



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: AARI

### **Introduction:**

Both parties attended and the tenant agreed he received the landlord's Application by registered mail. I find it was legally served pursuant to section 89 of the Act. The landlord applies pursuant to section 43 of the *Residential Tenancy Act* (the Act) for an additional rent increase.

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

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

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 1, 2013, it is now a month to month tenancy, rent is \$1250 a month and a security deposit of \$625 was paid September 1, 2013. After the legal increase of 2.9% this year, the rent would be \$1309.43. The landlord states this is significantly lower than rent for similar units in the same geographic area. The tenant submits that it is not.

There was much argument concerning the size of the unit in dispute. The tenant supplied me with a number of websites to check the size of units. The landlord invited me to consult the BC Assessment as the most reliable for she said it is the information which is submitted to the city for any improvement permits and it is the basis on which the taxes are paid. At my request, she called the Strata Management to confirm the square footage on which she is assessed by them. The BC Assessment showed the subject unit to be 510 sq. ft. and the neighbouring unit, used as a comparable, to be 492 sq. ft. The Strata confirmed that the neighbour unit was smaller by at least 18 sq. ft. (their unit entitlements were done in metres and included other items). Although the

tenant's evidence was late and the landlord said she did not have an opportunity to reply to it, I consulted the websites he supplied. One was a website apparently funded by a real estate company and the other was a website that would supply condo plans for a fee.

The landlord provided 3 comparables in the same building or development with the same amenities. #1 was 510 sq. ft. rented for \$1650 per month, #2 was 536 sq. ft. rented for \$1700 a month, and #3 was 564 sq. ft. rented for \$1780 per month. Nearby buildings had a unit of 433 sq. ft. for \$1595 a month and a unit of 530 sq. ft. rented for \$1700 a month. The last unit was 20 years old but the others were all 9-10 years old.

The tenant submitted in a letter that the neighbouring unit, #1509 is a relatively good example of rents in the area for \$1500 a month. The landlord submitted this rent is before the approved 2.9% increase for 2016. After the increase, it would be \$1543.50. The tenant, however, states this unit is larger than his unit (#1507) and has a bedroom. He submitted some comparables. He states the one in the Salt building on Hornby is a 474/475 Sq. ft. one bedroom at \$1495 a month with no pool but a roof top deck and barbeque. It is two years old. The landlord said this is a newer building, the unit is on the third (much lower floor than the subject unit) and there may have been factors such as rental competition and amenities that affected the price. Another unit in the Woodward's building is 642 sq. ft. for \$1495 a month including parking. The landlord noted this is not in the same desirable neighbourhood as the subject unit as there tends to be more crime in that area. The tenant said it was only a few blocks away.

### **Analysis:**

Policy Guideline 37 of the Residential Policy Guidelines sets out important factors that are considered in an application for an additional rent increase (AARI). It states in part:

***"The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount. The tenants will have an opportunity to appear at the hearing of the application, question the landlord's evidence, and submit their own evidence.***

*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;...*
- *a relevant submission from an affected tenant;*

- *a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation<sup>6</sup>;...*

*An arbitrator's examination and assessment of an AARI will be based significantly on the arbitrator's reasonable interpretation of:*

- *the application and supporting material;*
- *evidence provided that substantiates the necessity for the proposed rent increase;*
- *the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation<sup>7</sup>; and*
- *the tenant's relevant submission...*

### ***Significantly lower rent<sup>8</sup>***

*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...*

*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*

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<sup>6</sup> RTA, s. 32; MHPTA, s. 26.

<sup>7</sup> RT Reg, s. 23; MHPT Reg, s. 33.

<sup>8</sup> RT Reg, s. 23(1)(a); MHPT Reg, s. 33(1)(a).

*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.*

*"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 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 (e.g., park, shopping mall, water body) or other representative point within an area.*

*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. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.*

Although the tenant contended I should examine various web sites to determine the actual size of the unit and that the BC Assessment statement of size should not be relied on, I disagree. I find the BC Assessment stated size of the unit is the most credible and reliable source of this information. The size of the unit as given by the landlord and the Strata corresponds closely to the BC Assessment measurement and I find this supports the landlord's credibility and reliability of the BC Assessment that the unit is 510 sq. ft. As the landlord pointed out, it is not logical that an incorrect size is used by the City for the tax basis. I prefer and find more reliable evidence of a government assessment for tax purposes to that of a website with plans for sale or a realtor funded website.

I find the closest comparables are the units in the same building or within the same development. They are similarly constructed, of the same age with similar attributes and amenities. The tenant also agreed in his statements that the neighbouring unit would be considered a close comparable. According to the BC Assessment, I find the neighbor unit has 492 sq. ft. and is rented for \$1500 a month without the 2016 legislated increase (\$1543.50 with the increase). This amounts to \$3.04 a foot or \$3.13 after the increase. The second comparable at \$1650 a month for 510 sq. ft. amounts to \$3.24 a sq. ft. The third at \$1700 for 536 sq. ft. amounts to \$3.17 a sq. ft. and the fourth at \$1780 a month for 564 sq. ft. amounts to \$3.15 a sq. ft. I find the subject unit renting for \$1309.43 a month for 510 sq. ft. is \$2.56 a sq. ft. which is lower than all the comparables. Based on the comparables, I find this is significantly lower than units in the same geographic area with the same amenities. I find the neighbour unit #1509 has the lowest rental per sq. ft. of the comparables submitted.

Calculating the same sq. ft. price for the subject unit #1507 as the neighbor unit #1509 which is arguably the best comparable, being on the same floor of the same building with amenities, I find the comparable rent for this unit would be \$1599.96 per month after the 2016 increase of 2.9%. The landlord is requesting only \$1575 per month (which is equal to \$3.08 a sq. ft.). I find the rent for the subject unit after allowing the 2016 legislated increase of 2.9% would be \$1347.40. Given the comparables, I find the subject rent is significantly lower than properties of the same size, in the same geographic area with the same amenities as it is \$252.56 per month lower than the neighbour's rent for a smaller unit. As stated previously, the neighbour #1509 appears to have the lowest rent per sq. ft. of the comparables.

The tenant's comparables of the 2 year old building calculates to \$3.15 a foot and the Woodward's building at \$2.32 a sq. ft. The landlord pointed out that the third tenant comparable is a 38 year old building, the unit is on a much lower floor, has shared laundry and no amenities. I do not accept the Woodward's building as a good comparable as it is not in the same geographic area with the same neighbourhood and community reputation as the subject unit. I find the tenant's third comparable is from a 38 year old building without similar amenities so I find it not as comparable for determining rental rates as the landlord's comparables in the same building. As stated previously, many of the tenant's

calculations were based on his submission that the subject unit is 483 sq. ft. and is smaller than the neighbour unit. I find his calculations obtained from websites to not be as reliable as BC Assessment statement of sizes, so I relied on BC Assessment.

Although the tenant contended that his unit is a studio and the neighbour has one bedroom, I find the landlord's evidence credible that the layout was a choice and many persons prefer the open space concept, studio, like the subject unit. I find the actual square footage to be a more comparable measure for determination of rent than a choice of layout. I note there was no contention that the landlord has failed to maintain the subject unit. The landlord notes she rented the unit at a lower rate, \$1250, to the tenant four years previously as she had a tenant move unexpectedly. She notes there was no increase in 2013 per tenant request and in 2014 and 2015, only the legislated increases of 2.2% and 2.5% respectively. She submits that this has placed her in the situation of having a significantly lower rent than comparable units and she has mortgage and other expenses which have increased. She submits that she used as comparables the lowest rents she could find in the vicinity and they ranged over the \$1575 which she requests.

**Conclusion:**

I find the landlord entitled to an additional rent increase of 17.38% above the legislated increase of 2.9% as requested. This results in an allowed rent of \$1575 per month for the subject unit commencing three months from service in accordance with section 43 of the Act. I find this is a reasonable average of rents in this same geographic area, with similar physical and intrinsic characteristics.

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 09, 2016

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Residential Tenancy Branch