



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DIAMONDHEAD ROAD INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **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 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.*

Both parties were represented in the hearing and had opportunity to be heard, present evidence, ask questions and discuss their dispute. The tenant acknowledged receiving the evidence of the landlord except evidence for 1 of the landlord's comparables. The landlord acknowledged receiving the evidence of the tenant, effectively a copy of the tenancy agreement, with an indicated correction to the term of the agreement. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence 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:

Subject Unit	Current rent payable	Allowable Rent Increase for 2016 of 2.9%	Rent payable <u>after</u> allowable increase In 2016
40351	1175.00	34.07	1209.07

The landlord seeks the following rent increase:

Current Rent	Rent increase permitted	Claimed Comparable Rent payable	Additional increase requested / Total % increase Requested
\$1175.00	\$1209.07 / 2.9%	\$1700.00	\$490.93 / 40.6 %

**The landlord** testified the subject property is a 2 floor unit with walk-in at grade, located in an outer neighbourhood of Squamish: *Garibaldi Highlands*, approximately 5 kilometers from the city of Squamish. The landlord provides the rental unit is in a multi-residential complex close to transportation, shopping amenities of major retailers within proximity as well as social amenities within walking distance. The rental unit is claimed to be 1150 square feet, with 2 bedrooms and 1 ½ bathrooms, and end of complex unit, bigger yard than most others in the complex. Despite the claim in the tenancy agreement the kitchen is void of a dishwasher, however comes with window coverings and laundry amenities. The unit is claimed to have a “sunny” exposure. Flooring in the unit is comprised of laminate and some carpeting. Utilities are not included in rent. Parking for 1 vehicle is provided as part of the rent. The landlord provided images of other units used as comparables but no depictions of the subject unit, which the landlord claims, is in “fair shape”.

The tenancy started May 31, 2015 at a payable rent of \$1175.00 before utilities, and there is no reported history of legal rent increases. 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 the proposed rent increase, if applied, adequately represents the rent for all similar units.

**The tenant** submitted a copy of the tenancy agreement. The tenant did not dispute the landlord’s claim their rental unit is similar to other units in the same residential property of which the landlord has provided some comparables. They submit that other suites are not similar or are in a different geographic region. The tenant testified in respect to the interior condition of their unit as fair, and needing upgrading. The tenant generally opposes the landlord’s request to raise the rent 40% but is agreeable to a lesser increase of approximately 18% moving forward. However, the parties were unable to agree in respect to their respective proposals in contrast to that requested by this application.

The landlord submitted evidence comparing the subject rental unit to 5 other rental units: 4 in the same community (3 in the same residential property), 1 in Squamish.

The landlord provided evidence comprised of purportedly current listings for rent on Craigslist. The landlord's evidence relied on *asking rent* for the advertised units versus the *rent payable* under a prevailing or existing tenancy agreement as required by the Act.

In respect to the relevant geographic area, I considered Residential Policy Guideline #37 in which it recommends that 'a reasonable kilometer radius of the subject rental unit' be used. It further states,

"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 not been provided with supporting evidence respecting the surrounding features or amenities of the subject unit or the submitted comparables. However, I accept that the immediate neighbouring comparables in the same community would benefit from the same features and amenities as those of the subject unit. I have determined that in mixed geography such as in this matter it is appropriate for a reasonable radius of the rental unit to be a 2 kilometer radius of the subject unit as the relevant *geographic area*. More specifically, I am guided by the testimony of both parties it would be appropriate for the relevant geographic area to be the neighbourhood community of **Garibaldi Highlands**, 5 kilometers from the District Municipality / City of Squamish.

_ _ _ 51	end unit, 2 floors 1150 Sq. Ft. 2 Bedrooms 1 ½ bathrm. 1 parking No pets	Subject unit     actual rent after permitted 2.9% increase = <b>\$1209.07</b>
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The landlord provided the following as comparables of the subject unit:

#	Comparable	Relevant Similarities			
		(Relevant non-similarity)	Area	Age	Constr.
1	_ _ _ 55  Rented Feb. 29/16 Actual: \$1500.00	1150 sq. ft. 1 ½ bathrm.. 2 bedrooms 1 parking No pets (interior unit)	yes	yes	yes
2	_ _ _ 59	1350 sq. ft.	yes	yes	yes

	Rented July 2015 actual: \$1800.00	3 bdr., 1 ½ bathrm. dishwasher  ( extra bedroom, larger unit, dishwasher )			
3	--_61  Rented May 2016 actual : \$1600.00	1150 sq. ft. 2 bedrooms 1 ½ bathrm 2 parking No pets  ( 2 parking )	yes	yes	yes
4	2 br-1300ft2 – 2 Bedroom +den suite in Squamish (GH)  Ask: \$1750.00 Actual:	1300 sq. ft. 2 bedrooms + Den 1 bathrm Basement suite Pets ok  (+ Den, larger unit, just renovated, “everything new” pets ok)	yes	n/k	n/k
5	3 br – 1100ft2 – One half of a Duplex Squamish  Ask: \$1800.00 Actual:	1100 sq. ft. 3 bdr., 1 bathrm. half of duplex / house, fenced back yard, Downtown (Dentville) Pets ok  ( 3 bedrooms, half of a duplex, fenced yard, 5 km. distance, pets ok)	No	n/k	n/k
6	2 br +Den Condot	Not provided to tenant. Not considered	n/a	n/a	n/a

## **Analysis**

**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;

**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 limited supporting material and the limited 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 rely on the provisions within legislation and look to Residential Guideline #37 as applicable.

The Regulation does not define or indicate the number 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 unit.

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 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 these comparables that would assist in determining if the units were similar in respect to their age, construction, condition, state of repair, internal features, storage, community, and parking. The landlord surmised some of the details.

Although most of the landlord's comparables were within the *geographic area* the landlord included a number of units with additional bedrooms and/or larger interiors or units which were refurbished versus what the parties agree the subject unit being in “fair shape”.

I find that proposed comparables # 4 and #5 are not at all similar to the rental unit. Both contain an extra room, and are refurbished. I accept that the associated images

for these units depict them as refurbished or reconditioned. Both also accept pets. One is larger in square footage and the other is 5 kilometers from the target (same) geographic area. Other supporting information about these proposed comparables is absent.

Despite being within the target geographic area, I find that proposed comparable #2 is not similar at all to the rental subject unit as it is 3 bedrooms and is 200 square feet larger, and has a dishwasher.

I find that the balance of proposed comparables (#1 and #3) are in the same residential complex and therefore are similar in some respects. While I may accept that comparable #3 is physically a “mirror” of the subject unit I note that the rent for this unit includes parking for 2 vehicles, versus for 1. I also note that comparable #1 was rented for more than the subject unit beginning two months before the landlord’s application was submitted, whereas comparable #3 was rented for more than the subject unit beginning the month after the landlord’s application submission. In this regard the following from **Residential Tenancy Policy Guideline #37**, is relevant and must be noted;

*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.*

*However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. To determine whether the circumstances are exceptional, the Arbitrator will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.*

In this matter the subject unit has been rented for the past 13 months under a written tenancy agreement at the agreed, and purportedly lower, rate of rent. There is no evidence of rent increases given during the tenancy. There is no evidence suggesting the landlord intentionally kept the rent low for a long term renter. The landlord did not present other relevant historical information about the tenancy or reasoning for the prevalent payable rent other than the rent market has changed in the past year and the landlord is, as of recently, signing new tenancy agreements which include a higher rent. I find the circumstances pertaining to the subject rental unit are not exceptional.

I find the landlord’s recent success at renting out 2 similar units on the residential property at a higher rent is not sufficient evidence to support the landlord’s premise that

the tenant's rent is *significantly lower than those in similar units in the same geographic area*. Largely, I find the landlord has not provided sufficient evidence supporting that a reasonable number of similar rental units, within the same geographic area, with payable rent (versus ask rent) significantly higher than the subject rental unit.

I find the landlord's application has failed to demonstrate that an additional rent increase should be issued on the basis of their evidence. I find that the landlord's application was deficient in providing useful evidence 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 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: July 11, 2016

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Residential Tenancy Branch