



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: RI

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) section 43 (3):

- a) for the Director's approval for a rent increase that is greater than the amount calculated under the Regulation for 2015.

### **SERVICE**

Both parties attended the hearing and the landlord provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail. The tenant agreed he had received it as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the rent increase after the increase allowed by Regulation is significantly lower than the rent payable for other rental units similar to and in the same geographic area as the rental unit in issue?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said he has been a tenant in this building since 1986; his rent was \$395 in 1986 and is now \$700 a month. He has a security deposit of \$190 paid on August 1, 1986.

The landlord provided a number of comparable units with the same amenities (a laundry room) and of the approximate vintage and in the same geographic area. The sister building next door has a two bedroom ground floor unit renting for \$1500 a month and the one bedrooms are \$1300 a month. Another nearby building was built in 1910 and the two bedroom apartments of approximately the same size as the subject rent from \$1270 to \$1375 a month. Another built in 1936 has the lowest rent for two bedrooms at \$1335 for the second floor and \$1560 for the top floor.

The landlord submitted a chart showing the rents in the 1936 building for two bedroom apartments. The oldest recorded tenancy is since 1994 (21 year tenant) and the rent for the two bedroom fourth floor is \$1250 a month. Other rents are higher but they are more recent tenants; one unit is rented to the caretaker at the 'frozen rent' of \$920 a month; it is a garden level unit, has no view and is further from the beach.

A rent chart provided by the landlord for another building in this area shows the two bedroom units rent for \$1335 to \$1560 per month. The landlord emphasized that these buildings are similar in vintage and amenities. The tenant did not dispute this and he submitted no documentary evidence to dispute the landlord's comparables.

The tenant said he had been a long term tenant since 1986 (29 years) and at one point, he worked for the owner of the building who paid him \$1200 a month for some duties and he paid his rent of \$690 separately to the owner. He said he had had a good relationship with the owner and did not think he would be doing this to the rent; he has been unable to contact him. He said it was the owner's choice, not his, to set a lower rent and he had paid the legislated increases over the past years. The landlord said the owner is elderly and hired the management company to handle the building now and he wanted the rents to reflect market rents. The landlord requests an order to increase the rent from \$700 a month to \$1200 a month, a 69.7% increase while the legal increase for 2015 is 2.5%.

The landlord described the tenant's unit as 'the jewel' of the building as it is the two bedroom penthouse with a large deck and has great ocean views. He said it was the lowest increase he could somewhat justify as even in a less desirable part of this city, the rents are more than \$1200 a month for a two bedroom unit.

The tenant did not provide any evidence of units with lesser rents or dispute the landlord's submissions on comparable units.

In evidence is the disputed Notice of Rent Increase, details on units in three nearby buildings and some advertisements of units for rent.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

In section 43, the *Residential Tenancy Act* provides that an increase in rent may only be imposed up to the amount calculated in accordance with the Regulations unless the landlord applies for an additional rent increase. Section 23(1) of the Residential

Tenancy Regulation provides that a landlord may apply under section 43(3) of the Act if (a) after the rent increase allowed under section 22, 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. Section 23(3) sets out some factors to consider.

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;

I find that this tenant has had a history of a lower rent apparently based partly on his working at one time for the owner. Although he is a tenant of 29 years, I find the landlord's evidence credible that there are also older tenancies in this building which have significantly higher rents. The tenant did not dispute this or submit any evidence to the contrary. I find one of the comparables has a tenant of 21 years who is paying \$1250 per month for a unit on a lower floor. I find the weight of the evidence is that this tenant's rent is significantly lower than the rent payable for other rental units similar to and in the same geographic area as the rental unit in issue.

The Residential Policy Guideline 37 sets out some further considerations. *An additional rent increase under this provision can apply to a single unit, or many units in a building. 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.*

I find the landlord has provided evidence of rents in other buildings and that the state of repair and amenities are comparable. The tenant did not dispute this evidence of the landlord. Guideline 37 further states:

*The rent for the rental unit may be considered "significantly lower" when (i) the rent for the rental unit is considerably below the current rent payable for similar units in the*

*same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit. In the former, \$50 may not be considered a significantly lower rent for a unit renting at \$600 and a comparative unit renting at \$650. In the latter, \$50 may be considered a significantly lower rent for a unit renting at \$200 and a comparative unit renting at \$250.*

I find this unit is renting for \$700 and current rent for similar units are renting for over \$1250 to tenants, some of whom are long term. I find the difference of \$550 a month is significantly lower rent. Guideline 37 further states:

*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. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments 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.*

I find the circumstances of this case are exceptional as the rent was kept low for a number of years apparently partly due to the tenant assuming some of the caretaker duties. In 1997, the tenant was given the most recent rent increase from \$690 to \$700 a month.

I find the landlord provided (quotes from Guideline 37 referenced in italics) *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* as required by the Policy Guideline 37. I find the *amount of a rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessarily with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range. For example, an arbitrator may approve an additional rent increase that is an average of the applicable rental units considered.*

In considering all the submissions of the landlord and tenant, I find the requested rent increase to \$1200 a month would make the rent for this unit somewhat lower than the comparisons, the majority of which are not in such a desirable location and without the amenities of a large deck and ocean view. I find the requested increase is compatible with the legislation, Regulation and Policy Guideline provisions.

**Conclusion:**

The Application of the landlord to increase the rent from \$700 a month to \$1200 a month is successful.

**I HEREBY ORDER THAT the rent for the subject unit is increased to \$1200 per month effective April 1, 2015.**

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: March 03, 2015

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Residential Tenancy Branch

