



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RI

### Introduction

This hearing dealt with an application by the landlord for approval of a rent increase in excess of the amount allowed by the Regulations to the *Residential Tenancy Act*. The named parties participated in the conference call hearing and had opportunity to be heard.

### Issue(s) to be Decided

Should the landlord be permitted to increase the rent by an amount that exceeds the annual amount allowed by regulation?

### Background and Evidence

There is one rental property that is the subject of this application. It is a single family house in Abbotsford. The landlord has applied for a an additional rent increase on the ground that the rent for the unit is significantly lower than the rent for other units that are similar to and in the same geographical area as the rental unit.

I was not provided with a copy of a tenancy agreement. The landlord testified that the house was purchased in September, 2016, subject to the existing tenancy. There is no dispute that the monthly rent is \$1,500.00, payable on the first of each month. The tenants have lived in the house for several years; this is the second time the house has sold during their tenancy. I was told that the tenants signed a new tenancy agreement with the former owner in August, 2015. According to a real estate listing for the rental property, the rental unit is a four bedroom house built in 1973 with approximately 1,750 square feet of floor space. The house has a self-contained basement suite. There is a single garage. It is located on an 8500 square foot lot. The back yard is fenced and there is a deck at the rear of the house. The house is equipped with the usual appliances, including a dishwasher and relatively new washer and dryer.

The landlord noted that the unit has a separate self-contained basement suite and in his submission this is a significant factor to be considered when assessing the appropriate

rent for the unit. The rental unit is centrally located near shopping and the hospital and it is close to the freeway.

The landlord submitted listings for other houses and suites with three or more bedrooms in Abbotsford offered for rent at monthly rates from \$1,800.00 per month to \$2,500.00 per month. In the application for an additional rent increase the landlord submitted that a comparable rent for the unit would be \$2,200.00 per month. The landlord requested a 33% increase to raise the rent to \$2,000.00 per month.

The tenants did not submit any documentary evidence in reply to the landlord's application. The tenant testified that the rental property is less desirable than many of the comparables put forward by the landlord; he said that the backyard of the rental unit abuts onto the freeway and it is very noisy and dusty. The proximity of the freeway has a major negative impact on the quiet enjoyment of the house and yard. The tenant also said there are deficiencies with the house; he said that it does not have proper eaves troughs and in need of some updating.

The tenant testified that he cannot afford to pay an increased rent and said that if the rent is increased, it should not be more than an additional \$100.00 per month.

### Analysis

Section 43 of the *Act* provides that a landlord may apply for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

#### ***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* provides:

*23(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):*

- (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 in which the rental unit is located in the 12 months preceding the date of the application;*
- (d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;*
- (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.*

*Residential Tenancy Policy Guideline # 37 provides the following guidance as 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.*

*The “same geographic area” means the area located within a reasonable kilometer radius of the subject rental unit with similar physical and intrinsic characteristics...*

*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 dispute resolution officer 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.*

*The landlord must clearly set out all the sources from which the rent information was gathered...*

*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...*

*Residential Tenancy Policy Guideline #37* allows the landlord to apply for dispute resolution only in “extraordinary” situations.

The landlord provided evidence in the form of advertisements offering houses and large suites for rent in the neighbourhood of the rental property. Some of the advertised properties appear to have better amenities and have been more recently updated than the rental property. I agree with the tenant’s submission that the proximity of the freeway to the backyard of the rental property significantly detracts from the desirability of the rental property and distinguishes it from some of the suggested comparables.

The landlord referred to a similarly equipped house with four bedrooms offered for rent at \$1,800.00 per month and another offered for \$2,100.00 per month, but he noted that each of these properties has only one kitchen and they do not have a separate self-contained rentable suite, as does the rental unit. The landlord included a listing advertising a four bedroom house for rent for \$2,300.00 per month. He also included a listing for a upper three bedroom suite in a house advertised for \$2,000.00.

The tenant does not receive any rental income from the lower suite in the rental property; it is occupied by a family member, but nonetheless the presence of this separate self-contained suite is a valid consideration when evaluating rent payable for other similar units.

After considering all of the factors outlined in 23(3) of the *Regulation* and *Policy Guideline 37*, I find that the landlord has established that the rent for this unit was significantly lower than similar rental units in this vicinity when the property was purchased in 2016. The landlord inherited the tenancy agreement and has not been responsible for setting rent over the course of the tenancy. I find that having purchased the property subject to an existing tenancy does meet the test of an exceptional circumstance that would justify an application for an additional rent increase.

In regard to the options available to the director in considering an application for an additional rent increase, section 23(4) of the *Regulation* reads as follows:

*33(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 manufactured home park.*

Pursuant to all of the above, I find that the landlord has established entitlement to an additional rent increase above the limit set by the *Regulation* on the basis that, after the rent increase allowed under section 22 of the *Regulation*, rent for the rental suite is significantly lower than rent payable for other rental units that are similar to, and in the same geographic area as the subject rental unit.

Of the comparables provided by the landlord, I was referred to an advertisement for a four bedroom 2,000 square foot home with potential for a fifth bedroom in the downstairs portion of the house, advertised for rent at \$1,800.00 per month. This property had only one kitchen whereas the rental unit has two. Another listing provided by the landlord for an Abbotsford house with four bedrooms, and two kitchens on two levels was offered for \$2,000.00. The house was said to be recently renovated and in a quiet neighbourhood. It also had a large detached garage and shop. Based on the information provided, I consider this property to be somewhat more desirable than the rental unit, particularly because it does not border on the freeway.

Having reviewed the evidence of the parties and the all of information provided by the landlord with respect to similar properties offered for rent in the vicinity of the rental unit, I find that the landlord's application for an additional rent increase should be allowed to increase the monthly rent by \$400.00 per month from \$1,500.00 per month to \$1,900.00 per month.

I find it appropriate to phase the increase in over a period of 12 months in two instalments. The landlord must serve on the tenants a notice of rent increase in the prescribed form together with a copy of this decision. The first notice will increase the rent to \$1,700.00 per month and will take effect 3 full months after the notice is served. After the first rent increase has taken effect, the landlord may serve another notice of rent increase in the prescribed form which will take effect no earlier than 6 months after

the first notice has taken effect and no earlier than 3 full months after the landlord serves the notice. The second notice will increase the rent to \$1,900.00 per month. For the sake of clarification, if the first notice is served in the month of March, 2017, the first rent increase will take effect July 1, 2017. If the landlord serves the second notice in September, 2017, the second rent increase will take effect January 1, 2017.

Conclusion

The landlord's application is allowed in part.

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: March 08, 2017

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Residential Tenancy Branch