



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

R I

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to a rent increase above the limit set by the Residential Tenancy Act Regulation 23(1)(a): *on the basis that after an allowed rent increase the rent for the rental units are significantly lower than the rent payable for other rental units that re similar to, and in the same geographic area as, the rental unit.* The landlord withdrew their application under Regulation 23(1)(b).

Both parties were represented in the hearing and had opportunity to be heard, present evidence including, ask questions and discuss their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

After a rent increase permitted by the Residential Tenancy Act Regulations (Regulation), is the rent for the dispute rental unit *significantly* lower than rent payable for other rental units *similar to* and in the *same geographic area* as the rental unit?

### **Background and Evidence**

The current *rent payable*, and the *rent payable after applying a permitted increase* for the current year (2016) is as follows:

Unit	Current rent payable	Allowable Rent Increase for 2016 of 2.9%	Rent payable <u>after</u> allowable increase In 2016
UPPER	1742.50	50.53	1793.03

The landlord seeks the following rent increase:

Current Rent	Rent increase permitted	Comparable Rent payable	Additional increase requested / Total % increase Requested
\$1742.50	2.9%	\$2600.00 +	\$857.50 / 49 %

**The landlord** testified the subject property is the upper level portion of a residential house located in East Vancouver in near proximity to Knight Street and King Edward Ave. The landlord provides the rental unit is in a “classic East Vancouver house” close to transportation, shopping amenities of major chain retailers within walking distance, a public library, 2 blocks from an elementary school, and “a few blocks from two parks”. The rental unit is 1350 square feet, with 3 bedrooms and 2 bathrooms, large kitchen with new appliances, laundry facilities in the garage shared with lower tenancy. The unit also has a gas fireplace and balconies with a covered deck off of the kitchen with a southern exposure. Flooring in the unit is comprised of hardwood except for tiling in the kitchen and bathrooms. Utilities are not included in rent. Parking is on the street. The landlord provided images of the unit interior depicting it in largely reasonable condition.

The tenancy started November 01, 2014 at a payable rent of \$1700.00 before utilities, and a legal rent increase to \$1742.50 was applied in 2015. The landlord argues the rental unit rent is underrepresented in comparison to other units with the same or near square footage and same number of bedrooms and bathrooms, and possible other features. The landlord testified they are not confident of what amount of a rent increase best represents a comparable rent for the unit, however they stated they seek a rent increase of 49% to \$2600.00 per month.

**The tenant** submits the tenancy has been the subject of issues such as cigarette smoke wafting into the suite, the residential property used for storage of miscellaneous items, garage space intruded by additional storage of items, flooding during rain and the presence of rats and squirrels. The tenant does not think their rental unit is comparable to other units in their area for the amount of rent the landlord seeks in this application. They submit that such other suites are well maintained versus providing storage for the landlord’s castoffs. The tenant did not testify in respect to the interior condition. The tenant opposes the landlord’s request to raise the rent 49% but is agreeable to a modest increase until they vacate. However, the parties were unable to agree in respect to the tenant’s proposal.

Both parties submitted evidence comparing the subject residential property and rental unit to other rental units in the surrounding geographically relevant area.

The landlord has submitted into evidence their determination (that) “No units were actually found for rent in the exact neighbourhood”. The landlord’s version of same geographic area is:

east/west - Knight Street to Fraser Street, and  
north/south - 24<sup>th</sup> Ave to 33<sup>rd</sup> Ave.

The landlord largely provided evidence comprised of listings for rent on Craigslist, as did the tenant. The landlord’s evidence relied on *asking rent* for the advertised units. The *actual rent payable* is what the Act and Regulations prescribe. That is, the *rent payable* is existing rent due under a prevailing or existing tenancy agreement – not the *asking rent*, or desired rent for an advertised new tenancy. Solely *ask rent*, and not *actual rent* was provided. The applicant provided the following as comparables of their unit:

UPPER floor of house  
1350 Sq. Ft.  
3 Bedrooms  
2 bathrooms      Rent after current permitted 2.9% increase = \$ **1793.00**

In respect to the relevant geographic area, I considered the guideline of ‘a reasonable kilometer’ and determined that in urban (city) geography such as in this matter it is appropriate for a reasonable radius of the rental unit extend beyond the area proposed by the landlord. For the purpose of this matter, I find that a **2 kilometres radius** is more appropriate, extending:

**East /West** - Penticton Street to Cambie Street,  
and, **North / South** - 7<sup>th</sup> Avenue to 49<sup>th</sup> Avenue.

#	Comparable	Relevant Similarities (Relevant Difference)	same geographic area within radius of:	
			1.5 km	2.0 km
1	9xx E. 10 th Ave.  Ask: \$2600.00 Actual:	1100 sq. ft. *smaller* 1 bathrm.  (4 bdr. main floor, private driveway parking)	No	Yes
2	Withdrawn by Applicant	(North Vancouver)	No	No
3	Killarney	1200 sq. ft.	No	No

	Ask: \$1950.00 Actual:	*smaller* 3 bdr., 2 bathrm., covered sundeck  (pad parking)		
4	960 Nootka Vancouver  Ask: \$2150.00 Actual:	948 sq. ft. *smaller* 3 bdr., 2 bathrm. washer / dryer	No	No
5	Main & Terminal Vancouver  Ask: \$3500.00 Actual:	1300 sq. ft. *smaller* 3 bdr., 2 bathrm. dishwasher (Apartment )	No	No
6	Withdrawn by Applicant	None	No	No
7	9xx Nootka Vancouver  Ask: \$1900.00 Actual:	1150 sq. ft. *smaller* 3 bdr., 2 bathrm. Upper level, street parking, wood flooring, washer/dryer	No	No
8	South Vancouver Main & 53 <sup>rd</sup> Ave.  Ask: \$2300.00 Actual:	1200 sq. ft. *smaller* 3 bdr., 2 bathrm. washer / dryer, sundeck	No	No
9	Knight & Kingsway, Vanc.  Ask: \$3100.00 Actual:	1400 sq. ft. Upper level 3 bdr. Wood flooring  ( 2 floors, 9ft. ceilings, newly fully renovated, "high end features / remodelled", alarm system, 1 bathrm.)	Yes	Yes
10	Knight & Kingsway, Vanc.  Ask: \$2500.00 Actual:	1200 sq. ft. *smaller* 3 bdr., washer / dryer  (Newly built – duplex FULL HOUSE, back yard outdoor fireplace radiant floor heating, private washer/ dryer )	Yes	Yes
11	Killarney Park /	1400 sq. ft	No	No

	E. 49 <sup>th</sup> . Ave.  Ask: \$2400.00 Actual:	3 Bdr., 2 bathrm. "light"  (new carpet, in suite laundry)			
12	19 <sup>th</sup> / Oak – Laurel at 19 <sup>th</sup> Ave.  Ask: \$2450.00 Actual:	1400 sq. ft. corner house upper level 3 Bdr., 2 bathrm.  (in suite laundry)		No	No
13	Broadway /Commercial Dr.  Ask: \$2200.00 Actual:	1200 sq. ft. *smaller* 3 bdr., [1 bathrm. up, ½ down] hardwood flooring  (Full house)		No	Yes

### **Analysis**

**Section 23** of the Regulations states I must consider a number of factors, if relevant, inclusive of relevant submissions from any affected tenant.

**Residential Tenancy Policy Guideline #37** speaks to the key requirements for a landlord to be successful in obtaining an additional rent increase. In this matter the following from the Guidelines must be noted.

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

*The “same geographic area” means the area located within a reasonable kilometre 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 (e.g., park, shopping mall, water body) or other representative point within an area.*

I have based my decision on a reasonable interpretation of the landlord’s supporting material and the relevant submissions of the tenants. I have given consideration, in part, to similarity in square footage as a measure of similarity in size but my Decision is not based solely on the parameters of square footage.

I have looked to Residential Guideline #37 – as a *guideline*, choosing to primarily rely on the provisions of legislation.

**Section 23(1)(a)** of the Regulation states, in relevant part, as follows:

**23 (1)** A landlord may apply under section 43 (3) of the Act [*add. 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;

The Regulation does not define or indicate the quantum of other similar rental units against which the rent is deemed as significantly lower. I find the landlord should support that there is a reasonable number of similar rental units, within the same geographic area, whose rent payable is significantly higher than the subject rental units.

In particular respect to the similarity of the comparables to the rental unit I find the landlord's evidence in this regard was particularly incomplete. Other than the limited 'best foot forward' information provided in the Craigslist listings of the asking rent, size, number of bedrooms and bathrooms for the rental units, the landlord had very little other useful information about the majority of the comparables that would assist in determining if the units were comparable in respect to their age, condition, state of repair, internal features, storage, and parking.

Although the subject property is in a well-populated area of East Vancouver, most of the landlord's comparables were outside the 2 kilometer radius. Only four of the comparable units were within 2 kilometres of the subject property. Some of the units offered were outside the City and were withdrawn. Rather than limiting the comparables to upper suites in houses, as is the subject property, the landlord included a number of houses and an apartment. Those identifying laundry facilities were in suite rather than the facilities in the garage. Of those identifying parking only one unit identified street parking, the others identified private parking.

Despite being marginally within the same geographic area, I find that proposed comparable #1 is not accompanied by sufficient information about the comparable to compare the state of the rental unit and what amenities are provided so as to determine similarity.

Despite being within the same geographic area, I find that proposed comparables # 9 and #10 are not at all similar to the rental unit. One is a newly built *house* and the other is a "high end", "top of the line" appliances, fully renovated 2 floor home with 9 foot ceilings, and alarm system.

Despite being marginally within the target geographic area, I find that proposed comparable #13 is not similar at all to the rental unit as it is a full house.

I find that all other proposed comparables are outside of the same geographic area

I find that even if comparables #3 and #7 were within the same geographic area the rent of the subject rental unit is not *significantly* lower than the *asking rent* advertised for the comparables for them to be acceptable.

I have reviewed all of the comparables submitted by the landlord and have determined some of the units offered by the landlord were not considered for lack of sufficient details to arrive at a similarity even if deemed situated in the same geographic area .

I find that the landlord's application has failed to demonstrate that an additional rent increase should be issued on the basis of the landlord's claim that rents are *significantly lower than those in similar units in the same geographic area*. I find that the landlord's application was deficient in providing useful comparisons to establish an increase of the rent for this unit above what is permitted by the Regulation. As a result of all the above I dismiss the landlord's application, with leave to reapply.

### **Conclusion**

The landlords' application for an additional rent increase in respect to the subject unit is dismissed. The landlord is at liberty to issue rent increases in accordance with and as permitted by the Regulation. It remains available for the parties to *mutually agree* to a different rent.

This Decision is final and binding.

*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: April 28, 2016

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Residential Tenancy Branch