



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Introduction

The Application for Dispute Resolution filed by the landlord seeks an order for an additional rent increase.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on June 9, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled to an additional rent increase more than what is permitted by regulation and if so how much?

Background and Evidence

The landlord has applied for arbitration of a dispute in the tenancy at the above address and requests an order pursuant to section 43(3) of the Residential Tenancy Act for approval of a rent increase in an amount that is greater than the amount calculated under the regulations.

On April 5, 2014 the tenant and JF entered into a month to month written tenancy agreement that provided the rent was \$900 per month payable in advance on the 15th day of each month including hydro. The tenant paid a security deposit of \$450.

The landlord seeks to increase the rent by \$900 to \$1400 per month. .

On March 15, 2017 the tenant received a Notice of Rent Increase for the allowable percentage under the Residential Tenancy Act that increased the rent from \$900 to \$933 effective June 15, 2017. The tenant gave the landlord three post-dated cheques for June, July and August.

On May 9, 2017 the tenant received a letter from the solicitor for the landlord revoking/withdrawing the Notice of Rent Increase dated March 15, 2017 and requesting replacement cheques for \$900 per month. The tenant provided the replacement cheques on May 25, 2017.

The landlord gave evidence as follows:

- They recently purchased the rental property which is located on Galiano Island..
- The rental unit is approximately 1700 square feet on 2 floors.
- The main floor is approximately 1000 square feet that including a kitchen, living room, dining area, bathroom and 2 bedrooms.
- It is waterfront property on 2 acres and one can walk to the beach.
- The upstairs has 2 large rooms (12' x 20' and 8' x 10' and a ½ bathroom) which has an excellent view of the water. .

The maximum allowable rent increases set out by the Residential Tenancy Branch is 3.7% which would increase the rent to \$933 per month.

The landlord submits comparable properties in the area are currently rent for between \$1200 and \$1500 per month. The landlord seeks to increase the rent to \$1400 per month.

The landlord presented the following evidence:

An e-mail from PP (an owner on Galiano) that states the following:

- She owns and rents a 4 bedroom home with 1 1/2 bathrooms on Galiano that rents for \$1250. The tenant pays their own utilities and buys their own firewood. It is in a good neighbourhood close to all amenities and beaches with a view of a lovely meadow and a peekaboo view of the ocean.
- The present tenant is a single mother with two children who I think will enjoy and care for the property causing me to rent it to her for a bit less than I think it is worth.
- The rental market is very tight as many people are short term renting their places in order to offset the rising costs of ownership..

An e-mail from GH (an owner on Galiano) that states the following:

- They are the owner of a 2 bedroom rental unit on Galiano Island of 1200 square feet that is rented for \$1250 a month plus utilities.

- They also rent the basement suite in the same house for \$750 per month plus utilities that is about 900 square feet.

An email from CH who is a realtor on Pender Island that states the following

- She does not manage properties on Galiano. However rental prices of rental units for most Gulf Islands is fairly similar with Salt Spring being a bit higher.
- Most renters in the Gulf Islands like to rent between \$800 and \$1000.
- You can never get what the property is worth.
- I have reviewed your description and viewed past real estate information and pictures of the property. If it was on Pender Island the rent would be between \$1200 and \$1400 plus utilities.
- The benefits you have in your property is that it is waterfront, has a garden and good privacy and a woodstove.
- The writer gave a summary of 11 houses on Pender that rent for between \$1000 and \$1850 per month with utilities not included.
- The documentation presented by CH indicates that utilities have an average cost of about \$120 per month when calculated over the year.
- There is a huge shortage of rentals on Pender Island at the present time.

An e-mail from DS, a realtor on Galiano that states he would estimate that the rent would be between \$1200 and \$1500 per month. The e-mail further states that most renters on Galiano cannot afford that price range on their own and it would typically be a room mate situation with two or more tenants sharing the expenses. He also provided a snapshot of current rental rates on Galiano Island which described house, cottages, cabins, waterfront homes with most rents between \$800 not including utilities to \$1500 not including utilities.

The tenant gave the following evidence:

- The tenant disputes the description of the rental unit. She testified it is essential a 2-bedroom house. She describes the rental unit as 2-bedrooms on the main floor with a full bathroom, a large family room upstairs with a den that is accessed through the family room and a ½ bathroom. She testified she put a double bed in the family room and a single bed in the den. Neither the family room nor the den has closets.
- The rental agreement she entered into in 2014 was based on the rates at that time. Some rents have increased since then hence the rationale for a tenancy agreement is to protect tenants from the speculative market.
- The e-mail from CH states that most rentals are between \$900 and \$1200 which puts her in the range. The e-mail states the house is described as a bit dated, which detracts from its supposedly higher rental value of waterfront and garden.
- The rental property also includes a cottage which is rented separately.
- Pender Island is not a good comparable as it is closer to Schwartz Bay and is used as a bedroom for people than can commute to Victoria.

- It is very difficult to commute to Victoria from Galiano.
- She referred to a Vancouver Sun articles
- Each island has its own identify.

The tenant did not provide evidence from realtors or others who might provide an opinion as to the rent for other rental units that are similar and in the same geographic area as the rental unit.

Law:

Section 43 of the Residential Tenancy Act provides as follows:

“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 (3), 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.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.”

Section 23 of the Residential Tenancy Act Regulations provides 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;

...

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(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.

Policy Guideline #37 includes the following:

....The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount. The tenants will have an opportunity to appear at the hearing of the application, question the landlord's evidence, and submit their own evidence.

In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors. The arbitrator will determine which factors are relevant to the application before him or her:

- the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;
- the rent history for the affected unit for the preceding 3 years;
- any change in a service or facility provided in the preceding 12 months;
- any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;
- a relevant submission from an affected tenant;
- a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation⁶;
- whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;
- whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;
- whether an arbitrator has set aside a notice to end a tenancy within the preceding 6 months; and
- whether an arbitrator has found, in a previous application for an additional rent increase, that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.

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 Regulation⁷; and
- the tenant's relevant submission.

...

Significantly lower rent⁸

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. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

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. In the former, \$50 may not be considered a significantly lower rent for a unit renting at \$600 and a comparative unit renting at \$650. In the latter, \$50 may be considered a significantly lower rent for a unit renting at \$200 and a comparative unit renting at \$250.

“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 dependant 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.

Additional rent increases under this section will be granted only in exceptional circumstances.

...

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. Where there are a number of comparable units with a range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range. For example, an arbitrator may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

ANALYSIS:

I have carefully considered all of the relevant evidence presented by the parties including the following:

- The rental unit was first rented in 2014 for \$900 a month. The proposed increase of the landlord is the first rent increase proposed.
- There is no evidence of a change in a service or facility that the landlord has provided for the rental property in 12 months preceding the application.
- There is no evidence of an increase in operating expenses and capital expenditures in the 3 years preceding the date of the application.

- I accept the evidence of the tenant that the rental unit cannot be fairly described as 4 bedroom house as the upstairs can be better described as a family room and den. Further, consideration must be given to the fact that the landlords also rent a cottage on the property.
- There is no evidence the landlord has contravened section 32 of the Act (obligation to repair).
- I do not accept the submission of the solicitor for the landlord that the previous arbitration is not relevant. The Regulations require an arbitrator to consider whether an arbitrator has set aside a Notice to End Tenancy in the last 6 months. On March 8, 2017 an arbitrator ordered that a 2 month Notice to End Tenancy be cancelled. The decision records that the landlord testified that he intended to use the property for personal use. The landlord lives in the property next door. This was an estate sale. The landlord testified he intended this to be a place where friends and family could stay when they had large gatherings. It also records that prior to the serving of the 2 month Notice to End Tenancy the landlord had offered a new tenancy for the cottage on the property at a rate of \$750 which was rejected by the tenant. The landlord also offered that the tenant could stay in the rental unit for a rent of \$1100 plus 50% of the utilities. The arbitrator determined that at the time the landlord has
- Section 23(3)(h), (i), and (k) do not apply to this case.

After carefully considering all of the evidence and the submissions of the parties I determined that the rent for this rental unit is significantly lower than the rent for payable for other similar units in the same geographic area for the following reasons:

- The Policy Guidelines provides that the landlord has the burden of proof to justify an additional rent increase and an additional rent increase is to be granted only in exceptional circumstances.
- This is a difficult case as there are few similar properties in the same geographic area. The case law has interpreted same geographic area as within a few blocks of the rental unit. However, while this applies to an urban area it is not appropriate for a rural area. I determined that a fair interpretation of the Act and Regulations is that it should not be interpreted to prevent an owner in a rural from receiving increasing the rent so that it is similar to other rental units in the same geographic area because there are few comparable rental units nearby. Thus I determined it was appropriate to look at rental units on Galiano Island and other Gulf Islands including Pender Island. I accept the submission that a consideration of the rent for Pender Island should be dealt with cautiously as there is greater ferry access to Victoria which would increase demand.
- I determined that a significant feature in considering similar rental units is that most comparable properties provide that the tenant would pay utilities. In this case, utilities are included with the rent. The evidence provided by CH indicates the average hydro bill is \$120 per month when looking at costs over an annual basis. This benefit must be considered with comparing rents.
- The landlord relies on the following evidence of similar property on Galiano Island:

- PP gave an e-mail that she owns a 4 bedroom home that rents for \$1250 per month with the tenant responsible for utilities.
- GH provided evidence that they rent a main floor with 2 bedrooms (1200 square feet) for \$1250 per month not including utilities. The basement is also rented to another tenant for \$750 per month.
- DS, a realtor on Galiano Island gave an opinion that the rental unit would rent for between \$1200 and \$1500 per month not including utilities. He also provided a snap shot of current rental rates on Galiano Island which shows the following:
 - A 3 bedroom waterfront house rents for \$1500 per month not including utilities
 - A 3 bedroom waterfront house on the very north end of the island rents for \$1000 per month per month not including utilities.
 - A cottage/small house near the ferry rents for \$1200 per month not including utilities.
 - Cottages and cabins rent for between \$750 to \$900 per month. Two of the rentals including utilities. The remaining 5 rentals do not.
- GH provided the email with the following evidence:
 - If the landlord's property was on Pender Island it would rent for between \$1200 and \$1400 per month not including utilities.
 - Most of the Gulf Islands have similar rents with the exception of Salt Spring which is higher priced.
 - There was a property on Pender available June 1, 2017 where the rent is \$1300.
 - There is another house available May 1 with an ocean view that is rented to \$2250 per month.
 - GH gave a list of 11 Pender Island houses that are currently rented (2 to 4 bedrooms in size) for \$1000 to \$1850 per month with utilities not included.

Based on all of the evidence presented I determined the rent for other similar rental units in the same geographic area is between \$1200 and \$1500 with utilities not included. I further determined that the \$900 rent including utilities this rental unit is significantly lower than similar the rent for similar rental units in the same geographic area and that the landlord is entitled to an additional rent increase.

DETERMINATION:

The present rent is \$900 per month. The rent increase permitted by regulations would increase the rent to \$933 per month. I further determined the landlords are entitled to raise the rent a further \$300 per month as an additional rent increase which would set the rent for \$1233 per month including utilities.

I ordered that the landlords have the right to serve a Notice of Rent Increase on the Tenant which would increase the rent to \$1233 per month in accordance with the provisions of the Residential Tenancy Act.

I expect both parties will be extremely unhappy with this decision. The Policy Guidelines provides:

“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. Where there are a number of comparable units with a range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range.

While there is evidence that might suggest a higher increase might be warranted I determined it was not appropriate in the circumstances given the evidence presented most renters on Galiano can't afford a rent that is proposed by the landlord and there would a limitation to the demand.

This decision is final and binding on the 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: September 27, 2017

Residential Tenancy Branch