



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0945698 BC LTD. dba KING'S COURT APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RI

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 11, 2013, by the Landlord to obtain an Order for an additional rent increase.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord 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

Has the Landlord met the high statutory requirement for an additional rent increase?

### Background and Evidence

The Landlord testified that they purchased this building on August 1, 2012 and inherited some tenancy agreements that have really low rents. They have had 22 units change over since owning this building leaving the remaining 14 units with below market value rents and which have hydro costs included. The Landlord argued that hydro costs average around \$100.00 per month per unit and therefore these rents are even further below market value because most units these days pay for their own hydro. They are seeking to increase all the one bedroom units to \$700.00 and the two bedroom units to \$800.00 per month.

The Landlord indicated that she is not sure why these units have such low rent, other than the fact that many of these tenants have never had a rent increase until November 2011. All 14 units are long term renters which means their rents have not gone up to keep up with other units in the area.

The Landlord testified that she reviewed current rents in near buy units and provided a written submission listing those addresses and rents. She noted that hydro costs are not included in these comparable buildings. She indicated that the comparable buildings appear to be of similar age and style from the outside. They own one of the buildings so she has seen the inside of these units and they are of similar style and age. She has also seen inside one of the other buildings. A map was included of the area to show that these units are in the same geographic area close to a shopping plaza and on the bus route.

The Landlord stated that they have tried their best to bring this building up to par by completing repairs and they have also renovated many units as they become vacant. They have had some turnover of management but she now have a proficient management team which includes a building manager and maintenance manager. They are not attempting to cause any tenants hardship and are willing to work with those who cannot afford a rent increase by seeking other means such as having the tenants pay for their own hydro.

E.G., testified that he has resided in his two bedroom unit for 28 years and has only had three rent increases. He confirms that his rent might be a little low but argued that his unit is on the bottom floor, has no balcony, and is adjacent to an alley with a lot of traffic.

D.G. testified that he has resided in this unit for eight or nine years and has had no upgrades to his unit. His advocate argued that she has other clients who reside in buildings of the same age, closer to downtown which is more desirable, with the same low rent that the tenant is currently paying.

R.M. and J. M. argued that the package was left for R.M. with J.M. while she was out of town. She submitted her written response and argued that they have had elevator problems. They have resided in this unit for 15 ½ years and they knew they were getting what they paid for. This unit is not worth \$800.00 as that would be rent for an updated unit with hardwood floors and new finishes. Their unit is old and has no updates.

E.M. testified that he has resided in this unit since December 2004 and has only had one rent increase. He was told that this amount of rent increase is illegal and therefore he did not do anything to research this himself.

D. B. indicated that he began residing in this building in May 1995 and moved to his current unit in September 1999. He testified that his unit is dated as there has been no maintenance such as new carpet, paint, counters or cupboards. He was issued a 4.3 % rent increase in 2011 and now the Landlord is seeking a 38% rent increase. He indicated that he has endured other pressures from the Landlords and does not think this rent increase should be approved. They knew what the rents were when they purchased this building.

S.T. argued that she has been in this unit since 1987, over 26 years. She testified that she is one of the lucky tenants because she was given permission to paint her unit a few years ago and got a new toilet recently. Her carpets are worn and need cleaning. She has never had a rent increase.

In closing, the Landlord submitted that this building was built in 1972 as were most of the buildings in this area of town. She is of the opinion that she provided information pertaining to comparable buildings. It is logical that they paint and do minor renovations when units become vacant but that does not amount to thousands of dollars of repairs. They are simply attempting to bring these rents up to market value.

### 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 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 rents range from \$511.00 to \$594.00 and the allow rent increase for 2013 is 3.8% and 2014 is 2.2 %.

**Exceptional circumstances** - 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 allowable rent increase.

In this case all fourteen units have been occupied under long term tenancies and have only had one or two rent increases over the years. Although these Tenants have not had consistent annual rent increases 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.

**Similar units** – In determining market value rent section 23 (1) of the Regulation stipulates that I must consider if the Tenants’ projected 2012 rent is significantly lower than the rent payable for other rental units that are **similar** to the Tenants’ unit [emphasis added].

For examples of similar units the Landlord relies on a document she created simply listing addresses, rents, and a map of the area which she indicated the locations of other buildings. The Landlord did not provide advertisements of other units to support their allegations of rents being charged in other buildings. Furthermore, there were only five photos of the exterior of buildings and only three photos of the interior of units.

Notwithstanding the Landlord’s oral submission, there is no documentary evidence as to the type of construction or age of the Landlord’s examples, nor have they proven that

the interior and exterior ambiance (including view), and sense of community are similar; because she has not been inside many of the units submitted as comparables. As noted above, it is not enough evidence for a landlord to simply rely upon their success in renting other units at a higher rate.

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 the 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 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 she wishes to increase the Tenants' rent in accordance with the legislated amount for 2014 of 2.2%.

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: November 20, 2013

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Residential Tenancy Branch

