



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Claymore Development Co. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

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### Introduction

This hearing was convened in response to an application by the Landlord pursuant to Section 43 of the *Residential Tenancy Act* (the “Act”) for an Order for an additional rent increase.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to a rent increase over the annual allowable amount?

### Background and Evidence

The following evidence is not disputed: The current tenancies of the three units in dispute are between 11 and 21 years. Rents have increased annually with the current rent for the units at \$1,379.00 and \$1,389.00. The last rent increase was on August 1, 2014. The units all have 1,100 square feet, 3 bedrooms, 2 storages, 1.5 baths, and a carport. There is no in-suite laundry but hook ups are present. A fridge and stove are included. The floors are carpet and/or laminate. The interior paint is older than 7 years. The heating system is original from 1973. Similar units in the building with existing long term tenants in the building have recently agreed to a rent increase to \$1,585.00. Other units in the building with new tenants pay rent of \$1,875.00. Either 6 or 7 units in the building have been renovated and include 5 appliances, new countertops, new paint, new carpets and wood flooring.

The Landlord states that the current rents for the dispute units are below market and that costs have risen. The Landlord states that development has “gone insane” with taxes and that it makes more sense to sell the building and have it knocked down and replaced with high density housing.

The Landlord provides 5 print outs of online rental advertisements for 3 bedroom townhouse units. The ads for three of the units did not contain any photos other than the screen shot. The rent for the 5 units ranges from \$1,700.00 to \$2,000.00. Where the square footage is noted 3 units are between 100 and 400 square feet larger. The other 2 units are both newly renovated with in suite laundries, one of which has an extra bath and the other an outdoor pool and gas fireplace. All of the units have more appliances. Three of the units are noted as newly renovated or updated. The remaining two units do not indicate renovations and have larger square footage and more appliances. The Landlord agrees that the Tenants’ spread sheet on the similarities and differences between units as set out in “Table 1” is mostly accurate.

The Landlord states that improvements to the disputed units have been done by the Tenants over the years with the Landlord supplying the materials. The Landlord states that the Tenants have raised issues but that the Landlord cannot meet the requests, such as new windows and heating, without an increase in the rent. The Landlord states that the appliances in the units could be past their useful life. The Landlord states that replacing the appliances is seen as an upgrade and not part of the Landlord’s obligation to maintain a unit as with carpets. The Landlord states that the Tenants have only recently raised issues in relation to new flooring, painting and in once case a deadbolt. The Landlord requests a rent increase of \$331 and \$341 for the units for a rent of \$1,720.00 each.

The Tenants state that the rents received by the Landlord has provided a very lucrative return and that if any comparability can be made between their units and the Landlord’s examples, it would only be due to the work done by the Tenants in the units. The

Tenants state the examples provided by the Landlord are not comparable and in a different league entirely. The Tenants state that while the average annual cost of heating a similarly sized unit is \$520.00 per year, their units cost \$1,000.00 per year. The Tenants state that the 40 year old single pane glass windows and bad hearing system causes this extra cost. The Tenant states that the exteriors of the disputed units are worse and more neglected than the Landlord's examples. The Landlord did not provide exterior photos of the comparable units. One Tenant states that its unit is below a reasonable standard with shoddy carpet. One Tenant states that although its fridge was replaced, the door of the fridge cannot open in the space present.

### Analysis

Section 43 of the Act provides that in the circumstances prescribed in the regulations, a landlord may request the approval of a rent increase in an amount that is greater than the amount calculated under the regulations by making an application for dispute resolution. Section 23 of the Regulations provides that a landlord may apply for an additional rent increase if after the allowable 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. Based on the undisputed evidence of current rent and last rent increase and after the allowable rent increase for 2015, the rents payable for the units would be \$1,414.48 and \$1,423.73. The difference between this rental rate and the requested increase to \$1,720.00 is therefore \$296.27 and \$305.52.

Based on the Landlord's evidence, it is clear that the same size units in the building that are rented at \$1875.00 are not comparable due to new renovations and upgrades. The Landlord does not request an increase to reflect the \$1,585.00 rental rate of other similar units. Given the undisputed evidence of no to limited repairs or upgrades to the units over the long term, considering that the Landlord only provided an oral and brief statement of increased costs and given that the application does not include particulars on or reference to increased costs as the reason for the application, I do not consider

the evidence of increased costs to be of either any relevance to the dispute or of any persuasion.

As advertised rates are not evidence of rental rates obtained or payable, I consider that the advertised rates of the 5 rental examples can only at best show a possible significant difference in rates. Further given the Landlord's evidence of general agreement with the spreadsheets and considering that the advertisements themselves indicate generally more appliances, more space, recent upgrades or renovations and where not upgraded or renovated, more amenities, I find on a balance of probabilities that the Landlord has failed to show that these 5 example units are comparable with the dispute units. I find therefore that the Landlord has not shown that the rent payments of the dispute units are significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit and I dismiss the application.

### 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: May 29, 2015

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Residential Tenancy Branch

