



# 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 Dispute Resolution by the Landlord to obtain an Order to allow an additional rent increase because the Tenant's current rent plus the allowable 4.3% increase is lower than comparable units or sites.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

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. Should the Landlord be granted an Order to allow an additional rent increase?

### Background and Evidence

The parties agreed that they currently have a month to month tenancy that began on December 1, 2006. Rent is payable on the first of each month in the amount of \$825.00 and the Tenant paid \$412.50 as the security deposit. The rent has remained at \$825.00 per month since the onset of the tenancy.

The Landlord submitted copies of 9 advertisements which were printed off of the internet which he stated were samples of similar units to that of the Tenant's unit. He confirmed that he is seeking a total of 18.18% increase to bring the Tenant's current rent of \$825.00 up to \$975.00 per month.

The Landlord advised that the Tenant's unit is located in a 100 year old building that was originally built as a single family home and was turned into a multi unit complex with eight units sometime in the late 1950's or early 1960's. There are some small bachelor suites, 1 bedroom units, and one 2 bedroom unit located in the basement. The Tenant has a 1 bedroom unit on the main floor which is above ground with windows on three sides. He noted that as tenants move out he usually increases the rent for the new tenants. Currently there is one family who has resided at the building longer than the Tenant and they agreed to a 20 % rent increase whereas the Tenant did not agree to her proposed rent increase.

The Landlord asserted that his evidence provided samples of similar units that are: currently for rent in the same neighbourhood and; which mostly do not allow pets; however, this Tenant is allowed pets which is an added feature. He noted that the average rent for the sample units is \$1,230.00 which was calculated by adding the nine rents and dividing them by nine. He acknowledged that the Tenant's rent has never been increased. He stated that he is not requesting that the rent be raised to the average of \$1,230.00 rather he is seeking only \$975.00 because he has taken the Tenant's current financial situation into consideration.

The Tenant submitted evidence which included numerous original photographs and 37 pages which included printed advertisements, photos, and her typed statement. The Tenant grouped her evidence into the following five sections: (A) direct responses to the examples provided by the Landlord; (B) photos and descriptions of the building in which the Tenant's unit exists; (C) examples of units for rent that are similar to the type of examples provided by the Landlord which are currently advertised for rents that are similar to the Tenant's rent; (D) examples with photos of two units that are within two blocks of the Tenant's unit; and the Tenant's written summary.

In summary the Tenant asserted that the Landlord's examples should not be considered as comparables because her unit is not the same as an apartment or a basement suite. She submitted that she provided similar examples of apartments and basement suites to prove that there are some available in her area for a much lower rent than the examples provided by the Landlord.

The Tenant advised that she went to each address provided as examples by the Landlord and noted how her photographic evidence supports that these units have a higher standard of maintenance; have better kept exterior and common areas; and provided different amenities than her unit such as balconies, private storage, bike, storage, newer floors, in suite laundry, underground parking, dishwashers and a garberator. She argued that because her building used to be a single family dwelling the

electrical system is connected throughout various units so if a tenant in another suite blows a breaker her electricity is affected; whereas in apartments they have separate electrical panels. She also noted that these units often have onsite caretakers, which her unit does not, and they are not all located on a busy street as her unit is.

When describing her unit the Tenant pointed to the photos provided in her evidence and stated that her building has rotting wood, peeling paint, walkways which are not level, dirty stairs, lawn needing upkeep, and the interior common areas and washroom display peeling paint, mold, exposed nails, old frayed carpet, and the overall area is dirty. As for location, the Tenant submitted that her unit is located on a very busy street which is also used as the emergency corridor so there are sirens and emergency vehicles on this street 24 hours per day.

The Tenant asserted that there were two buildings in her neighbourhood that could be considered comparables as they are located within two blocks of her unit. She advised that she spoke with the managers of both buildings and was allowed to photograph the exterior and interior common areas. She pointed to these photos in evidence and noted that these two buildings are of similar age, were built as single family homes and changed into multi unit buildings with bachelor and one bedroom suites. She noted that the photos support that these buildings are in a much better state of upkeep and cleanliness than her building. She said she was told that rent is currently charged between \$725.00 and \$900.00 for a 1 bedroom unit in these comparable buildings which she asserts proves that her rent of \$825.00 per month is reasonable.

The Tenant argued that at the outset of her tenancy the Landlord verbally agreed that she would never have a rent increase as long as she resided there. She stated that this agreement was made in exchange for her assisting the Landlord by putting up notices and delivering messages to other tenants and for letting contractors or workers into the building.

The Landlord denied having a verbal agreement with the Tenant about never raising her rent. He agreed that the Tenant's unit does not really compare to apartment buildings or basement suites. He noted that the Tenant's unit is quite large, 750 sq ft, with a full kitchen and windows on three sides of the building. He argued that the Tenant's examples were of much smaller units and most did not allow pets. He confirmed that the building is old and does require a fair amount of maintenance however he has recently had some major repairs completed such as the boiler and a new roof. He argued that the majority of the Tenant's examples cannot be used as comparables because they are much smaller and most do not allow pets; therefore he is of the opinion that the proposed increase is justified

In closing, the Tenant argued that the Landlord's examples cannot be used as comparables as they are not on a busy street and have numerous amenities that her unit does not have such as: balcony, bike storage, dishwasher, garberator, individual storage, and are all much cleaner and better maintained. She argued that although the two buildings she submitted within two blocks of her unit may be considered comparable it must be noted that they are in much better condition and charge similar rents to what she is currently paying.

### Analysis

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.

The burden of proof of the 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.

In this case the current monthly rent is \$825.00 and after the 2012 rent increase of 4.3% allowed under the Regulation is applied the monthly rent would be **\$860.47**.

When determining the existence of exceptional circumstances it is not sufficient for a landlord to base their claim that the rental unit(s) has a significantly lower rent that results simply from the landlord's recent success at renting out similar units at a higher rate. 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. It is not exceptional circumstances if a landlord fails to implement an annual allowable rent increase.

In this case the Tenant has never been issued a rent increase and has argued that the Landlord made a verbal agreement with her that rent would never be increased as long as she resided there. The Landlord has denied entering into this verbal agreement.

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 Tenant has argued the existence of a verbal agreement which the Landlord denied. Accordingly, the only evidence before me was disputed verbal testimony which I find insufficient to prove the existence of such an agreement.

As per the foregoing, the Tenant's rent has never been increased simply because the Landlord has made no effort to increase the rent. Therefore, I find no basis to indicate rent has been kept artificially low nor is there evidence to prove that the circumstances in this case are exceptional.

For examples of similar units the Landlord relies on nine samples of apartments and basement suites recently advertised for rent. The Landlord submitted that these units are located within the Tenant's neighbourhood however there is no evidence to indicate their proximity to the Tenant's unit or their proximity to any prominent landscape features such as parks, shopping mall, or water. Although some of the listings indicate the units are close to the water, there is insufficient evidence to support if the Tenant's unit is as close.

Notwithstanding the Landlord's submission that the Tenant's unit is approximately 750 sq feet and is larger than some of the examples she submitted, I accept the Tenant's argument that the Landlord's evidence did not include units that could be considered similar or comparable to her unit as they were apartments and/or basements suites. I further accept the Tenant's submissions that although the two buildings which are located within two blocks of her unit are of similar construction or structure (older single family homes turned into multi unit buildings), they are much cleaner and are of a standard of repair and maintenance that exceeds that of the building in which her unit is located.

Based on the aforementioned, I find there to be insufficient evidence to meet the high standard of proof required to prove the presence of exceptional circumstance or that the Tenant's rent is lower than comparable units which are located in the same geographic area. Accordingly, I find the Landlord's application must fail.

### Conclusion

The Landlord has not met the burden of proof required for an additional rent increase. Therefore I DISMISS the Landlord's application.

The Landlord is at liberty to issue the required 3 month notice, on the prescribed form, if he wishes to increase the Tenant's rent in accordance with the legislated amount for 2012 at 4.3 %.

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: August 09, 2012.

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Residential Tenancy Branch