



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord October 29, 2012 to obtain an Order to allow an additional rent increase.

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 and respond to each other's testimony. 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

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

### Background and Evidence

The parties confirmed that the Tenant has occupied the unit with his former spouse since August 1, 1993. Rent started at \$850.00 per month and was increased to \$875.00 as of March 1, 1999. The Tenant remained in the unit and entered into a subsequent tenancy which began on April 1, 2000 for \$875.00 per month. The Rent has been increased three times since and the current monthly rent is payable in the amount of \$1,076.40. The original security deposit of \$450.00 from August 1, 1993, was transferred to the existing tenancy.

The Landlord has applied for an additional rent increase for the reason that the Tenant's rent is below market value. She is seeking to raise the Tenant's rent from \$1,076.40 to \$1,500.00 per month. The Landlord submitted 74 pages of documentary evidence which

included, among other things, copies of: her written statement; advertisements printed from the internet of rental units; maps of the area; a schedule of rents for the fourplex; several tenancy agreements for other units in the complex; cost increases from 2002 to 2012; the floor plan of the fourplex; a record of the Tenant's rent increases; and a list of improvements to the rental unit complex since the Landlord purchased the property.

The Tenant submitted 11 pages of documentary evidence which included, among other things, copies of: his identification; a pay stub; and internet advertisements for rental units.

The Landlord advised that the rental fourplex is approximately thirty years old and is located in a prestigious, highly sought after, subdivision which has underground services, a large lot and an open parking pad area. The property is within walking distance to an elementary school and a historical village. The rental unit is an upper unit in a fourplex (2 upper and 2 lower units). The Tenant's unit is 1,318 sq, with 3 bedrooms, 2 full baths, has an open parking area, and has access to the shared laundry. The tenancy agreement allows for pets and rent does not include utilities.

The Landlord stated that she provided samples of units that were primarily located in the same geographic area, are either a duplex or fourplex unit, and are 3 bedroom units with similar facilities. She noted that she provided information pertaining to two units that were significantly similar to the Tenant's unit as follows:

- 1) The identical unit next door in the same fourplex which has been rented for several years at \$1,500.00 per month and
- 2) A unit down the street which is drawing \$1,420.00 per month. The owner provided the information via e-mail to the Landlord.

The Landlord stated the following were the reasons why the Tenant was not issued rent increases for several years:

- The Tenant had made the Landlord aware of his divorce and his financial constraints during that time so the Landlord was being accommodating by not increasing his rent and adding to his financial strain; and
- Two years ago the Tenant informed the Landlord the he was getting married to a women with two children and the rental unit was not large enough so he would eventually be giving notice to end his tenancy; and

- The Land waited for the notice to end tenancy but the Tenant never ended the tenancy so she attempted to discuss a rent increase with the Tenant but he never responded to her requests.

The Tenant advised the unit was built in 1978. He confirmed that the two most important or significant comparables provided by the Landlord were the unit next door and the one down the street as the Landlord stated. He argued that the unit next door commands a higher rent because it has been updated with hardwood in the entrance and recent paint and other upgrades. The unit down the street is only seeking \$1,420.00 for the upstairs unit and a much lower rent of \$900.00 in the downstairs unit. He was not able to get inside either unit to see the actual condition however he said the amount being charged for rent should explain the condition of the inside of the unit.

The Tenant browsed through the rest of the Landlord's comparables and noted in cases where there were garages, different flooring, upgrades in the appliances, or utilities included. He argued that his carpet is old and needs replacing and his unit has only been painted once in twenty years.

The Landlord pointed to the list of improvements in evidence which she had completed at the rental property since owning it. She confirmed that she has upgraded the other units while they were vacant and that the Tenant's carpet is old. However, he has never requested upgrades be completed to his unit and it is packed so full of possessions that there is no way they could work around them to install new carpet. Throughout his tenancy she had completed repairs when he asked, for example, she installed a new dishwasher, taps, and painted the unit in 2002. She argued that he only occupies the unit part time and that the upgrades are just cosmetic and do not change the use of the unit.

Upon review of the Tenant's evidence he confirmed that most of his comparables were two bedroom units and not three bedrooms. He said he submitted two bedroom samples because the Landlord did. He reviewed the three bedroom samples he provided and stated one was only 1 mile north east for \$950.00 per month and the other was about 2 ½ miles east of his rental unit and only \$1,100.00.

The Landlord refuted the Tenant's statement and argued his two samples of 3 bedroom units were nowhere near his unit and they were not units in a fourplex. One was considerably north, about three miles, while the other was 3 miles north and 3 miles east and both are in a completely different neighbourhood.

In closing, the Tenant stated that he would not be able to afford the rental unit if the rent was increased. The Landlord submitted that \$1,500.00 is a fair rent and is not excessive, as supported by the fact that the unit next door has been rented at \$1,500.00 for several years during different tenancies.

### Analysis

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

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 to prove 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 \$1,076.40 and after applying the 2013 rent increase of 3.8% allowed under the Regulation the Tenants' monthly rent will be **\$1,117.30**.

**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 rent was ultimately kept artificially low in part, due to the fact the Tenant has occupied the unit for over nineteen years. I accept the Landlord's submission that she did not want to increase the rent substantially when the Tenant entered into a new tenancy in 2000 because the Tenant was suffering financial constraints after going through his divorce.

The evidence indicates the Tenant was issued only four rent increases during the last twelve years bringing the rent from \$875.00 to \$1,076.40. I accept the evidence that the Landlord attempted to work with the Tenant to increase the rent over the past two years but that he continued to stall by first stating he was getting remarried, then stating he was going to be providing her with notice to end the tenancy, and more recently by avoiding to respond to her requests to discuss an increase.

After consideration of the aforementioned, I find there is exceptional circumstances in this case which have kept the Tenant's rent lower than market value.

**Similar units** – In determining market value rent section 23 (1) of the Regulation stipulates that I must consider if the Tenant's projected 2013 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.

I find that in order to determine market value rent of the Tenant's 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 (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 and (c) a unit that has undergone cosmetic renovations or updates would command a higher market rent than a unit that has had no updating or renovations.

**Same geographic area** – The Landlord disputed the sampling of 3 bedroom units provided by the Tenant and argued that they were not in the same geographic area as they were “considerably north and north east of the prestigious subdivision” where the Tenant's unit is located. Therefore, in determining the market value rent I have considered the sampling of units provided by the Landlord and accept the undisputed submission that they were all within the same geographic area as the Tenant's unit, with two units being in the immediate area.

### **Calculation of Market Value Rent**

I favored the evidence of the Landlord that the rent was below market value over the Tenant's argument that the value of his tenancy is diminished far below market value because his unit has not been upgraded. I favored the Landlord's evidence in part due to the following: (1) the Tenant has occupied this property for more than nineteen years; (2) the Landlord has conducted repairs when requested by the Tenant; (3) The Tenant never asked for the carpet to be replaced; and (4) the upgrades referred to by the

Tenant are all cosmetic. I accept that a rental unit that has had recent cosmetic upgrades may demand a slightly higher rent, that the upgrades themselves do not change the use or occupation of a rental unit, and cosmetic upgrades on their own would not demand a rent that was 39.5% higher.

After consideration of the above definitions, the arguments put forth by each party, and a review of the evidence submitted as samples to be compared with the Tenant's unit, I found sample market value rents in the same geographic area to range from \$1,420.00 to \$1,700.00. The median rent for these sample units is \$1,560.00. I did not consider averaging the rents as the higher and lower rents would skew the value. I note that there were differences noted for each unit that would command either a higher or lower rent such as cosmetic upgrades or less bathrooms and smaller units.

When considering similarities and differences of sample units, I find the following rental unit to be significantly similar to the Tenant's unit, with noted differences to be considered when determining the Tenant's market value rent.

**Significantly similar** - The sample unit located in the same fourplex has rented for \$1,500.00 per month since May 01, 2010 and would be \$1,557.00 after the 2013 allowable rent increase. It is a mirrored image of the Tenant's unit; it is the exact same size, 1,318 sq feet; has 3 bedrooms, 2 bathrooms; is of the same age and era; in the same geographic location, has the same yard; same parking; and the tenants are required to pay utilities. The undisputed differences relate to cosmetic face lifts or updating such as painting and flooring.

I accept the Landlord's submission that the significantly similar unit has been rented at market value for over two years, without increase, because of the desirable location and not due only to the cosmetic upgrades. Had this unit had annual rent increases the 2013 rent would be \$1,661.30.

**Similar units** - Notwithstanding the Tenant's arguments that the other sample unit is not similar enough because it is in an upper / lower duplex and because the lower suite rents for only \$900.00; the Tenant agreed with the Landlord that this was in the exact same geographic area and was of the same character and age.

I find the statutory requirement allows me to consider similarities of this type of unit as long as I take into consideration the differences between an upper / lower duplex and a fourplex when looking at the market rent in comparison to the Tenants' current rent. The significant differences in this sample are: (a) there are only two rental suites (upper / lower) which some may find more desirable than the Tenant's unit which has four rental

suites; (b) this sample upper unit is rented for \$1,420.00 per month and the 2013 rent would be \$1,473.96 and commands a lower rent as this unit is over 100 sq ft smaller than the Tenant's unit and it only has 1 ½ baths instead of two full baths; and (c) the lower unit which is rented for \$900.00 is a 2 bed unit and only 900 sq ft which is almost 350 sq ft smaller. I noted that the lower units are not similar enough and therefore, cannot be considered as comparables for market value rent with an upper unit.

In adjusting current comparable rents to accommodate the above differences I considered that units which had undergone recent cosmetic renovations would command a higher rent of approximately \$150.00 per month; therefore reducing the 2013 rent of the significantly similar unit to \$1,407.00 (\$1,557.00 - \$150.00).

In determining the market value rent I did not use the higher rent for the significantly similar unit of \$1,661.30, which would have resulted from annual rent increases from 2011 onward, because there was insufficient evidence to prove the market would demand the higher rent for these units.

Then I considered that smaller units with only 1 ½ bath of the same character, age, and in the same geographic area, would demand a lower rent of approximately \$75.00 per month; therefore in relation to the Tenant's unit it would bring the value up to \$1,548.96 per month (\$1,473.96 + \$75.00).

To determine the 2013 market value rent of the Tenant's unit I calculated the median rate between the adjusted rents of (A) significantly similar units \$1407.00 and (b) similar units \$1,548.96, which is **\$1,477.98**.

Based on the foregoing considerations I find the Landlord has been successful in proving the Tenant's projected 2013 rent to be below market value.

### Conclusion

The Landlord is hereby granted an ORDER allowing an additional rent increase raising the Tenant's 2013 rent from the legislated allowable increased amount of \$1,117.30 to **\$1,477.98**.

The Landlord is required to serve the Tenant 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: December 27, 2012.

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Residential Tenancy Branch