



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ARI

### Preliminary Issues

Upon review of the application for additional rent increase the Landlord requested to amend her application to reduce the amount of rent increase she was seeking to \$1,400.00 per month from \$1,500.00 per month. She stated that she completed the application indicating that \$1,500.00 was market value rent, not the rent increase they were seeking.

Based on the submissions of the Landlord I find that the request to amend the application would not prejudice the Tenant, rather it would benefit him. Therefore, I grant the amendment pursuant to section section 64 (3)(c) of the *Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 30, 2012, by the Landlord to obtain authorization for an additional rent increase.

The hearing convened on December 20, 2012 at 1:00 for ten minutes and was adjourned to allow the Tenant an opportunity to submit evidence in response to the Landlord's claim. The hearing reconvened for the present session on February 08, 2013 at 9:00 a.m. for sixty minutes.

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

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

Background and Evidence

The Landlord submitted 17 pages of documentary evidence which included, among other things, copies of: a spreadsheet listing 13 rental units and the amount being charged for rent; and advertisements relating to the rental units listed on the spreadsheet.

The Tenant submitted two packages of documentary evidence consisting of 24 and 47 pages which included, among other things, copies of: a spreadsheet listing 21 rental units and advertisements of rental units printed from the internet.

The parties agreed that the Tenant has occupied the rental unit since December 1, 2001, under the following two consecutive tenancy agreements:

- 1) A fixed term agreement that began on December 1, 2001 and switched to a month to month tenancy agreement after November 30, 2002 for the monthly rent of \$900.00. The Tenant paid a security deposit of \$450.00 on November 21, 2001.
- 2) A fixed term agreement that began on November 1, 2008 that switched to a month to month tenancy after October 31, 2009 with the following rent schedule:
  - a. November 1, 2009 – January 31, 2009 at \$985.00 per month
  - b. February 1, 2009 – October 31, 2009 at \$1,021.00 per month

Then in September 2010 the Tenant was issued a notice of rent increase raising his rent from \$1,021.00 to the current rent of \$1,044.00 per month effective February 1, 2011.

The rental property is an apartment located on the 9<sup>th</sup> floor of a 29 story strata building that has 238 apartments. The building is located in the downtown core of Vancouver and was built in 2000. The unit is approximately 540 sq ft, and has one bedroom, one bathroom, in-suite laundry, one parking stall, 24 hour security and concierge service, and access to the on sight pool and gym. All appliances (washer, dryer, fridge, stove, dishwasher, and microwave) are included. The Tenant rented the unit unfurnished and is responsible to pay the electricity, cable, and telephone utilities.

The Landlord submitted that: the tenancy includes access to storage; the Tenant was the first person to occupy the new unit; and the Landlord pays the monthly strata fees. The Landlord stated that the building was in the down town core in the Yale town area.

The Landlord advised that she has managed this unit since September 2012. Upon taking over the unit she met with the Tenant and conducted an inspection during which there were no issues raised and nothing functionally wrong with the unit. The owner purchased the unit new and has only had one other property management company look after the unit from 2000 to August 2012.

The Landlord submitted that the additional rent increase should be granted for the following reasons: (a) it has been a long term tenancy of over 12 years; (b) rent has been kept low and only increased a couple of times even though the owner had requested that her previous property manager keep rent at market value; (c) strata fees have increased from \$125.00 to \$270.00 per month; (d) and property taxes have increased to \$1,216.00, the strata fees and property taxes amount to one third of the rent; and (e) the owner had to pay \$2,083 into the strata fund for the external renewal fund.

The Landlord acknowledged that she did not make an application for a rent increase for any other reason other than the rent is lower than market value. She also confirmed that she did not indicate anywhere in her application or evidence that she would be supporting her request for a rent increase based on increased operating costs.

The Landlord pointed to her documentary evidence and noted that the comparable units were advertised for rent at the time she made her application. She stated that the most similar units are the three that were advertised in the Tenant's building. She acknowledged that two are being rented fully furnished and include utilities however those rents are substantially higher at \$1,895 and \$2,000 per month than the \$1,400.00 they are seeking. The other unit is similar but larger at 605 sq ft, is not furnished, but is \$1,495.00 per month.

The Landlord submitted that the rest of her comparables are within a 2 km radius and all are above \$1,500.00 except for one unit that is \$1,395.00 which is smaller at 527 sq ft. The Landlord acknowledged that she has not been inside any of the comparable units and has only seen photos if posted on the advertisement. She argued that the Tenant's rent has been kept low for several years allowing him to save thousands of dollars over the twelve year rental period.

The Tenant advised that his unit does not include storage and that he was not the first person to occupy the rental unit as there was a tenant prior to him. He disputes the rent was kept low and argued that he assumed that the professional property management company was doing their job and increasing his rent based on market values. He in turn did what was required and provided the management company twelve post dated

cheques each year and has been a good tenant. He recalls that he may have signed annual tenancy agreements but did not have those records in front of him during this proceeding. He stated that he plans his expenses for the year based on his rent and cost of living increases. He argued that it would be unfair to increase his rent all at once when the property management company should have been increasing his rent gradually over the years and have on occasion.

In reviewing the comparable units provided by the Landlord he pointed out that units on lower floors would be cheaper than higher units because of the noise levels. He stated that his unit is on a busy major street that has a lot of street noise from traffic and people screaming all night long. He acknowledged that noise comes with city living and should be expected but that the noise would be at a lower volume for the higher units. He noted that there are several clubs and night life around and stated that units within a 2 km radius would have similar access to geographic amenities. His unit has views of the downtown core while some of the Landlord's samples would have views of Yale town and the bay.

The Tenant argued that it would be difficult to find an exact match to his unit unless it was located on his floor. He pointed to his evidence and noted how those comparables have rents ranging from \$800.00 to \$1,095.00. Specifically he noted that one unit was \$995.00 and included all utilities and a view of the bay. Another had access to a pool and was still rented for a lower amount.

In closing the Landlord stated that the Tenant has been a very good tenant with no issues. She argued that 13 of the 21 comparables submitted by the Tenant are located in the west end and not the downtown core, many do not have the size listed, 9 do not have in suite laundry, 5 do not include parking, and some are in buildings that are over 30 years old. She argued that she provided 3 listings of significantly similar units in the exact same area as they are in the same building and their rent ranges from \$1,495.00 to \$2,000.00.

The Tenant disputed the use of the units in his building arguing that furnished units cannot be used as comparables because there is no way of knowing the quality of and value placed on the furnishings. Furthermore they include the cost of utilities which his rent does not. Also, he should not have to suffer a large increase simply because a professional property manager did not do their job and increase his rent in accordance with the annual cost of living.

## Analysis

The Landlord confirmed that she did not make application for an additional rent increase on the grounds of increased operating costs and that she did not provide the Tenant information about increased costs prior to her oral submission. Accordingly, I will not consider the evidence relating to increased costs as it does not pertain to this application and the Tenant was not privy to that information in time to prepare a response.

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 \$1,044.00 and after the 2013 rent increase of 3.8% allowed under the Regulation is applied the monthly rent would be **\$1,083.67**.

When determining the existence of exceptional circumstances it is not sufficient for a landlord to base their claim on the argument that the rental unit has a significantly lower

rent that results simply from the 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 occupied the rental unit since December 2001, (over 12 years). The unit was managed by the same professional property management company from December 2001 to September 2012 after which the current property management company was hired. The Landlord's application for an additional rent increase was filed on October 30, 2012.

The evidence supports that rent began at \$900.00 and has been increased three times, (November 1, 2008, February 1, 2009, and February 1, 2011) raising it to \$1,044.00 per month. Despite the rental property being managed by a professional property management company from the start of the tenancy, annual rent increases were not issued or implemented. The Landlord submitted that the owner had wanted rent to remain at market value; however, her previous property management company did not comply by issuing annual rent increases.

Based on the foregoing, I find there to be insufficient evidence to prove the existence of exceptional circumstances that caused rent to remain artificially low. Rather, I find that the rent is at the current amount simply because the owner allowed the prior property management company to ignore annual rent increases and issue sporadic increases. It was not until recent months that the owner felt the need to increase her rental income and began to look at how her property was being managed.

For examples of similar units the Landlord relies on advertisements of units available for rent during the time she completed her application. She pointed to three units that would be considered significantly similar as they are located in the same building. The Tenant disputes the Landlord's evidence arguing that the Landlord provided samples of two units that are rented fully furnished and include utilities while the last remaining unit was larger than his unit. The advertisement for the larger unit does not indicate which floor it is located on so he argued that it may be in a higher unit that does not have street or traffic noise, as his unit does, and it has in suite storage.

Notwithstanding the Landlord's submissions, I accept the Tenant's argument that they do not know the value placed on furnished units, and they do not know the views or level of noise each comparable unit would have. While both parties provided samples of units within a 2 km range I accept that some of the Tenant's samples may fall outside

the down town core. That being said, I find there is insufficient evidence to prove the value placed on the cost of utilities or furnishings or the fair market value of the three significantly similar units in comparison to the Tenant's unit.

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 which kept the rent artificial low. Furthermore, there is insufficient evidence to prove the actual market value rent of similar units that 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 this application. Therefore, I DISMISS the Landlord's application.

The Landlord is at liberty to issue the required 3 month notice, on the prescribed form, if they wish to increase the Tenant's rent in accordance with the legislated amount for 2013 at 3.8 %.

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: February 08, 2013

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Residential Tenancy Branch

