



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      ARI

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for allowance to increase the rent beyond the prescribed amount pursuant to section 43(3) of the *Act*.

The tenant did not attend this hearing although the teleconference remained open until approximately 11:30 am to allow the tenant an opportunity to attend this 11:00 am hearing. The landlord testified, providing supporting documentary evidence that he served the tenant with his Application for Dispute Resolution and Notice of Hearing by registered mail on February 4, 2016. The landlord produced tracking information from Canada Post to confirm this registered mailing. I find that the tenant was deemed served with this Application for Dispute Resolution, including the Notice of Hearing, on February 9, 2016, (5 days after the registered mailing) in accordance with section 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to increase the rental amount at this particular unit beyond the prescribed amount by the RTB?

### Background and Evidence

The landlord testified that this tenancy began on November 1, 2005 with a current rental amount of \$710.00 payable on the first of each month. He testified that, originally this tenancy was set for a fixed term of one year but that it continued on a month to month basis after that. The landlord did not submit a copy of the residential tenancy agreement. The landlord testified that the tenant has never had a rent increase "that he is aware of" over the course of the 11 year tenancy.

The landlord applied to increase the tenant's rent from \$710.00 payable on the first of each month to \$1050.00 payable on the first of each month in rent, an increase of \$340.00 or 47.9%. The landlord testified that he believes the tenant is aware of the application for the rent increase however the landlord confirmed that he did not provide

the tenant with a rental increase notice form prior to supplying the dispute resolution documents for this hearing.

The landlord submitted “comparables” to reflect his claim that this particular tenant is paying well below market rent for his unit. These comparables were in the form of printed copies of online advertisements for other units in the surrounding neighbourhood with similar square footage for 1 bedroom, 1 bathroom apartment units. The landlord argued that these comparables were similar in size, age and location to the building that the tenant resides in. He testified that those units rent from \$1000.00 to \$1100.00 per month.

The landlord testified that the tenant’s rental unit is approximately 500 square feet with one bedroom and one bathroom. The landlord submitted that he feels it is fair to increase the tenant’s rent in all the circumstances.

### Analysis

Section 43 of the *Act* allows a landlord to make an application for an arbitrator’s approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

- 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 an 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.
- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The *Residential Tenancy Regulation* (the *Regulation*) pursuant to the *Act* sets out the limited grounds for applying for an Additional Rent Increase. In this case, the landlord has applied for additional rent under the following provisions of subsection 23(1)(a) of the *Regulation*:

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...

Section 23(3) of the *Regulation* lists a number of factors that I must consider in deciding whether to approve an application for an additional rent increase pursuant to section 23(1) of the *Regulation*. In reaching my decision, I have considered these factors, and in particular, subsection (a) which reads as follows:

- (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect...
- (b) (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;

The landlord has been unable to provide the rent history for this rental unit or, at the least, a copy of the residential tenancy agreement to confirm the terms of this tenancy. Further, I note that the tenant has not been a party to this application and cannot provide information with respect to the history of the tenancy or any effects this increase might have on him.

*Residential Tenancy Policy Guideline # 37* provides the following guidance to the interpretation of **significantly lower rent**:

*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...*

*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...*

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

*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...*

*The landlord must clearly set out all the sources from which the rent information was gathered...*

*Residential Tenancy Policy Guideline #37* allows the landlord to apply for dispute resolution only in “extraordinary” situations.

In this case, the landlord provided no evidence of any actual rentals in his list of comparables. He confirmed that all of the rental units he cited were listings of available or advertised rental suites. In reaching my decision, I have given consideration to the landlord’s assertion that the owners of the rental suites he provided as comparables would not be listing them at a rate that exceeds what prospective tenants will pay. While I can appreciate the difficulties involved in obtaining actual market rental information, the landlord has failed to provide even a single example of an actual rental in the marketplace in his list of comparable properties. Asking rents are not necessarily determinative of what tenants will pay for a rental unit and are not reliable surrogates for actual rental information.

In addition, I find the landlord has provided an insufficient amount of supporting documentary evidence beyond the online advertisements thereby limiting their usefulness in that they lack detail and dates more recent than three months prior to this application. Without significant oral testimony or further documentary evidence to support the landlord’s claim, I have minimal evidence before me upon which to rely in making a determination about an extraordinary, exception rental increase beyond the standard amounts allowed.

After considering all of the factors outlined in section 23(3) of the *Regulation* and *Policy Guideline 37*, I find that the landlord has not satisfied the requirement that he demonstrate that the tenant’s rent is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic areas as the rental unit. I also find that the landlord has not demonstrated that there are exceptional circumstances that entitled him to an additional rent increase beyond the annual amount allowed under section 22 of the *Regulation*, particularly in that the landlord failed to provide sufficient information with respect to this particular tenancy and its history.

Part 3 of the *Residential Tenancy Act* provides information regarding what rent increases are allowed. Section 41 of the *Act* provides that a “landlord must not increase rent except in accordance with this Part”. This part of the *Act* provides information

regarding the form and timing of the provision of a notice for a rent increase including these subsections applicable to the landlords' application,

**42** (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

...**43** (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.

...In this case, the landlord has not provided any evidence to suggest that he has given notice to the tenant of this additional rent increase. The landlord confirmed that he has not provided notice to the tenant in the correct form.

Given that the landlord has not provided the correct form for an additional rent increase and has not met the burden of with respect to an application for an additional rent increase section 22 of the *Regulation*, I dismiss the landlord's application.

In all of the circumstances described above, I find that the landlord has not met the burden in applying for an additional rent increase.

### Conclusion

I dismiss the landlords' application.

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 13, 2016

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Residential Tenancy Branch