tenants also felt that the landlord had not provided sufficient data.

I find that, where one party provides a version of facts or events in one way and the other party provides an equally probable version of facts, this conflicting testimony may be seen as quashing each another. When this occurs, in the absence of additional documentary evidence to add evidentiary weight to support their position, then the party carrying the burden of proof is not likely to succeed. The reason is because the positions of the two parties are not on equal ground being that one carries the added burden of proving their case. In this instance I find that the onus is solely on the landlord to adequately prove that the additional rent increase should be allowed based on the evidence provided. I find that the landlord's evidence was not adequate to meet the landlord's burden of proof.

Given the above, I find that the additional rent increase sought by the landlord cannot be granted based on the alleged ground that rent for these two rental units are significantly lower than the rent payable for other rental units that are similar to them , and in the same geographic area.

In regard to the other ground upon which the landlord's application is based, that being the fact that significant unforeseen repairs were completed and expenditures incurred that could not have been anticipated under reasonable circumstances, I find that to justify an increase, the landlord must meet the criteria below:

- The landlord completed significant repairs or renovations
- The repairs could not have been foreseen under reasonable circumstances , and
- The repairs will not recur within a time period that is reasonable.

I find that I can fully accept that the landlord was required to complete a roof replacement and that this qualified as a significant repair. I also accept that the

landlord did incur the cost claimed. Finally, I am able to accept that the repair will not recur in the reasonable future.

However, I find that the tenant's testimony that the need for this repair was unforeseeable and should have been anticipated by the landlord under reasonable circumstances, does have merit particularly given the age of the existing roof.

I find that all items and finishes of a rental unit have a limited useful life and this is recognized in Residential Tenancy Policy Guideline number 40 which lists the estimated useful life of interior and exterior finishes, items and fixtures. The Guidelines set the average useful life of a sloped roof at 15 years and the average useful life of a flat roof at 20 years and the average life of roof repairs to be 5 years. I find that the landlord would have a reasonable expectation that this roof would need to be replaced at some point as a routine part of building maintenance. I find that the probability of when this may be necessary could likely be determined through the due diligence of regular inspections of the building by the landlord.

Based on my determination that the repairs could have been foreseen under reasonable circumstances, I find that there is no valid basis to grant an order permitting the landlord to impose an additional rent increase based on the costs of significant unexpected repairs.

### Conclusion

Based on the evidence before me, I find that the landlord has not successfully met the criteria to justify an additional rent increase under either of the grounds put forth. I hereby dismiss the landlord's application for an additional rent increase in its entirety without leave.

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: July 17, 2012.

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Residential Tenancy Branch