



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Kiwanis Senior Citizens Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's application pursuant to section 43(3) of the *Residential Tenancy Act* (the *Act*) for an additional rent increase beyond the amount prescribed under the *Residential Tenancy Regulation* (the *Regulation*).

Both sets of parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to ask questions and provide comments with respect to the positions taken by one another with respect to the landlord's application. Given the number of parties involved and the complexity of the teleconference process when many individuals were connected to this hearing, all parties are to be commended for the patience and co-operation they displayed during the course of this lengthy hearing.

The landlord's agent CM (the landlord) gave undisputed sworn testimony that the tenants in all 32 units in this rental building were provided with copies of the landlord's dispute resolution hearing and written evidence packages by notices provided by the building manager/caretaker (the building manager) on May 23, 2013. The building manager (who also resides in this building) gave undisputed sworn testimony that he provided these packages in the tenant's mailboxes on May 23, 2013. Each of the 14 tenants who attended this hearing confirmed that they had received the landlord's dispute resolution hearing and written evidence packages as stated by the landlord's representatives. I am satisfied that the landlord has served notice of these documents to the tenants in accordance with the *Act*.

At the beginning of the hearing, the landlord and some of the tenants testified that applications related to the landlord's current application have been heard by other Arbitrators appointed under the *Act*. Some of the decisions reached by previous Arbitrators were submitted as evidence for this hearing, while other decisions were referred to by the Residential Tenancy Branch's (the RTB's) File Numbers.

As one individual application from the tenant in Unit 216 was also scheduled to be heard along with the landlord's current application, I asked the parties present to advise me as to any RTB File Numbers regarding any recent decisions already rendered with respect to their tenancies and any hearings scheduled. Prior to proceeding with this hearing, I asked the parties to wait a few minutes while I retrieved and reviewed the RTB decisions issued by other Arbitrators so as to clarify the issues that were currently before me. I thank the participants for allowing me this opportunity.

My review of applications for dispute resolution filed by the tenants in Units 113 and 218 confirmed those tenants' claims at this hearing that the Arbitrators in decisions heard and rendered on June 11, 2013 (for Unit 218) and June 20, 2013 (for Unit 113) allowed those tenants' applications to cancel Notices of Rent Increases issued to them by the landlord on February 25, 2013. Those decisions cancelled the landlords' Notices of Rent Increases of 10 % that the landlord proposed would take effect on August 1, 2013. The Arbitrators in those hearings found that section 43 of the *Act* only allows a landlord to impose a rent increase up to the amount calculated in accordance with the *Regulation*. The Arbitrators noted that section 22 of the *Regulation* limits a landlord's increase to an amount no greater than the inflation rate plus 2 %, a figure which resulted in a maximum allowable rent increase of 3.8% for 2013. As the landlord had not applied pursuant to section 43(3) of the *Act* for authorization to obtain a rent increase in addition to that established under the *Regulation* for 2013, the landlord's Notice of Rent Increase for those tenancies was found to be of no force or effect.

At the hearing, the tenant in Unit 209 testified that he had entered into late written evidence a copy of an April 26, 2013 decision of an Arbitrator regarding his application to cancel the landlord's February 25, 2013 Notice of Rent Increase. The landlord confirmed that at that hearing the parties agreed to settle their dispute on the basis of a rent increase from \$380.00 per month to \$399.00 per month to take effect on August 1, 2013. This negotiated settlement with the tenant in Unit 209 was contingent on the landlord's agreement that the monthly rent for this unit would not increase for at least 12 months from the August 1, 2013 date when this negotiated increase was to take effect. As this matter has already been decided, the legal principle of *res judicata* prevents me from making a new decision with respect to the correct monthly rent to be applied to Unit 209 as of August 1, 2013.

Issues(s) to be Decided

Should the landlord's application for a rent increase in an amount greater than the amount calculated under the *Regulation* be allowed?

Background and Evidence

On February 25, 2013, the landlord, a non-profit society providing rental housing to senior citizens, issued Notices of Rent Increase to all of the tenants in this 32-unit rental building.

On May 17, 2013, the landlord applied to the RTB for authorization to increase rent beyond the 3.8% increase allowed for 2013 under section 43(1) of the Act as established under section 22 of the Regulations. The landlord identified the following reasons in the application for an additional rent increase:

- A) After the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic areas, as the rental unit or site...*
- B) The landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that:*
 - could not have been foreseen under reasonable circumstances, and*
 - will not recur with a time period that is reasonable for the repair or renovation...*
- C) The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property...*

In the application, the landlord correctly noted that the permitted increase for 2013 is 3.8%. The landlord requested an additional increase of 6.2% for a total increase of 10% for each of the rental units in this building.

In the section of the application relating to the landlord's claim that the rent at the landlord's rental building (the subject building) was significantly lower than the rent in comparable units or sites, the landlord provided the following information:

	Rent Before Increase	# of Units	Rent Increase Permitted	Comparable Rent	Additional Increase Requested	% Increase Requested
Rent 1	\$393.00	29	3.8 %	\$600.00	6.2 %	10 %
Rent 2	\$439.00	3	3.8 %	\$750.00	6.2 %	10 %

The landlord also provided a list of the actual monthly rents charged to each of the rental units in this building. The landlord entered into written evidence copies of 14 advertisements for rental suites placed on the rental section of Craigslist in Vancouver, a popular housing website.

In the section of the landlord's application relating to significant repairs or renovations, the landlord stated that plumbing costs will be required for this building. The landlord stated that "costly leaks have increased the R & M costs and resulted in the need to re-plumb the building at a cost of \$200,000." The landlord stated that "this will reduce interest income to zero, and add to amortization and interest charges in future years."

The landlord supplied a copy an October 1, 2012 estimate and an February 20, 2013 estimate for the cost of re-plumbing all of the rental units in this building. The 2012 estimate was for a total of \$171,800.00 plus HST. The 2013 estimate was \$215,500.00 plus GST.

In support of the landlord's claim that the rental property had incurred a financial loss from an extraordinary increase in operating expenses, the landlord noted that the total rent for the period ending September 30, 2012 was \$157,350.00. The landlord also reported Other Income of \$7,286.00 for a Total Income for the rental property of \$164,636.00. The landlord cited Total Operating Cost for the last fiscal year of \$167,268.00. The landlord identified the following increases in operating costs for this building that the landlord described as extraordinary:

Type of Cost	Cost Last Fiscal Year	Cost Previous Fiscal Year	Total Increase
Repairs and Maintenance	\$63,562.00	\$54,263.00	\$9,299.00
Insurance	\$7,381.00	\$6,186.00	\$1,195.00

The landlord also supplied the non-profit housing society's Financial Statements for the periods ending September 30, 2011 and September 30, 2012. The 2011 Financial Statement also included some figures for 2010.

In a letter to the tenants of this building entered into written evidence by the landlord, the non-profit housing society (the society) stated the following:

*...The Board...believes it is important, indeed essential, that the ...Housing Society maintains sufficient cash reserves to fund all current building costs **and** to accommodate future anticipated maintenance costs. The normal business practice is to generate financial surpluses each year. Good stewardship requires that we build sufficient reserves to ensure the necessary funds are available before the need to use them occurs.*

We find we do not have the necessary reserves today. So, with hindsight, it is obvious that we should have been charging higher rents over the last several years. Our decision of 2008 is shown to have been wrong. Indeed the position has deteriorated these two last fiscal years to the extent that instead of surpluses

we have experienced losses. Now, major maintenance is required, and we will have to borrow the necessary funds. This will, of course, add to future years costs of operation and future years rents.

May we say, the actual timing of repairs and maintenance, and the history thereof, whilst interesting, is not relevant...

The landlord also stated at the hearing that government support is available to those tenants living on limited means through the SAFER rent subsidy program if the increases requested by the landlord would create a hardship for them.

The tenants opposed the landlord's application. Some of the tenants asked a number of questions of the landlord, particularly with respect to the extent to which their building resembled the comparable units selected by the landlord and entered into written evidence. The landlord and the landlord's representatives had few details regarding these comparable properties other than the very limited information available from the Craigslist postings. The building manager said that he thought the rental building was constructed in 1968 or 1969. The society's representative who attended this hearing said that unless the landlord obtains more rent, needed repairs will not be conducted and the building will deteriorate. The landlord said that the landlord has not charged the allowable increases in rent since 2008, which has led to a gradual deterioration in the financial circumstances of the property. He described the building as being in dire need of repair.

At the hearing, one of the tenants observed that the landlords obtained a rent increase in 2008 to assist with replacing the roof of the rental building. She said that no roof repairs have been conducted since that time. Some of the tenants observed that the society has been reluctant to apply any of the surpluses that they have obtained over the years to the repairs that are becoming necessary.

Analysis

I first note that this application applies only to 31 of the 32 units of this building. The landlord entered into a binding contractual commitment at the April 26, 2013 hearing with the tenant in Unit 209 that no further rent increases would be undertaken for that unit until at least August 2014.

Residential Tenancy Branch Policy Guideline 37 (the Guideline) provides considerable guidance to Arbitrators and to the public as to the considerations to be taken into account when Arbitrators are tasked with making a decision on an application from a landlord for an additional rent increase beyond that allowed under the *Regulation*. The full text of the Guideline) is available on the RTB's website at:

<http://www.rto.gov.bc.ca/documents/GL37.pdf>

As stated in the Guideline, “The policy intent is to allow the landlord to apply for dispute resolution only in ‘extraordinary’ situations.” Section 23 of the *Regulation*, essentially the reasons cited on the landlord’s application form, establishes limited grounds for seeking an additional increase in rent beyond that which is allowed under the *Regulation* without filing such an application. As noted in the Guideline in bold letters, **“The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount.”**

The Guideline also outlines the process whereby a landlord “should either obtain the tenant’s consent, in writing, or apply for the increase **before** issuing the first Notice of Rent Increase that will include the additional rent increase” (emphasis added). The Guideline also notes that “if the application results from significant repairs or renovations, or a financial loss resulting from an increase in operating expenses or financing costs, the application should be made before the first Notice of Rent Increase for the calendar year is issued.”

The non-profit housing society and particularly the landlord’s agent may wish to review Policy Guideline 37 carefully. I make this suggestion as the landlord’s application, submission and presentation revealed limited awareness of the factors to be considered when making an application for an additional rent increase.

As there were three reasons cited for the requested additional rent increase in the landlord’s application, I will review them in the order submitted and as set out above.

Analysis – Landlord’s Claim that Existing Rents in the Subject Property are Significantly Lower than those in Comparable Units Elsewhere in the Geographic Area

I find the landlord’s evidence in this regard was particularly weak and incomplete. Other than the very limited information provided in the Craigslist listing of the asking rent for the rental units, the landlord had very little useful information that would assist in determining if the units he claimed were comparable were indeed so.

The units in the subject property are in a walk-up rental building with one dryer and washing machine available in the basement to service 32 rental units. The landlord had very few details to offer with respect to the “comparable units” he had selected for this application. At the hearing, the landlord relied on estimates provided by the building manager as to the distances between the comparable units and the subject property. Although the subject property is in a well-populated area of East Vancouver, many of the landlord’s “comparable units” were by the caretaker’s estimate 7-12 kms. from the

subject property. Only one of the comparable units was within 1 km. of the subject property. Many of the units were at least 4-5 kms. from the subject property. Rather than limiting his comparables to units in multi-unit rental buildings, the landlord included a number of suites in houses. Neither the landlord nor the building manager were certain as to whether some of the comparable units were in buildings or homes. The landlord provided little useful information with respect to whether those advertised rental units in buildings had elevators or the ratio of washers or dryers in these buildings per tenant, an issue raised by a number of the tenants who attended this hearing.

In contrast to the wholly inadequate evidence submitted by the landlord to demonstrate rents for the landlord's selection of distant units that the landlord maintained were comparable, the tenant in Unit 113 provided sworn testimony that I found far more informed and credible. Based on his conversations with tenants in other buildings, he maintained that residents in the building beside the subject property were paying marginally more for their rental units. However, as he noted, tenants in that building do not have to carry their laundry up and down stairs to a single washer and dryer serving the entire building. He also provided an example of another rental building approximately 1-2 km from the subject property where tenants in bachelor units pay \$435.00 and tenants in one bedroom units pay \$519.00. However, he testified that each of these tenants has a washer and dryer in their own rental unit, a significant benefit as compared to those in the subject property.

I find that the landlord's application has failed to demonstrate that an additional rent increase should be issued on the basis of the landlord's claim that rents are significantly lower than those in similar units in the same geographic area. I find that the landlord's application was extremely deficient in providing useful comparisons for similar units in the vicinity of the subject property. I dismiss the landlord's application for this item accordingly.

Analysis – Landlord's Claim that Significant Repairs or Renovations Have Been Completed

At the hearing, I advised the parties that the landlord appeared to have misunderstood the grounds for seeking an additional rent increase on the basis of significant repairs. An additional rent increase for significant repairs or renovations cannot be obtained for repairs that the landlord anticipates encountering. Section 23(b) of the *Regulation* specifically states that an additional rent increase can only be obtained on this basis if "the landlord has completed significant repairs or renovations." The landlord's application and sworn testimony sought an increase on the basis of the projected expense of \$200,000.00+ to re-plumb this building. This request was consistent with the information conveyed in the letter sent to tenants in this building by the society.

I dismiss the landlord's application because the landlord has not demonstrated that significant repairs or renovations have been completed that would justify the landlord's application for an additional rent increase.

Analysis – Landlord's Claim that there has been a Financial Loss from an Extraordinary Increase in Operating Expenses

The landlord has provided written evidence in the form of Financial Statements for the past two fiscal years to support the claim that this rental building has been suffering a financial loss from an extraordinary increase in operating expenses.

Although the landlord's overall Financial Statements provide information about 2010, 2011 and 2012, the 2010 figures are a consolidation of revenues and expenses for two rental buildings it apparently operates. As such, the landlord's statements only provide useful information for this building for 2011 and 2012.

During those years, the Financial Statements confirm the landlord's claim that Repairs and Maintenance on this building have increased from \$54,263.00 in 2011 to \$63,562.00 in 2012. In addition to this increase, the landlord has also submitted that Insurance costs increased from \$6,186.00 in 2011 to \$7,381.00 in 2012. As noted in the landlord's application, these increases of \$9,299.00 and \$1,195.00 exceed \$10,000.00 for fiscal 2012.

While these expenses have increased during that time period, at least four of the other categories of expenses have actually decreased over the same period. Some of these expenses, such as amortization do not qualify as operating expenses for this property. However, others such as "Heat, light and water" which decreased from \$15,879.00 in 2011 to \$14,116.00 in 2012 clearly do fall within the category of operating expenses.

By making the above observation, I am not suggesting that the landlord is incorrect in claiming that there was a financial loss for 2012, resulting from increased operating expenses. Rather, I do so as a means of noting that there are many factors that must be taken into account in considering the claim that an additional rent increase should be granted as a result of increased operating expenses that may have occurred from one year to the next. Many factors might lead to an elevated figure for maintenance and repairs in a particular year. For example, the timing of unforeseen repairs might lead to the inclusion of one set of repairs in one year's fiscal statement and exclusion in the previous year. Without more detailed evidence with respect to the nature of the repairs included in the 2011 and 2012 Financial Statement, I find it difficult to gain a clear perspective on the extent to which 2012 reveals an actual pattern of escalating financial losses.

It would seem that the following portion of the Guideline was intended to take into account the variability in operating expenses that may occur from year to year.

...In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors. The arbitrator will determine which factors are relevant to the application before him or her:

- any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;...*
- whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;...*

In the society's letter to tenants, the society observed that the non-profit society by definition does not need to return a profit from its rental building each year. However, the society's Financial Statements also reveal sizeable "surpluses" that have arisen over time for both of the rental buildings under its management. The society reported a series of grants, including an annual grant exceeding \$100,000.00 received for this rental building for 2010 and 2011. The figures for this item are not included in the same method in the 2012 Financial Statement. However, as was noted by one of the tenants at the hearing, there remains a sizeable end of year "surplus" shown for this rental building at the end of the fiscal year, a surplus that has actually increased from 2011 until 2012 from \$349,096.00 to \$350,053.00. While these figures no doubt take into consideration a host of factors that may or may not have a relationship with the operating expenses for this rental building, it would seem that the society has attempted to keep sufficient reserves in place to enable it to operate the building effectively. However, I find an element of validity to the comments of one of the tenants at the hearing who queried the society's purpose for retaining these extensive capital reserves if the society were not prepared to utilize them when major repairs, such as the ones identified in this application become necessary.

This building is now 45 years old; major capital expenditures become necessary at some point. While the society may view it as a prudent business practice to generate financial surpluses each year, it is bound by the *Act* and the *Regulation* in its ability to obtain additional income from tenants to ensure that it does not need to draw on surpluses it has amassed over time from a variety of sources in providing this non-profit housing service to elderly tenants.

I also note that there is at least some evidence before me to suggest that part of the reason for the landlord's financial losses result from the landlord's failure to seek allowable rent increases during the previous years. The Guideline notes that "If, over

the preceding years, a landlord has simply failed to give rent increases to capture rising operating expenses, the landlord is not allowed to recapture those previously forsaken expenses.”

By selecting only two of the items listed in the landlord's Financial Statement, the landlord maintained that operating expenses increased by \$10,494.00 over a one-year period. However, the decrease in expenses over this period for “Heat, light and water” of \$1,763.00 reduces the overall increase in operating expenses to \$8,731.00. This amounts to 5.2% of the overall expenses the landlord reported for this rental property for 2012. In considering whether this constitutes an “extraordinary increase”, I have taken into account the following:

- the lack of detail provided in the landlord's evidence with respect to the actual operating expenses reported in the landlord's 2011 and 2012 Fiscal Statements;
- the timing and nature of the operating expenses;
- the lack of information about the process the landlord has established to cover capital expenditures; and
- the insufficiency of information provided by the landlord to enable me to assess the landlord's application in the context of at least a three-year pattern of expenditures.

Based on the evidence the landlord has provided, I am not convinced that the landlord has demonstrated that the losses reported for this rental building represent an “extraordinary increase” in operating expenses. With additional information, it is possible that the landlord could demonstrate that there has been a financial loss resulting from an extraordinary increase in operating expenses sufficient to obtain an additional rent increase beyond that allowed under the *Act* and the *Regulation*. However, after carefully considering the evidence, I find that the landlord's current application has not provided sufficient evidence to make a determination that the landlord is entitled to an additional rent increase for financial loss due to an extraordinary increase in the operating expenses of the residential property. As was noted above, the burden of proving entitlement to an additional rent increase rests with the landlord. I find that the landlord has not met this burden of proof and dismiss the landlord's application accordingly.

Conclusion

I dismiss the landlord's application with the effect that the rents for this building with the exception of Unit 209 remain unchanged. The rent agreed to by the landlord and tenant in Unit 209 is not properly before me as a final and binding decision has been issued

with respect to that tenancy reflecting a binding contractual agreement entered into by those parties.

As noted in the Guideline and pursuant to section 22(2) of the *Regulation*:

...If a landlord applies for an additional rent increase and the application is not successful,

(a) the landlord may give a notice of rent increase to one or all tenants of rental units in the residential property for a rent increase of an amount up to that calculated under the applicable Regulation; and

(b) the landlord may give a notice of rent increase to one or all tenants agreeing to an additional rent increase in writing, for a rent increase of an amount up to the amount agreed...

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 03, 2013

Residential Tenancy Branch

