



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes:

RENT INCREASE (RI)

Introduction

This hearing was convened in response to an application by the landlord filed June 01, 2016 for a rent increase above the set allowable rent increase pursuant to Residential Tenancy Act Regulation 23(1)(a).

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, and the landlord acknowledged receiving the evidence /submission of the tenant. The landlord submitted 12 photo images of inside the subject rental unit which they did not provide to the tenant, and therefore were deemed inadmissible.

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 after applying the allowable rent increase* for the current year (2016) is as follows:

Unit	rent payable February 2015	Allowable Rent Increase for 2016 of 2.9%	Rent after allowable increase In 2016
Ground level	1000.00	Established February 1, 2016	1029.00

The landlord seeks the following rent increase:

Current Rent	Rent increase permitted	claimed Comparable Rent	Additional increase requested / Total % increase Requested
\$1029.00	applied	\$1300.00	(\$1250.00) \$220.00 / 21.10 %

The landlord's property is the ground level portion of a residential house located in East Vancouver in near proximity to Renfrew on 15th Avenue referenced as Renfrew Heights. The landlord provides that the rental unit is close to transportation and shopping amenities. The rental unit is 1000 square feet, with 2 bedrooms and 1 bathrooms, kitchen, living room and laundry room. All utilities are included in rent inclusive of media service. I do not have benefit of a written tenancy agreement.

The tenancy started in September 2004 and rent increases were applied in 2007, 2010, 2013, 2015, and 2016. The payable monthly rent increased February 2016 and is \$1030.00.

By their application the landlord seeks a rent increase to \$1250.00 equaling an *additional* rent increase of 21.10%. The landlord argues the rent for the unit is low in comparison to newly advertised units in online listings, as provided into evidence, and that they seek an increase at the lower end of the current market rents.

The landlord provided the following evidence in support of this matter.

- 1 page narrative titled *Application for additional rent increase*
- Realty listing details of residential property 2002
- Media service utility invoice for residential property
- 19 online comparables 'for rent' of 2 bedroom basement suites dated June to August 2016 as similar and in the same geographic area with varying asking rents averaging \$1430.00 (removing highest and lowest).

The landlord submits they "feel justified" asking for an additional rent increase as they did not increase allowable rent increases as permitted for 7 of the past 12 years. They acknowledge that it is not available to them as landlord to retroactively impose previously unapplied allowable rent increases. However, the landlord submits their costs associated with the residential property have increased and they have made improvements to the rental unit. The landlord provided that over the tenancy period they have replaced the shared washer and dryer, the toilet, bathroom and kitchen faucets, refrigerator and stove, as well as all new window blinds. The landlord provided an accounting of what the current rent hypothetically would be if they had increased the rent annually in accordance with the allowable increases. The landlord notes that currently there are no comparable or similar rental units available for rent within the subject area.

In partial response to the landlord's evidence the tenant provided a narrative into evidence which argues that a landlord may not retroactively apply a rent increase in subsequent years so

as to "catch up"; and, that the landlord's submission of online comparables seeking market rents does not meet the evidentiary requirement in pursuit of their application at hand: Regulation 23(1)(a).

Analysis

The full text of the Act, and other resources indicated in this Decision can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I have reviewed all relevant evidence in this matter. I find that Part 4 of Residential Tenancy Regulation, **Section 23 – Additional rent increase**, in relevant part to this matter, states as follows.

Additional rent increase

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

I find that the landlord has the burden to provide the following evidence,

- that the payable rent for the subject rental unit including the rent increase allowed by Regulation: in this matter for 2016 the permitted rent increase of 2.9%.
- that the payable rent of the subject unit is significantly lower than the rent *payable* for other rental units which are similar and in the same geographic area as the subject rental unit.

I find that Residential Tenancy Regulation **Section 23** compels an Arbitrator to consider contents of **subsection (3)(a) through (3)(k)** of which I find the following are relevant in this matter.

3(b) In September 2013 the landlord imposed a rent increase of \$25.00.

In 2014 the landlord did not impose a rent increase: \$0

In February 2015 the landlord imposed a rent increase of \$25.00.

3(d) The landlord referenced costs typically associated with a 12 year tenancy as reasonable wear and tear items. No cost details provided.

3(f) The tenant provided a narrative arguing the landlord's application should not operate to request unclaimed allowable annual rent increases over the tenancy's

history. The tenant further quotes from a Director's Decision effectively outlining that providing a comparison with prospective rents or *market ask rent* is on its own not sufficient to prove that a rental unit has a significantly lower rent. That market ask rent is of only limited value.

It must be noted that in this matter the landlord seeks an increase of the rent to \$1250.00 which is significantly below the established median of their comparables.

I find the landlord has largely provided evidence representing comparables with a wide spectrum of near recent *ask rents* or *market ask rents* and varying similar newly available units within the subject area. It must be noted that these rent amounts are prospective rents reflecting the market condition of the day for newly available rental units and are not a representation of what tenancies as a whole for similar units in the subject geographic area are currently paying. I also note the landlord's comparables at the higher end of the *market ask* for rents were posted for weeks, and one for 2 months.

I accept that there are always newly rented units with payable rents in line with prevalent *market ask rents*. I find the landlord has not provided *overwhelming* evidence establishing that other than for these newly rented units the rent for the subject rental unit is significantly lower than the rent paid for similar rental units in the same area. While I am not bound by past decisions of the Director, I accept the evidence of the tenant in this matter that the landlord's comparables provided to support their application may be of limited value. However, that is not to say the evidence has no evidentiary weight.

Residential Tenancy Policy Guideline 37 – Rent Increases, in relevant part includes the following excerpt:

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.

Of course the above excerpt is in relation to a landlord administering additional units within their larger residential property, however I find the guideline can be applied in respect to this matter. I find that the landlord cannot use their comparables to justify an increase of rent to current *market ask*. I have not been provided evidence that the landlord's online comparables all resulted in payable rents as were advertised.

I accept the landlord's premise, and in effect accept most of their comparables, that on balance of probabilities there are similar units within the same geographical area with payable rents higher than the subject rental unit.

I accept the tenant's argument the landlord cannot support their application solely with examples of recent market asks. However, I am compelled to also consider relevant aspects of Residential Tenancy Regulation Section 23(1)(b) in which I find that in the 3 years preceding the date of the landlord's application the landlord raised the rent in 2 of those 3 years and in both cases the rent was raised by less than the allowable rent increase permitted. I also note from the landlord's evidence that in the additional 2 years preceding the aforementioned 3 year period the landlord did not raise the rent.

As a result of all the above, I find that the landlord has provided sufficient evidence that the payable rent of the subject rental unit of \$1029.00, in all likelihood 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.

Residential Tenancy Regulation **Section 23(4)** states as follows,

Additional rent increase

23 (4) In considering an application under subsection (1), the director may

- (a) grant the application, in full or in part,
- (b) refuse the application,
- (c) order that the increase granted under subsection (1) be phased in over a period of time, or
- (d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the residential property.

On preponderance of all the evidence in this matter, I find the landlord has provided sufficient evidence allowing the landlord's application as per **Section 24(4)(a)**, *in part*. As a result, I find that while a landlord may not retroactively impose an allowable rent increase I find it available for an Arbitrator to do so, and in this matter find it reasonable. Therefore, **I grant** the landlord an *additional rent increase above the permitted rent increase of 2.9% for 2016 of 7.96 %*, based on the following calculation adjusting the last 5 years to the allowable rent increases.

Annual allowable rent increase

increases

Rent: September 2011 rent	\$ 950.00 >	<i>carried</i> \$ 950.00
allowable rent increase 2012: 4.3% =	\$ 990.85	40.85
allowable rent increase 2013: 3.8% =	\$ 1028.50	37.65
allowable rent increase 2014: 2.2% =	\$ 1051.12	22.62

allowable rent increase 2015: 2.5% = \$ 1077.40	26.28
allowable rent increase 2016: 2.9% = \$ 1108.65	31.25
2016 rent with allowable increases	\$1108.65

- Imposed February 2016 rent increase: $\$1000.00 + 2.9\% = \1029.00 .
- Granted *Additional* Rent Increase of **7.96 %**: $\$1029.00 + \$79.65 = \$1108.65$

As result of the above,

I Order an additional rent increase of **\$79.65** effective **December 01, 2016** and that the resulting rent of **\$1108.65** is the payable rent until an allowable legal rent increase may be imposed by the landlord, as prescribed.

I Order that any portion of rent paid by the tenant from February to November 2016 of over \$1029.00 may be deducted by the tenant from a future rent.

Conclusion

The landlords' application is, in part, is granted.

This Decision is final and binding on both parties.

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: November 30, 2016

Residential Tenancy Branch