



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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*).

The landlord's agent (the agent) and 12 of the tenants/respondents in this application attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The agent gave undisputed sworn testimony that he served all of the tenants in this three storey walk-up rental building with copies of the landlord's dispute resolution hearing package by either handing it to them directly or posting it on their doors. He also said that he had provided the tenants with copies of the landlord's written evidence package. Although some of the tenants testified that they only received the written evidence package and notification of this hearing on or about January 14, 2014, none of the tenants in attendance disputed the landlord's claim that they had been served with the landlord's dispute resolution hearing and written evidence packages. They also indicated that they had reviewed the landlord's application and were prepared to respond to the landlord's application for rent increases. The agent confirmed that he had received written and photographic evidence packages from a number of tenants. I am satisfied that the parties served one another with the above documents in sufficient time to prepare for this hearing.

The tenant in Unit 307 testified that the copy of the dispute resolution hearing package and the landlord's written evidence provided to him did not appear complete. At the hearing, I advised that I would take his comments into consideration if it appeared that he would be in any way adversely affected by the missing information provided to him by the agent.

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 November 14, 2013, the landlord issued Notices of Rent Increase to 19 of the tenants in this rental building. On the same day, the agent applied to the Residential Tenancy Branch for authorization to increase rent beyond the 2.2% increase allowed for 2014 under section 43(1) of the *Act* as established under section 22 of the *Regulations*. The landlord identified the following reason 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...*

In the application, the agent correctly noted that the permitted increase for 2014 is 2.2%. In his application, the agent requested an additional increase of 12.67%. He added the two of these figures together and maintained that the total increase he was seeking was 22.94%, instead of 14.87%, the sum of the two figures cited above.

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:

	<b>Rent Before Increase</b>	<b># of Units</b>	<b>Rent Increase Permitted</b>	<b>Comparable Rent</b>	<b>Additional Increase Requested</b>	<b>% Increase Requested</b>
Rent 1	\$730.00	203	746.00	\$925.00	179.00	23.9 %
Rent 2	\$753.00	209	769.50	\$1,120.00	350.50	45.5 %
Rent 3	\$730.00	307	746.00	\$1,100.00	354.00	46.3 %

The agent has misunderstood how to properly complete the above table. Rather than identifying the number of units that are affected by his application (e.g., 6 units or 10 units), the agent has incorrectly identified the Suite Number of the unit. Rather than indicating the percentage of the rent increase permitted or the actual rent increase, the agent has provided the overall rent to be charged for that Suite Number.

The landlord also provided a list of the actual monthly rents charged to each of the rental units in this building and the requested increase in dollars. Some of the

requested rent increases were as low as 2.1 – 5.1%. For other units, the agent requested a monthly rent increase of as much as \$390.00, an increase of 53.4%.

The agent also entered into written evidence a table in which he included the date when tenancy agreements within this building commenced, the square footage of each of the units, the current rent per square foot, the proposed rent, the proposed rent per square foot and the proposed additional rent increase. At the hearing, the agent testified that all of the rental units in this building constructed in 1965, are one bedroom units, with the exception of two bachelor suites. However, the sizes of many of the one bedroom units vary.

The agent also entered into written evidence a copy of very general information regarding the cost of living in Vancouver, and a Canada Mortgage and Housing Corporation (CMHC) tables showing average rental rates for the South Granville/Oak Street area of Vancouver where this building is located. He also provided copies of 7 advertisements for rental suites placed on the rental section of Craigslist in Vancouver, a popular housing website.

Some of the tenants supplied photographs of their rental suites and the common areas of this rental building. In their written submissions and photographic evidence, some of the tenants alleged that this building has not been well-maintained and does not compare to standard rental units in their vicinity. The agent confirmed that the photographs supplied by the tenants appeared to have been taken in this rental building. With the exception of some relatively minor work, the agent did not dispute the tenants' assertion that this rental building has not been renovated or refurbished. Based on the tenants' undisputed photographic evidence and submissions, it would appear that there has been no major upgrading or renovation to either the common areas or the suites in this almost 50 year old walk-up apartment building.

### Analysis

Residential Tenancy Branch Policy Guideline 37 (the Guideline) on Rent Increases 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.”**

At the hearing, the agent testified that he was unaware of the Guideline on Rent Increases. He said that he had never been involved in an application for an additional rent increase beyond the allowed percentages set out in the *Regulation* and said that this was a learning experience for him. On at least that point, I am in agreement with the agent’s testimony.

I find the agent’s evidence regarding the “comparable” units elsewhere in the geographic area of the subject property 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 almost no useful information that would assist in determining if the units he claimed were comparable were indeed so. One of the landlord’s comparables was described as being a “beautiful new suite in heritage house.” Another was a “garden suite” in a home. Another was a one bedroom condominium unit in a new building. Some of the comparables selected by the agent were in elevator services buildings. The agent testified that he had driven to some of the comparable buildings he selected, but had no information as to whether any of the rental units he offered as comparables had actually been rented or if they had been rented, whether or not the amounts cited in the Craigslist advertisements reflected the eventual monthly amounts agreed to by the parties. He did not know the age of the buildings, the condition of the rental units or what was included in the monthly rent. He had virtually no information regarding the comparable rental units beyond the descriptions provided in the advertisements.

Confronted as I was by an almost total lack of information provided by the agent with respect to the comparable rental units he was identifying to support his application, at the hearing I referred extensively to the Guideline. I did so to demonstrate the type of information that would need to have been submitted by the landlord in order to substantiate an application for an additional rent increase. For example, the Guideline establishes the following information an Arbitrator is to take into account when considering this type of application from a landlord:

*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:*

- *the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;*
- *the rent history for the affected unit for the preceding 3 years;*
- *any change in a service or facility provided in the preceding 12 months;*
- *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;*
- *a relevant submission from an affected tenant;*
- *a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation;*
- *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;...*

At the hearing, I also reviewed the following portions of the Guideline to help inform the parties as to the test to be met by the landlord in this type of application:

***Significantly lower rent***

*The landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area... If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable...*

As set out in the following section of the Guideline, a landlord cannot simply rely on his or her success in renting suites within the same building to new tenants for a higher monthly rate than is being paid by longer term tenants:

*...Additional rent increases under this section will be granted only in exceptional circumstances. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar units in the residential property at a higher rate....*

I also commented specifically that the agent's reliance on general information produced by CMHC is commented upon in the Guideline and is not to be used as either the sole or primary evidence for comparing units in the subject property with similar residential rental units.

*...The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and any additional separate charges for services or facilities (e.g.: parking, laundry) that are included in the rent of the comparable rental units in other properties. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographical area, it is **not** sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord...*

The extent to which I find this application for an additional rent increase lacking has prompted me to take the unusual step of quoting extensively from the Guideline. I do so as I find the agent's submission and evidence so completely lacking in substance that he would be well advised to familiarize himself with the entire contents of this Guideline should he ever choose to initiate an application for an additional rent increase in the future. I dismiss the landlord's application in its entirety, meaning that the landlord's notice of an additional rent increase has no force or effect.

At the hearing, some of the tenants remarked that shortly after issuing the notice of an additional rent increase that is currently before me, the agent issued a new notice of an additional rent increase citing different figures. As I have received no application from the landlord or the landlord's agent with respect to this second set of notices, I am in no position to make a binding decision that affects that second set of notices. However, should the agent decide to proceed with an application for dispute resolution to consider those second set of notices, the agent would be well-advised to seek information from the RTB beforehand and to ensure that he has taken into consideration the burden of proof established under the *Act*, the *Regulation* and the information contained in the Guideline.

### Conclusion

I dismiss the landlord's application in its entirety.

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: January 21, 2014

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Residential Tenancy Branch

