



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Chau Luen Kon Sol Society of Vancouver
and [tenant name suppressed to protect privacy]

DECISION

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Introduction

This hearing dealt with an application by the landlord for an order approving an additional rent increase pursuant to Section 43(3) of the Act and Section 23(1)(a) of the Regulation.

The tenants' representatives advised that they were representing 66 of the 81 tenants in the residential property. The representatives had tried to contact every tenant in the building. Of the 70 tenants they contacted, 4 declined representation. The advocates advised that they were unable to make contact with the remaining 11 tenants.

Due to the number of tenants involved in this application, the hearing was actually held in a large meeting room at the residential property.

I have given some consideration to the fact that some of the tenants did not attend the hearing or were not represented by anyone. This fact might lead to the result that those who were not in attendance in some way might be considered to have accepted the rent increase proposed by the landlord. However, given the very large number of residents that did attend the hearing and the fact that all units are the subject of this application, I find that in the interest of fairness, the result of this decision will apply to all units regardless of whether the respondent tenant actually attended the hearing.

I also wish to address the fact that this decision is being rendered long after the 30 day time frame set by the Act. The reason for this is that following the hearing, there was a period during which the parties attempted to come to a settlement. There were numerous people involved in trying to reach some kind of settlement including Residential Tenancy Branch staff but the efforts were to no avail. I had originally set a deadline of one month following the hearing for the settlement discussions to be completed but it is my understanding that the discussions continued past that time. In any event, a settlement was not reached and I was advised of the failure to reach a

settlement by RTB staff members on January 2, 2014. This decision is being given 30 days from the date of that advice.

Issue(s) to be Decided

Is the landlord entitled to the requested order?

Background & Evidence

On September 20, 2013 the landlord filed an Application for Additional Rent Increase with the Residential Tenancy Branch. The landlord has made this application on the basis that after the rent increase allowed by Section 22 of the Act, the rents in the building are still lower than the rents for other comparable units in the same geographic region. The increases requested by the landlord range from \$65 to \$220 or 8.76% to 46.89%.

At the hearing the landlord stated that the compelling reasons that force them to apply for an additional rent increase at this time are (a) to enable the landlord to seek new financing to undertake a major renovation to the tower to address envelope failure; and (b) to allow the landlord to maintain the long-term financial sustainability of the tower.

The residential property is a 12 floor, 82 unit building built in 1971. The landlord is a charitable not-for-profit society. All of the tenants are Chinese-speaking senior citizens who had to provide evidence of their fixed incomes when they applied for tenancy in the building.

Landlord's Presentation

The main document submitted by the landlord in support of its application is entitled "Chau Luen Society Rental Analysis" and was prepared by Aedis Appraisals Ltd. The date of the report is July 31, 2013. The purpose of the report was *"to estimate the market rents for all units in the building."* In terms of scope, the report states that *"in the analysis and determination of market rents, the appraiser has used MLS data, experience in the buildings analyzed, an inspection of the subject building and has employed the use and assistance of the local newspaper and online listings of rental units."* In terms of methods applied, the report states that *"a direct comparison approach [was] applied"* to determine the market rents for all the units in the building.

The report does a breakdown of the units in the building in terms of the types of units and the floors they are on. For example, the report specifies that there are four 1-

bedroom units on the 12th floor, four 1-bedroom units with balconies on the 11th floor, eight bachelor units on the 10th floor and so on.

The overall statement about the nature of the units is as follows:

"All units inspected were found to be in clean and average condition overall. The finishing was similar in all units inspected and consisted of laminate countertops in the kitchen and bathrooms and flooring of linoleum and carpets. The finish quality was found to be standard.

Kitchens included the following appliances: stove, oven, sink and refrigerator. All laundry was shared in common areas with no insuite laundry provided."

The report then groups the units into essentially 3 categories: (a) 1-bedrooms on the 12th floor of 587 square feet; (b) 1-bedrooms on the 11th floor of 587 square feet plus balcony and (b) bachelors on floors 2 through 10 of 353 to 364 square feet. I shall summarize the report's findings of each category of unit in turn. I emphasize that this is just a *summary of the report* and not a complete reiteration.

12th Floor 1-bedrooms – The report says that there are four of these units. The condition of the units is noted as "average". The report gives three comparables which range in size from 200 s.f. to 600 s.f. with rents ranging from \$750 to \$975. The report acknowledges that the finishing in two of these is superior to the finishing in the subject units but points out that the size and view from the subject units more than make up for these shortcomings. The current rent for the subject units is as follows:

1201	\$445
1202	\$445
1203	\$445
1204	\$575

The landlord seeks to raise the rent for all four of these units to \$950.

11th Floor 1-bedrooms – The report says that there are four of these units. Again, the condition of the units is noted as "average". The report uses the same three comparables for these units as it does for the 12th floor units. The report notes that although the finishing in two of the comparables is superior to the subject units, the subject units are not only larger and have better views but also have balconies. The current rent for the subject units is as follows:

1101	\$450
1102	\$450
1103	\$605
1104	\$450

The landlord seeks to raise the rent for all four of these units to \$975.

Floors 2 to 10 - Bachelors - There are 72 bachelor units in the building. They are located on floors 2 through 10 and the rent for all of them is \$550 per month. As stated already, the square footage of these units ranges from 353 to 364 square feet and their condition is described as average.

For the bachelor units, the appraisers identified three other buildings in the area that also have bachelor units that the appraisers believe are comparable. The first building is referred to as the “Main & Prior” building at 116 West Hastings, the second is 1842 East Pender and the third is 116 West Hastings. The report says that the bachelor units in these other buildings range from 250 to 450 square feet, have inferior views to those in the subject property and yet rent from between \$625 to \$780 per month.

The landlord seeks to raise the rent for the units on the 8th, 9th and 10th floors to \$790; the 5th, 6th and 7th floors to \$780 and the 2nd, 3rd and 4th floors to \$770.

Tenants’ Response

In response to the landlord’s presentation, the tenant argued that the buildings used as comparables are not at all the same as the subject building. The tenant’s argument, in summary, is that all of the buildings used as comparables have undergone major upgrades and/or are located in geographic areas that are superior to that of the subject building due to numerous things such as the proximity of amenities and social hotspots and the demographics of the neighbourhoods in which these buildings are located. The tenant argues that the subject building has undergone no major renovations, painting or other maintenance work and that at least some of the suites have very serious water leakage issues and mould.

The specifics of the tenant’s arguments with respect to each of these comparables are set out below.

Main & Prior Building (116 West Hastings)

The tenant pointed out that this building is on the Vancouver Heritage Registry. The tenant argues that this fact is significant because a building that is not on the registry (like the subject building) does not offer the same “character” and is significantly different in that sense. The tenant also points out that the Main & Prior building has recently undergone extensive renovations including new windows, flooring, lighting, appliances, countertops and a completely refinished first floor commercial space. According to the tenant, the effect of these renovations has been to significantly modernize the Main & Prior building such that it is not at all comparable to the subject building. In support of this argument the tenant provided a copy of the sales brochure for the building showing photos and details of the upgrades that had been done.

1842 East Pender

The tenant argues that this building is not a suitable comparable because it is not within a reasonable kilometric distance and is in a “significantly dissimilar neighbourhood.” The tenant notes as follows:

“This building is approximately 2.5 kilometers away and is less than 2 blocks from Commercial Drive in the Grandview Woodlands neighbourhood. This neighbourhood is characterized by the long-established and highly popular Commercial Drive restaurant and shopping district and a high concentration of single family houses. Furthermore, 1842 East Pender has balconies and larger units. The presence of balconies at 1842 East Pender is a significant factor in finding that it is not similar to the relevant comparison units in the Keefer building.”

116 West Hastings

The tenant argues that this building is also not a suitable comparable for the following reasons:

“116 West Hastings is on the Vancouver Heritage Registry and was significantly renovated and modernized after low income tenants were evicted from the building in 2009. It is also significantly different geographic area, approximately 1 km away from the [subject building]. The physical and intrinsic characteristics of

the neighbourhood are significantly more gentrified and focused on young urbanites, students and artists. 116 West Hastings is directly across the street from the newly redeveloped Woodward's building which plays host to 536 new condos, SFU's downtown campus, a Nester's Market and other newly developed retailers. The proximate amenities and prominent landscape features include Gastown's Water Street, the Woodward's development, restaurants such as the Bitter Tasting Room and it is 600 M from Waterfront Skytrain station. Proximity to such amenities is a significant factor in determining that a building is not "comparable"...Finally, the units used for comparison includes utilities and wifi internet unlike the Keefer Building."

679 East Cordova

Again, the tenant argues that this building is not a suitable comparable because it has recently undergone interior renovations. The tenant also points out that the owners of this property have recently applied for a permit to do significant additional renovations to the building and is currently being advertised as a "strategic investment opportunity" The tenant also notes that the building is located one block from a significant Boffo Properties condo development (557 East Cordova). The tenant also stated that "no publicly available sources were found to corroborate the \$975 rent cited in the report and that the report does not provide any documentation to substantiate the \$975 claimed."

Analysis

Both parties to this application made presentations in a professional and organized manner. I found that a great deal of effort had been made by both sides to prepare for the hearing. This is not an easy situation for either party. On the one hand, there is the landlord, a charitable not-for-profit society with a volunteer board, which is facing real concerns about the long term financial viability of this building – particularly given the need for building envelope work; and on the other, a large group of elderly people who are on fixed incomes and have little or no ability to pay more. Notwithstanding the difficulty of this case however, a decision must be made.

In making my decision, I remind the parties that the burden of proof is on the landlord on a balance of probabilities. In this case, the landlord has relied largely upon the Rental Analysis prepared by Aedis Appraisals Ltd. The landlord has argued that this report is professional and reliable and should be accepted as a valid and conclusive assessment of market rental rates in the Chau Luen building.

However, at the hearing, the tenant presented what I found to be compelling and persuasive evidence that the Aedis report was deficient in some crucial areas. I will not repeat those deficiencies here as they are fully set forth above under “Tenants’ Response”. At the hearing, the landlord argued that the tabbed binder of evidence submitted by the tenant had not been given to the landlord in advance of the hearing. I agreed that this may have caught the landlord off guard and offered the landlord time to have Aedis Appraisals Ltd. prepare a response. The landlord declined this offer.

In the result, I find that the landlord has not met the burden of proof of establishing that the rent increases sought are justified on the basis that the rent for the rental units is significantly lower than the rent paid for other rental units that are similar to, and in the same geographic area as, the rental units. It may well be that the landlord will, at some point in the future, bring a new application for the same rent increases on the basis of significant repairs or renovations but that is not the case before me.

Conclusion

The landlord’s application is dismissed.

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 2, 2014