



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

ARI

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for authorization to increase the rent by an amount greater than the permitted increase amount pursuant to section 43 of the Act.

The landlord and tenants all attended this hearing. Both tenants confirmed receipt of the landlord's Application for an Additional Rent Increase. All parties agreed to receipt of the other's materials for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to increase the tenants' rent by 15% - an amount greater by 12.1% than the permitted annual increase amount of 2.9%?

### Background and Evidence

This application related to two tenants within the same building. One tenancy began on October 1, 2011 with a rental amount of \$850.00 ("Tenancy JD") and a second tenancy began on September 15, 2012 with a rental amount of \$1700.00 ("Tenancy JS"). Tenant JD provided a \$425.00 security deposit on September 6, 2011 and Tenant JS provided a \$775.00 security deposit on August 6, 2012. The landlord continues to hold both security deposits.

The landlord applied to increase the tenants' rents by 15%. With this rental increase, Tenant JD's rent would increase to \$997.50 and Tenant JS's rent would increase to \$1955.00 monthly. The landlord testified that these tenants have not had rent increases over the course of their tenancy, that his property taxes have increased and that the amount of monthly rent paid by comparable rental units in the same area are significantly higher. In making his application, the landlord relied on the ground that the rent for these tenants is significantly lower than comparable units in the area.

The landlord submitted copies of six internet advertisements for rental units in the general area where the rental unit is located. The rents for these six comparables provided by the landlord ranged from \$1000.00 to \$1300.00 per month. The landlord testified that his property was built in 1958 and is 2527 square feet. He testified that Tenant JS rents the upstairs unit and Tenant JD rents the downstairs unit. He testified that he has done renovations and that the rental units have a view. He testified that he purchased the residential premises from the former owner in

March 2016 and that the current rental amounts are not providing sufficient income to meet his expenses. He acknowledged that both tenants are good tenants and take excellent care of the property.

The tenants submitted that the landlord purchased the residential premises knowing the rental amounts paid. The tenants both testified that the current landlord has not renovated the property in the time period that he has owned the property.

With respect to the comparables submitted by the landlord, the tenants both testified that the other rental unit advertisements submitted are renovated or much newer than the landlord's property. Both tenants submitted that the rental unit advertisements related to rental units that were more central to amenities in the community and that they provided significantly more facilities and amenities, including private (not shared) laundry and full size appliances. Tenant JD testified that she has no window in her basement suite living room and that her windows are small half size windows as the unit is partially underground. Tenant JS testified that she shares the yard with the downstairs neighbour (Tenant JD) and that the rooms are quite small in comparison to the units submitted as comparables.

Under the *Residential Tenancy Act* ("the *Act*") and the *Regulation* issued pursuant to the *Act*, the landlord would be allowed to increase each tenant's rent by 2.9% per month without any application. The tenants testified that their rent should not be raised. The landlord applied to raise the rent by 15% per month, the allowable 2.9% plus an additional 12.1%. For the tenants named within the landlord's application, this would result in an increase in monthly rent from \$127.50 and \$255.00 each month respectively for Tenant JD and Tenant JS.

### Analysis

Section 43 of the *Act* allows a landlord to apply to the Residential Tenancy Branch for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. In accordance with the *Residential Tenancy Regulation*, a landlord may impose an Annual Rent Increase up to, but not greater than 2.9% for 2016.

#### Amount of 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; 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.

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.

- 23(3)
- (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 ...;
  - (d) a change in operating expenses and capital expenditures in the 3 years preceding the date ...;
  - (e) the relationship between the change described in paragraph (d) and the rent increase applied for;
  - (f) a relevant submission from an affected tenant;
  - (g) a finding by the director that the landlord has contravened section 32 of the *Act* [*obligation to repair and maintain*];
  - (h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year;
  - (i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;
  - (j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
  - (k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has
    - (i) submitted false or misleading evidence, or
    - (ii) failed to comply with an order of the director for the disclosure of documents.

I note that, in considering the subsections of 23(3) of the *Act*, some relevant considerations include;

- There was limited information provided by the landlord to support the claim that the tenants had not received a rental increase in previous years;
- Some of the change in operating expenses of the landlord are as a result of the increase in the value of his property;
- The tenants testified that no renovations have been provided to either rental unit.
- The “comparables” used by the landlord’s appraisers are somewhat dissimilar in that they reflect a more accessible home with more amenities in better repair than are available to these tenants.

The landlord submitted that he sought to raise the rents because the rental amount the tenants are paying is well below other rents in the same area and that his own costs have increased requiring that he create more income for himself. I accept the submissions of both tenants at this hearing that there have been no renovations by the landlord.

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...

In this case, the landlord provided evidence of advertised rental units in a diverse area within the community where the rental unit is located. Most of those units were comparable in some

fashion but all were distinguishable in some significant way. Particularly, I accept the testimony of the tenants that the properties submitted as “comparables” were more central, providing more amenities and having been more recently renovated. I also note that the comparables were limited in their value as there was too small of a sample of rent amounts and that they merely reflected somewhat dated printed copies of online advertising. I have not been provided sufficient evidence by the landlord to support his claim that he has performed renovations.

As indicated above, Residential Tenancy Policy Guideline No. 37 allows the landlord to apply for dispute resolution only in “extraordinary” situations. Extraordinary is defined as beyond what is usual, regular or customary. I find that the current situation is not extraordinary. The landlord is allowed an annual rental increase amount to account for changes to his costs from a variety of factors. Furthermore, the comparables provided reflect a difference from the current tenants’ rent at \$150 or more. I do not consider the factors raised by the landlord extraordinary.

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 sufficiently satisfied the requirement that he demonstrate that the tenants’ rents are significantly lower than the rent payable for other rental units that are sufficiently similar to, and in the same geographic areas as the rental unit. I find that the landlord has not demonstrated that there are exceptional circumstances that entitle him to an additional rent increase beyond the annual amount allowed under section 22 of the Regulation. I find that the landlord is not entitled to an additional rent increase beyond the current annual rental increase amount Allowable under the *Act*.

Given all of the evidence, and the requirements provided under the *Residential Tenancy Regulation*, I find that the landlord has not met the burden of proof in applying for a rental increase. Therefore, I dismiss the landlord’s application. The landlord is entitled to increase the rent annually in accordance with the regular rental provisions of the *Act*.

The landlord is not entitled to recover the filing fee as he was not successful in this application.

### Conclusion

I dismiss the landlord’s application in its entirety without leave to reapply.

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: September 1, 2016

---

Residential Tenancy Branch

