# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes AARI

Introduction

This proceeding dealt with the landlord's Application for Additional Rent Increase (AARI). All parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

1. Additional evidence and submissions

The hearing was held over two dates and at the end of the first hearing date I ordered the landlord to provide information on revised spreadsheets. An Interim Decision was issued and should be read in conjunction with this decision. During the period of adjournment I received the revised spreadsheets. At the start of the reconvened hearing I confirmed that the landlord had served the revised spreadsheets upon the tenants as ordered. The tenants of Unit 1 had also submitted a written response to me, as authorized, and I confirmed that it was served it upon the landlord as well.

Having been satisfied that the parties were exchanging their respective written submissions and evidence, I accepted and considered their respective submissions it in making this decision with the exception of another comparable that the landlord had added. The landlord had not requested authorization to provide another comparable and I did not authorize another comparable to be provided. The landlord also provided the layout of the basement level and measurements of the rental units in the basement level. Although this additional evidence had not been authorized, I did permit this evidence to be included as square footage had been previously estimated by the landlord and was an issue under dispute. Accordingly, I viewed the layout and measurements to be evidence that would be aid in assessing the accuracy to the calculations.

2. Determining date of last rent increase

The current landlord purchased the property in January 2016 and inherited the subject tenancies from the previous landlord. Shortly after the property was transferred to the current landlord, on January 29, 2016, the landlord's agents issued Notices of Rent Increase to the tenants for an amount equal to the annual allowable increase of 2.9% to be effective on May 1, 2016.

On March 3, 2016 the landlord's agents issued a letter notifying the tenants that the rent increase would not be coming into effect and the rent would remain the same; however, on April 12, 2016 the landlord filed this Application for Additional Rent Increase (AARI).

The tenants of Unit 1 submitted that they have been paying the increased rent of $1,749.30, as indicated on the Notice of Rent Increase, since May 1, 2016 and have continued to do so until the date of the hearing and the landlord has accepted that amount. The landlord appearing at the reconvened hearing stated that he is not involved in the collection of rent and was unaware the amount of the rent Unit 1 has been paying. I noted that the tenants made this submission in writing before the first hearing date and in their submissions made during the period of adjournment. I was of the view that if the landlord had evidence to contradict the tenants' submission the landlord could have easily provided it. Therefore, I accepted that the tenants of Unit 1 have been paying the increased amount since May 1, 2016, as provided on the Notice of Rent Increase served upon them.

The tenants of Unit 1 were of the position that the landlord's letter of March 3, 2016 was inadequate to rescind the Notice of Rent Increase and of no force which is why they have been paying the amount stipulated on the Notice of Rent Increase. Accordingly, I proceed to consider whether a landlord can unilaterally withdraw a Notice of Rent Increase.

Notices issued under the Act, duly completed and in the approved form where appropriate, are legally binding documents given by one party to the other and generally impact the tenancy in some way. Accordingly, I am of the view that in order to withdraw a Notice both parties must be in mutual agreement that the Notice is withdrawn and of no effect. Consent may be express or implied. The tenants of Unit 1 did not provide express agreement to withdraw the Notice of Rent Increase the and by paying the increased rent in accordance with the Notice of Rent Increase I find there is sufficient evidence to demonstrate that the tenants were not in agreement that the Notice be withdrawn. Therefore, I find the date of the last rent increase for Unit 1 is May 1, 2016.

Since the rent was increased as of May 1, 2016 the earliest the rent may be increased again is May 1, 2017 pursuant to section 42(1)(b) which states the earliest rent may be increased is: "if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act."

In filing this application, the landlord has not taken into account the rent increase as of May 1, 2016. Therefore, I find the landlord's AARI for Unit 1 is inaccurate and pre-mature. Therefore, I dismiss it with leave to reapply.

As requested by the landlord during the hearing and for added certainty, the landlord is at liberty to file another AARI in order to seek authorization to rent a rent increase for Unit 1 at any time to take into account hearing dates are scheduled several months after filing.

The tenants for units 4 and 6 also argued that they did not agree to withdraw the Notices of Rent Increase served upon them in January 2016; however, both of these tenants continued to pay the same amount of rent that they had prior to the issuance of the Notice of Rent Increase. Accordingly, I find their actions consistent with implied consent to withdraw the Notices of Rent Increase and I proceed to consider whether the landlord has established that the rent for units 4 and 6 are significantly lower than rent payable for similar rental units in the same geographic area.

Issue(s) to be Decided

Has the landlord established that the rents for unit #4 and #6 are significantly lower than rent for similar rental units in the same geographic area?

Background and Evidence

The subject building is a heritage house, approximately 110 years old; which has been divided into six living units. The property is located in the West End area of Vancouver. Unit #4 and #6 are referred to as "micro units" or "sleeping units" located in the basement level of the house. The rental units include a kitchenette but the bathroom facilities are shared between the four micro units located in the basement.

The current landlord purchased the property in January 2016. The tenants have not had a rent increase since their tenancies began, except for the Notice of Rent Increase that was issued by the current landlord in January 2016 and then rescinded in March 2016.

Below, I have summarized the pertinent rental information for each of the units:

| Unit # | Tenancy started | Current Rent | Rent Requested | Amount of Increase | % Increase |
|---|---|---|---|---|---|
| 4 | January 1, 2015 | $575.00 | $805.14 | $230.14 | 40% |
| 6 | April 1, 2012 | $550.00 | $706.86 | $156.86 | 28.5% |

The monthly rent for each of the subject rental units includes hydro.

The landlord selected the same seven units as comparable units for both rental units (herein referred to as comparable #1 through #7). The landlord acknowledged that there are a limited number of micro units in the same geographic region and used a blend of micro units and studio units in the same geographic region and outside of the geographic region in selecting comparable units.

Five of the seven comparable units were chosen from advertisements the landlord found posted on the internet. The landlord acknowledged that these comparable properties were not viewed. The other two comparable units, #2 and #7 are owed by the landlord and the landlord has viewed these units. In fact, comparable #7 is another micro unit located in the subject building.

In calculating the market rent for the rental units, the landlord calculated an average rent per square foot ($3.78) and multiplied that figure by the square footage of the rental units. To determine the average rent per square foot, the landlord took the advertised rent for the comparable units, and actual rents for comparable #2 and #7, and adjusted the rents to reflect whether the rents include hydro, cable TV or internet. The landlord estimated that the inclusion of hydro has an approximate value of $20.00 per month and the inclusion of cable and/or internet has a value of $35.00 per month. The adjusted rent was then divided by square footage of the comparable units to arrive at a rent per square foot for the comparable units. Then the average for all seven comparable units was determined.

I noted that some of the comparable units had private bathrooms located within the unit. The landlord acknowledged that adjustments were not made to reflect the inclusion of a private bathroom. The tenants also pointed out that comparable #7 was a furnished unit whereas their rental units are not. The landlord acknowledged that there was no adjustment for the inclusion of furniture.

The tenants questioned the value of the adjustments used by the landlord; the failure to adjust for furnishings and private bathrooms; and, the landlord's determination of square footage. As for the comparable units, the tenants pointed out that some were in apartment buildings that included other amenities that that they do not have in their heritage house and others are not in the same geographic area. The tenants suggested that comparable #7 was more akin to a short term vacation rental as the unit was furnished and rented for a short term only.

The tenants had questioned the landlord's calculation of square footage for their units based upon their own measurements of their rooms. The landlord proceeded to have the rooms professionally measured during the period of adjournment and served the professional measurements to the tenants. The tenants still objected to the professional measurement results, claiming they could not come up with the same figures that the property measurement company did and argued that it appears that the interior of walls must have been included in the calculation of square footage. The landlord responded by explaining that it is the industry practice to measure outside of the walls in calculating square footage of a building.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Seeking an additional rent increase is provided under section 23 of the Residential Tenancy Regulations. This AARI is being made under the section 23(1)(a) which provides that a landlord may apply for an additional rent increase where:

> (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;

Residential Tenancy Policy Guideline 37: *Rent Increases* also provides policy statements with respect to making an AARI. Below, I have reproduced some of the more relevant sections of policy guideline 37 to the AARI before me:

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; and
- the tenant's relevant submission.

"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.

In the case before me, the landlord made adjustments to the rents of rental units the landlord considered "comparable" to reflect the inclusion of hydro, cable TV and/or internet in rent. However, certain features were not taken into account such as some "comparable" units having a private bathroom and furnishings. I find it likely that providing a private bathroom and/or furnishings would have a significant impact on the amount a rent a unit may garner verses a unit that has a shared bathroom and no furnishings. Accordingly, I do not consider units that have a private bathroom and furnishing to be comparable to the subject rental units and certainly not without an adjustment to the rental amount. Therefore, I was not satisfied that the landlord's "comparable" units # 1, 2, 3 or 7 are similar units and I have disregarded them from further consideration.

While it would appear that comparable units #4, #5, #6 are micro units, without a private bathroom or furnishings, I find the landlord has failed to provide sufficient evidence to satisfy me that they are "similar units" in the "same geographic area" for the following reasons.

Comparable #4, #5 and #6 were not viewed by the landlord and the landlord merely relied on information found on an internet posting. Accordingly, the information in the internet advertisement was not verified and the amount of rent that was ultimately negotiated was not confirmed. Further, without viewing the building and the "comparable" unit, the view and ambiance, which are part of determining whether a unit is similar, were not taken into account. Nor, did the landlord describe or take into account the age of the comparable units. The print outs of the advertisements included several photographs of the units; however, the photographs were black and white and very tiny (between ¼" x ¼" and ¾" x 3/4" in size), making it nearly impossible to compare the subject units to the comparables. The landlord did not provide a map outlining the geographic area where the subject rental units are located in comparison to the comparable units. The landlord acknowledged that some comparables were outside of the geographic region and units located outside of the geographic region are not to be considered as comparable.

Having been unsatisfied that comparables #4, #5 and #6 are "similar units" in the "same geographic area"; I have disregarded them from further consideration.

In light of all of the above, I find the landlord did not provide sufficient evidence to satisfy me that the rents for the subject rental units are significantly lower than similar units in the same geographic area. Therefore, I deny the landlord's request for an additional rent increase for unit #4 and #6.

Since the tenants for rental unit #4 and #6 have not paid a rent since their tenancies began, the tenants did not pay the increased rent indicated on the Notices of Rent Increase, and the landlord's AARI has been denied, I authorize the landlords to issue a Notice of Rent Increase to these tenants at any time after receiving this decision for the annual allowable amount (3.7% in 2017), to be effective three full months after service.

Conclusion

The landlord's application for an additional rent increase for Unit 1 was found to be premature and dismissed with leave.

The landlord's application for an additional rent increase for Unit #4 and #6 has been denied due to insufficient evidence to demonstrate the rents are significantly lower than rents for similar units in the same geographic area. The landlord is at liberty to serve a Notice of Rent Increase to these tenants at any time after receiving this decision to increase the rent by an amount that is equal to or lesser than the annual allowable increase, to be effective three months after service.

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: January 06, 2017

Residential Tenancy Branch