



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

R I (additional)

### Introduction

This hearing was convened in response to an application by the landlord for a rent increase above the limit set by the *Residential Tenancy Act Regulations*. The landlord applies on the basis prescribed by *Regulation 23(1)(a): 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 parties acknowledged receiving the evidence of the other. The parties were also provided opportunity to mutually resolve the issues in dispute to no avail. 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 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 (2017) is as follows:

Subject Unit	Current rent payable	Allowable Rent Increase for 2016 of 3.7%	<i>Rent payable after allowable increase</i> In 2017
209	\$1300.00	\$48.10	\$1348.10

The landlord seeks the following additional rent increase:

Current Rent	Rent increase permitted	Claimed Comparable Rent	<u>Additional</u> increase requested / Total % increase Requested
\$1300.00	\$1348.10 / 3.7%	\$1733.00	<b>\$384.90 / 29.6 %</b>

The subject property is a strata condominium apartment unit on the second level of the residential property / building located in the south area of the City of Surrey in the Greater Vancouver Area. The residential property is close to the typical amenities of an urban setting. The parties provided the residential property contains 87 units of which a portion is tenanted and the balance occupied otherwise.

It is undisputed the subject rental unit is 981 square feet, with 2 bedrooms, 2 bathrooms, and a large patio area. The tenancy agreement states the rental unit includes a dishwasher, window coverings and laundry amenities. Flooring is described as carpeting. Utilities are the responsibility of the tenant. Parking for 1 vehicle is provided as part of rent. The rental unit includes other common amenities of the residential complex.

The tenancy started in 2010 at a payable rent of \$1300.00 and there is no reported history of rent increases. The landlord argues the rent for the unit is low in comparison to 2 other units in the same residential property and to other advertised units listed online, 2 of which are also in the same residential property and another in a nearby property with claimed similar characteristics, all as provided into evidence. The landlord seeks an increase to \$1733.00 which if applied represents the average rent for the 5 units submitted as similar units, or 'comparables'.

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

- Third party information from other landlords respecting 2 units in the same residential property, #309 and #409, each directly above in-line with the subject unit, currently renting for \$2040.00 and \$1550.00 respectively.
- 3 other online 'comparables' A, B, and C 'advertised for rent', each 2 bedroom/2 bathroom units claimed similar to the subject unit and in the same geographic area with varying *asking rents* averaging \$1690.00 (A=\$1750, B=\$1600, and C=\$1725).

The landlord testified they thought it fair to ask for an additional rent increase as they did not increase allowable rent increases as permitted since the outset of the tenancy in the past 7 years and that the current rental market clearly supports higher rents. The landlord submits their costs associated with the residential property have increased like

those of all landlords. The landlord agreed with the tenant that over the tenancy period they have not made improvements nor made replacements as the unit was new when originally rented.

In response to the landlord's evidence the tenant provided a narrative into evidence describing various issues with the residential property in years past, including vandalism of mail boxes and plumbing related as well as structural issues. The tenant provided evidence that to their knowledge a handful of 2 bedrooms/2 bathroom nearby units in the same residential property currently rent for below and at the same amount of rent as their unit: \$1200.00 - \$1300.00. The parties also agreed that 3 other units in the same residential property with 1 bedroom are renting for \$1100.00 and less.

### **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](http://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;

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 currently charged for such a comparable unit.

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

- the rent required paid, or payable, rent under the contractual agreement for the subject rental unit including the allowable rent increase by Regulation for 2017.
- evidence that the above amount for rent is *significantly lower* than the current *payable rent* required paid under an agreement for other rental units similar to and in the same geographic area as the subject rental unit.

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

*3(b) there has been no rent increases since the outset of the tenancy in 2010.*

*3(c) there has not been changes in services or facilities in the past 12 months.*

*3(d) The landlord referenced normally rising costs of ownership typically associated with a tenanted property or any property.*

*3(f) The tenant's written and oral submissions arguing the landlord's application should not be granted as their rent is typically in line with other units in the same residential property and that neither party has direct evidence as to why one unit rents for considerably more than the others.*

I accept the evidence of both parties that there is insufficient evidence or explanation supporting the rent payable for unit #309 in the amount of \$2040.00. Again, 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 currently payable for a similar unit. I find comparable #309 is an anomaly example in comparison to all the other units submitted by both parties. Aside from this example I accept the landlord has provided evidence of 1 other unit's actual *payable rent* higher than the subject unit in comparable #409.

In addition, I find the landlord has provided evidence representing 3 other available units, A, B, and C within a spectrum of *asking rents* versus actual *payable rents*, as required by the Regulation. It must be noted that these *asking rent* amounts are prospective rents for available units and not a representation of what tenancies as a whole for similar units in the subject geographic area are currently paying. I also note 2 of these proposed similar units were posted for 12 days, and for 'about a month ago', respectively and still available at the *asking rent*.

I accept there are always newly rented units with current market rents as their payable rent, as well as available units with *asking rents* in line with what the market currently might bear. Other than unit #409 at \$1550.00 the evidence is not sufficient to establish that the subject unit's rent, when increased by 3.7%, *is significantly lower than the rent payable by similar other rental units*.

I find that the landlord's application has failed to demonstrate that an additional rent increase should be issued on the basis of the landlord's application. I find the landlord's

application did not provide sufficient useful evidence to establish an increase of the rent for this unit above what is permitted by the Regulation is warranted.

As a result of all the above, and pursuant to Residential Tenancy Regulation **Section 23(4)**, I must refuse the landlord's application. The landlord is at liberty to issue rent increases in accordance with and as permitted by Regulation.

### **Conclusion**

The landlords' application for an additional rent increase in respect to the subject unit effectively is dismissed.

**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: April 12, 2017

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Residential Tenancy Branch