



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: ARI

### Introduction

This hearing concerns the landlord's application for an additional rent increase above the limit set by the Residential Tenancy Regulation (the "Regulation"). Both parties attended and / or were represented and gave affirmed testimony.

### Issue(s) to be Decided

Whether the landlord is entitled to an additional rent increase above the limit set by the Regulation.

### Background and Evidence

The 4 units which are the subject of this application are located in a 2 storied, wood frame, walk-up building constructed in 1954. Within the building are a total of 6 units. The landlord takes the position that rent paid for the subject units is significantly lower than rent payable for other rental units which are similar to and in the same geographic area as the subject units. Further to the application itself, documentary evidence submitted by the landlord mainly comprises rental advertisements appearing on Craigslist. Documentary evidence submitted by the tenants is more extensive and includes, but is not limited to, detailed descriptions of the condition of the subject building / units, photographs, in addition to a detailed comparative analysis of the subject units *vis-à-vis* units identified in the landlord's submission.

A description of the building / units is included in the tenants' submission, in part:

Units 1, 2, and 6 are all 2 bedroom units with 1 bathroom. Unit 3 is a one bedroom. The building has shared, coin-operated laundry. None of the units have a dishwasher, balcony, in-suite laundry, or fireplace. The bathrooms do not have electrical outlets. The building has centrally controlled heat, and the tenants do not have the ability to adequately regulate the heat in their units. All of the units frequently experience either over-heating or under-heating. The

building does not have a view, and is located on a busy, four-lane street. The building is not sound proofed.

Very few upgrades or repairs have been done on the 4 units since the tenants have lived there.

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There have been no other upgrades to appliances, bathroom fixtures, windows, flooring, carpeting, curtains, lighting, or paint in any of the units since the tenants have lived in the building (ranging from 15 to 37 years).

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All of the units currently have several repair issues, including cracks in the walls, water damage, cupboards that do not properly close, deteriorating carpets, flooring, and bathrooms, etc.

The agent representing the owners / landlords began managing the subject 6 unit building in November 2014. The 2 units not included in the application both have 2 bedrooms, and have variously been upgraded. It is understood that the current renters in these 2 units began their tenancies in 2014 and pay monthly rent of \$1,700.00.

There are no written tenancy agreements in evidence for any of the 4 tenancies which are the subject of the application. With the exception of unit #3, where it is understood that rent was increased from \$100.00 to \$300.00 a couple or so years ago, it is understood that annual rent increases have regularly occurred for the other 3 units since approximately 2006. Particulars concerning the subject tenancies are as follows:

**Unit # 1:**

Tenant "TG." 25 year tenancy

\$781.56: *current rent*

Date of last rent increase: *September 01, 2014*

\$19.53: (2.5%) *allowable rent increase in 2015* [ $\$781.56 + \$19.53 = \$801.09$ ]

\$1,700.00: *landlord's claim of "comparable rent"*

\$768.44: *amount of rent increase sought by landlord (approximately 98%)*  
[ $\$781.56 + \$768.44 = \$1,550.00$ ]

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**Unit # 2:**

Tenant "PR." 15 year tenancy

\$1,035.00: *current rent*

Date of last rent increase: *September 01, 2014*

\$25.87: (2.5%) *allowable rent increase in 2015* [ $\$1,035.00 + \$25.87 = \$1,060.87$ ]

\$1,700.00: *landlord's claim of "comparable rent"*

\$565.00: *amount of rent increase sought by landlord (approximately 54%)*

*[\$1,035.00 + \$565.00 = \$1,600]*

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**Unit # 3:**

Tenant "EM." 37 year tenancy

\$300.00: *current rent*

Date of last rent increase: *thought to be a couple of years ago*

\$7.50: (2.5%) *allowable rent increase in 2015* [ $\$300.00 + \$7.50 = \$307.50$ ]

\$1,300.00: *landlord's claim of "comparable rent"*

\$300.00: *amount of rent increase sought by landlord(100%)*

*[\$300.00 + \$300.00 = \$600.00]*

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**Unit # 6:**

Tenant "JO." 30 year tenancy

\$846.00: *current rent*

Date of last rent increase: *September 01, 2014*

\$21.15: (2.5%) *allowable rent increase in 2015* [ $\$846.00 + \$21.15 = \$867.15$ ]

\$1,700.00: *landlord's claim of "comparable rent"*

\$754.00: *amount of rent increase sought by landlord (approximately 89%)*

*[\$846.00 + \$754.00 = \$1,600.00]*

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Analysis

While all of the documentary evidence and testimony has been carefully considered, only key aspects of the evidence and testimony, in addition to related legislation and Residential Tenancy Policy Guidelines are specifically addressed here.

Sections 41, 42 and 43 of the Act address, respectively, **Rent increases**, **Timing and notice of rent increases**, and **Amount of rent increase**. In particular, section 43 of the Act provides, in part:

43(1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1)(a) by making an application for dispute resolution.

Section 23(1)(a) of the Regulation addresses **Additional rent increase**, in part:

23(1) A landlord may apply under section 43(3) of the Act [*additional rent increase*] if one or more of the following apply:

- (a) after the rent increase allowed under section 22 [*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;

Further, section 23(3) of the Regulation provides, in part:

23(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

- (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;
- (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;
- (c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;
- (f) a relevant submission from an affected tenant;

Residential Tenancy Policy Guideline # 37 speaks to “Rent Increases.” As to an application which relies on the claim of “significantly lower rent,” this Guideline provides variously and in part as follows:

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. 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 some 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.

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“Similar units” means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

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The “same geographic area” means the area located within a reasonable kilometer radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject unit, such as proximity to a prominent landscape feature (eg., park, shopping mall, water body) or other representative point within an area.

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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.

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The tenants take the position that advertisements for rental properties submitted by the landlord, in general, show units that are variously either in a better location, are in a significantly better state of repair, and / or have more amenities. The tenants also argue that one cannot conclude that advertised rents are the same as rents actually paid, or that market rents provide a fair and reasonable tool for comparison. In their submission, the tenants specifically claim, in part, as follows:

By submitting on Craigslist advertisements, the landlord has provided little evidence as to the actual state of the other units. The advertisements do, however, give information regarding recent upgrades and amenities.

Every advertised unit has significant differences from the tenants' units, which explain why they may attract a higher rent. Many have had recent upgrades, and the majority offer amenities that the tenants' units do not, such as balconies, in-suite laundry, dishwashers, secure parking, multiple bathrooms, and walk-in closets. The tenants' units have had very few upgrades or maintenance since the tenants have lived in the building, ranging from 15 to 37 years.

Several of the advertised units are much closer to [the local] Beach than the tenants, who live 10 blocks from the beach. Most of the advertised units are located on quiet, residential streets, while the tenants' building is on a busy, four-lane street. With no soundproofing in their building, the tenants likely hear significantly more street noise than the other units.

Further to the broad summary above, the tenants have provided in their submission a more detailed comparison between the subject units and units identified in the Craigslist submission made by the landlord.

In summary, I find that the landlord's application falls short of meeting the burden of proving entitlement to an additional rent increase above the limit set by the Regulation. Specifically, I find that there is insufficient evidence that the "size, state, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community," is sufficiently comparable between the units identified from Craigslist, and those which are the subject of the application. Further, if the landlord considers that the

4 subject units and the units advertised on Craigslist are located within a geographic area “with similar physical and intrinsic characteristics,” such a view is not articulated in the application, and is disputed in considerable detail in the tenants’ submission. Finally, and as addressed in the Guideline above, I find that the landlord’s relatively recent success in renting out 2 other units in the building for a higher rent than any of the 4 subject units, is insufficient to make the case for an additional rent increase.

### Conclusion

The landlord’s application is hereby 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: June 08, 2015

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Residential Tenancy Branch

