



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0968559 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with an application by the landlord for an additional rent increase. The landlord had served the affected tenants with a copy of the Application, hearing package and copies of its evidence. When the hearing had to be continued the landlord again served all of the affected tenants with the notice of continuation. Most of the tenants appeared at the hearing and/or submitted written submissions and evidence of their own. In the course of the hearing, they also expressed their opinions about the landlord's evidence.

Issue(s) to be Decided

Should an additional rent increase be granted to the landlord and, if so, on what terms?

Background and Evidence

This apartment complex is comprised of three separate two story buildings connected by an elevated deck structure. The landlord described the building as looking like a motel. In two of the buildings each unit has an exterior entrance; the third building has an interior hallway by which residents access their units.

The buildings date from the 1960s. They are frame construction built on a concrete foundation. The previous owner had started renovating units as they become vacant. Usual repairs included painting, upgrading breaker panels, and replacing bathtubs.

The landlord bought this building in July 2013. It has continued to "freshen" suites as they become vacant – clean, repaint, remove the carpet and clean up the underlying hardwood floors, and make any necessary repairs. The landlord has also been implementing a program of exterior renovations. In 2013 and 2014 the landlord replaced the two worst exterior staircases with new wooden stairs. The 2013 project cost over \$5000.00 and the 2014 project cost over \$10,000.00.

From the photographs submitted into evidence it appears that the siding, windows, doors, and second level balconies have been upgraded at some point in the past.

The landlord testified that the complex is in a good location. The complex is on the corner and on each side of it, and across the alley from it, are single family homes. Across the street is a condominium. Although the immediate neighbourhood is a quiet residential street it is only a few minutes walk to a major retail centre. The crime rate in the immediate area is low.

The landlord testified that the vacancy rate in this community is low. He has other rental buildings in other parts of the same community and the vacancy rate in those units is 0%. The turnover in this complex is very low. He thought that only five units had turned over since he bought it and he said he had not received a notice to end tenancy in months.

The landlord testified that there are rental properties in this neighbourhood that are old, not well maintained and with a poor tenant profile. The rents in those buildings are lower. He said he tried to keep his buildings clean, safe and repaired.

He acknowledged that there are upgrades/repairs required to a number of units in this complex, including those that are the subject of this application. About five units need new fuse boxes – a \$700.00 item – and the parking lot needs to be gravelled.

On the whole the tenants expressed satisfaction with the complex and its management. Many spoke highly of the complex manager – her responsiveness to their requests and her selection of new tenants. One tenant described the complex as “nice, quiet and civilized”.

Some of the longer term tenants have not had any work done in their units for years. These tenants all testified that they had not asked for repairs or raised any of these issues with the landlord. It was clear that the purpose of their evidence was to establish that they were paying market rent for their unit in its present condition.

All units received a rent increase effective March 1, 2014. Although no specific evidence was submitted by the landlord on the rent increase history for each unit it appears from the tenants’ evidence that while long term residents went without rent increases in the past they have become a regular event in the past few years.

Each of the tenants pays their own hydro, which includes heat. For some tenants, cable is included in their rent. Water is included in the rent for everyone.

One Bedroom Units

There are eight 1 bedroom units in the complex. Five are currently paying \$800.00/month. The landlord is asking for additional rent increase for two.

Unit	Start of Tenancy	Current Rent	Allowable Annual Rent Increase for 2015	Additional Rent Requested
104	Not stated	\$742.48	\$18.50	\$39.01
203	Not stated	\$766.50	\$19.16	\$14.34

Neither of these tenants appeared or submitted anything in writing. 203's mother also lives in the complex and made a brief statement on his behalf.

Of the comparables submitted by the landlord the most similar appear to be the following:

Unit	Rent	Utilities Included	Advantage Compared to This Building	Disadvantages Compared to This Building	Other Comments
Sudbury	\$800.00	Not stated	In-suite laundry Private Yard Space	Basement Suite	
Basement Suite	\$825.00	Included	A/C Private Outdoor Space	Basement Suite	Ad says the suite is 5 years old, does not say the age of the house.

The tenants submitted an ad from Riverside Gardens. That ad said "starting from \$725.00" for a one bedroom unit. That ad does not appear to be for a specific unit that is currently available for rent.

Two Bedroom Units

There are fourteen 2 bedroom units in the complex. Seven are currently paying \$900.00/month; one is paying \$884.75; and one is paying \$878.90. The landlord is asking for additional rent increases for the other four.

Unit	Start of Tenancy	Current Rent	Allowable Annual Rent Increase for 2015	Additional Rent Requested
106	October 1987	\$733.67 plus \$30.00 for cable	\$18.34	\$117.99
107	October 1995	\$803.00	\$20.08	\$76.92
109	Not stated	\$900.00	\$22.50	\$77.50
205	About 5.5 years ago	\$834.90	\$20.87	\$44.23

All of the tenants of the two bedroom units filed written submissions and/or appeared at the hearing. One tenant's appearance was very brief. At the beginning of the hearing he expressed the view that the increase requested was too much and hung up.

One of the tenants filed several short newspaper ads for two bedroom units. These rents were advertised from \$700.00 to \$870.00 per month. The ads do not include any photos to help with the comparison of condition. The fifth ad was just a general ad for a particular building that said two bedroom apartments start at \$800.00/month. The ad does not indicate whether units are actually available at this price.

The landlord testified that when a two bedroom unit becomes available and they freshen it up they can usually rent it for \$900.00 per month.

Of the comparables filed by the landlord I found the following to be the most similar to this building:

Unit	Rent	Utilities Included	Advantage Compared to This Building	Disadvantages Compared to This Building	Other Comments
Brock	\$1000.00	No	In-suite storage New stove and window coverings Central A/C		
Edgewater	\$925.00	Heat			No mention of A/C

Schubert	\$1000.00	Not stated	In suite laundry, Dishwasher		No mention of A/C
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Three Bedroom Units

There are four 3 bedroom units. One is paying \$1200.00/month. The landlord is asking for increases for the other three.

Unit	Start of Tenancy	Current Rent	Allowable Annual Rent Increase for 2015	Additional Rent Requested
112	Not stated	\$883.10	\$22.08	\$294.84
212	May 2006	\$964.61	\$24.12	\$211.47
213	September 2009	\$1125.00	\$28.12	\$46.87

The resident of 112 did not appear or file a submission.

The residents of 212 testified that they cannot afford an increase as large as requested and argued that the price they pay is fair for the condition of their unit. The landlord acknowledged that there are repairs that should be inspected and/or completed. He also stated that these tenants take good care of their unit.

The resident of 213 said that her unit had been freshened before she moved in. At the start of her tenancy the rent was \$1000.00. She also pointed out that they do not have central air conditioning.

The landlord filed the following comparables:

Unit	Rent	Utilities Included	Advantage Compared to This Building	Disadvantages Compared to This Building	Other Comments
Duplex	\$1200.00	No	Yard	Laundry hook-ups only	
Well kept	\$1275.00	No	Yard		LL says this unit is some distance from

					amenities, is on a busy street and is near the airport
Newly reno'd	\$1375.00	No	Main floor of a house Better appliances Yard		

The tenants filed the following comparables:

Unit	Rent	Utilities Included	Advantage Compared to This Building	Disadvantages Compared to This Building	Other Comments
Lilac Townhouse	\$950.00	No	Paved Parking		
Tranquille	\$1150.00	No	2.5 baths, Basement, Fireplace		

The tenants also filed an ad for a three bedroom townhouse. The ad says renovated suites are available (so presumably some units are not renovated) and rents starts from \$1099. There is no information in the ads as to the condition of the units that actually rent for \$1099.00.

Analysis

Applicable Law

The *Residential Tenancy Regulation* allows a landlord to apply for a rent increase in addition to the annual increase allowed by the legislation in a very limited number of situations. The ground upon which this application is made is that after the allowable annual rent increase, the rent for the rental unit is significantly lower then the rent payable for other rental units that are similar to, and in the same geographic area, as the rental unit.

Section 23(1) of the *Regulation* sets out a detailed list of factors an arbitrator must consider when deciding an application such as this. Although I have not listed the factors and will not make a specific statement about each factor, I have considered them when hearing the evidence and when writing this decision.

Residential Tenancy Policy Guideline 37: Rent Increases provides a summary of the law applicable to applications such as this.

The landlord has the burden and is responsible for proving the ground upon which the application is based.

Evidence regarding lack of repair or maintenance will be considered only where it is shown to be relevant to whether an expenditure as the result of previous inadequate repair or maintenance. A tenant's claim about what a landlord has not done to repair and maintain the residential property may be addressed in an application for dispute resolution about repair and maintenance.

Additional rent increases 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. However, if a landlord has kept the rent low in an individual unit for a long term renter, an Additional Rent Increase could be used to bring the rent into line with other, similar units in the building.

To determine whether the circumstances are exceptional, the arbitrator will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

The legislation imposes a high standard of proof on the landlord.

One Bedroom Units

I find that the landlord has established that \$800.00 is within the range for units of a similar character in the same geographic area. After the allowable annual rent increase of 2.5% for 2015 the rents for these units will be \$760.98 and \$785.69 respectively. That is a difference of 4.8% and 1.8% from \$800.00 respectively. I find that these percentages do not represent a rent that is significantly lower than the rent charged for similar units. Accordingly, the application for an additional rent increase over and above the allowable annual rent increase for units 104 and 203 is dismissed.

Two Bedroom Units

I find that the landlord has established that \$900.00 is within the range of rents charged for similar units in a similar geographic area. In coming to this conclusion I considered that the Edgewater comparable appeared to be closest to most of these rental units.

The other two comparables were of somewhat higher quality so the rents charged for them were higher.

Units 107 & 109

After the allowable annual increase of 2.5% the rents for these two units will be 823.08 and \$820.00 respectively. This represents a difference of 8% from \$900.00. I find that this is significantly lower than the rent charged for similar unit. Accordingly, I allow the landlord an additional rent increase of \$27.00 per month to bring the rent within 5% of the market value.

Unit 205

After the allowable annual rent increase of 2.5% the rent for this unit will be \$855.77, a difference of 4.91% from \$900.00. I find that this percentage does not represent a rent that is significantly lower than the rent charged for similar units. Accordingly, the application for a rent increase over and above the allowable annual rent increase for units 205 is dismissed.

Unit 106

The situation for this unit is different than the other units. Because of the length of this tenancy and the undemanding nature of the tenant two things have happened over time:

- Previous landlords' failure to regularly raise the rent has resulted in a rent that is significantly lower than the rents charged for other two bedroom units in this area.
- The unit has had no repairs or renewals in almost 30 years. Accordingly, the condition of this unit cannot be in the same condition as the more upgraded comparables provided by the landlord, including the other two bedroom units in this complex.

The range of rents from the lowest of the tenant's comparables to the higher end of the landlord's comparables is \$700.00 to \$1000.00. The rent charged for any rental unit reflects many variables besides condition. It will also reflect factors such as location and tenant profile, both of which are positive for this complex. Accordingly, the rent for this unit should not be at the lowest end of the spectrum, because of the positive factors; but neither should it be at the highest end of the spectrum, because of the condition of the unit.

The median range between \$700.00 and \$1000.00 is \$825.00 to \$875.00, which I find to be closer to the actual value of this unit.

After the allowable annual increase the rent for this unit, not including \$30.00 for cable, will be \$752.01. I allow the landlord an additional rent increase of \$22.00 for this year, and an additional rent increase of \$22.00 for the following year, which will be in addition to the allowable rent increase for 2016. This will bring the rent for this unit into the lower end of the median range.

Three Bedroom Units

Units 112, 212 & 213

Determining the market value for the three bedroom units is more difficult because there do not appear to be many three bedroom apartments in this area. The closest comparable appears to be the Lilac Townhouse which rents for \$950.00 per month. The landlord expressed that view that this rent was too good to be true. Unit 212 is already paying more than this which indicates that \$950.00 must be the bottom of the range. Although the evidence established the bottom of the range it did not establish the top end of the range.

After the allowable rent increase the rent for unit 112 will be \$905.18, 9.5% off the bottom of the range. This is significantly below the market value. I allow the landlord an additional rent increase of \$22.00 for this year, and an additional rent increase of \$22.00 for the following year, which will be in addition to the allowable rent increase for 2016, to bring the rent to the lowest end of the range.

After the allowable rent increase for 2015 the rent for unit 212 will be \$988.73. This is more than the bottom end of the range. Accordingly, the landlord's application for a rent increase in addition to the allowable annual rent increase is dismissed.

As Unit 213 is already paying more than the bottom end of the range the landlord's application for a rent increase in addition to the allowable annual rent increase is dismissed.

Conclusion

The landlord's application for an additional rent increase for units **104, 203, 205, 112, and 213** is dismissed, for the reasons set out above. If the landlord has not already done so, it may serve these tenants with three months notice of rent increase in the prescribed form for the allowable annual increase of 2.5%

The landlord is granted an order allowing a rent increase of \$27.00 per month, in addition to the allowable annual increase of 2.5% for 2015, for units **107 and 109**. The landlord is required to serve these tenants with three months notice of rent increase on

the prescribed form, for these amounts, if it wishes to proceed with implementing this order.

The landlord is granted an order for an additional rent increase of \$44.00 per month, in addition to the allowable annual increase of 2.5% for 2015 for units **106 and 112**. This increase is to be implemented in two phases; \$22.00 this year and \$22.00 next year.

The landlord is required to serve the tenants with three months notice of rent increase in the prescribed form and to serve a second three month notice twelve months later, both in these amounts, if it wishes to proceed with implementing the order.

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 20, 2015

Residential Tenancy Branch

