



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Kiwanis Senior Citizens Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ARI

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an additional rent increase.

The landlord was represented at the hearing by an agent (property manager) and a director of the landlord society, both of whom gave affirmed testimony. A number of the 31 tenants affected also attended, 8 of whom also gave affirmed testimony.

During the course of the hearing some tenants raised an issue with respect to some of the landlord's evidence being unreadable. I also cannot read some of the evidence, and therefore it cannot be considered. No other issues with respect to service or delivery of documents or evidence were raised, however, with the consent of the tenants who attended the hearing, the landlord was permitted to provide to me and each tenant who may be affected by this order an un-audited copy of the financial statements of the landlord society. I now have that material, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that rent should be increased by a greater amount than provided by the legislation?

### Background and Evidence

The landlord's application seeks an additional rent increase of 11.3% above the allowable 3.7%, bringing the total increase to 15% because the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that:

- could not have been foreseen under reasonable circumstances, and
- will not recur within a time period that is reasonable for the repair or renovation.

The application also states that a new roof was installed in 2016 at a cost of \$100,668.75 and that an engineering report specifies that the roof did not require replacement for the foreseeable future.

**The landlord's agent** (property manager) testified that the rental units are located in an apartment block containing 34 rental units, all of which are occupied. Rents for each vary between \$452.00 per month to \$529.00 per month, as a result of vacancies and some are as low as \$442.00 per month. A list of current rents as well as lists of 2 previous years has been provided as evidence for this hearing. The landlord is a non-profit organization.

The landlord's agent further testified that the last upgrade to the rental complex was roofing last year when the entire roof was replaced. After doing so, and operation of the building with monthly expenses, such as plumbing, maintenance and other on-going issues, the expenses are not covered by current rents paid. The landlord wants to save money for future major or capital repairs as a reserve. The allowable rent increase is 3.7% and the landlord seeks to increase rents for each rental unit by 15%, which would bring the average rents to \$520.00 or \$540.00 per month.

A letter from the landlord society has been provided for this hearing, dated June 13, 2017 which states that there were 2 reports with respect to the roof. The report in October 24, 2014 stated that the existing cedar shakes were heavy in thickness and still in good condition. The November, 2014 report indicated that work would not be required until 2024, however persistent and repeated roof leaks in the winter of 2015 and spring of 2016 necessitated roof replacement at a cost of about \$100,000.00.

The landlord also needs to paint, replace carpeting, replace the main door as well as exit doors, and complete some interior upgrades. Tenants have been asking for upgrades, but with the current budget, the landlord cannot afford it and also needs a reserve for emergencies.

The last rental increase was effective December 1, 2016 at the allowable 2.9%.

The landlord attempted to join BC Housing but was refused. The landlord tried other routes but was not successful and obtained a line of credit.

There are 2 subsidies; one for the building, and one for the tenants, which is the SAFER program. Because the building is not subsidized, tenants living on low income could qualify individually for the SAFER program. The rental complex is not a BC Housing building.

The landlord made an application to increase rent in 2007 based on market rents and again in 2015 for lining water pipes. The landlord was not successful with the first application.

The landlord's financial statements are with an independent accountant for an audit, and the landlord will provide unaudited copies to the Residential Tenancy Branch and to each tenant.

**The director of the landlord** (GD) testified that all water pipes were replaced in the rental complex.

With current rents, the landlord is operating on a budget deficit which the landlord's agents and directors are trying to avoid in order to provide quality housing at low cost. However, the landlord needs to maintain the complex. The landlord was advised that the roof would have lasted longer, but there were too many leaks and numerous repairs. When it did leak, it was unexpected.

The landlord has property managers who specialize in property management, as well as a building manager for day-to-day operation and an accountant. A third party audits the financial statements.

The SAFER subsidy would apply to the tenants if rents are over 30% of income. The landlord organization owns the building and there is no operating agreement with BC Housing. Each time the landlord seeks an increase, it's met with objection by the tenants.

**The first tenant** (EB) testified that the tenant has to depend on benefits and can't afford such a large increase. The tenant wants to stay in the rental unit because it's comfortable. The tenant is a senior and is able to apply for the SAFER program for assistance, but such applications take time.

**The second tenant** (DL) testified that the roof replacement was completed in June, 2016. The landlord increased rent on December 1, 2016 stating that it was for the roof replacement, and the landlord now applies for a further increase for roof replacement.

The tenants are all seniors on fixed incomes and pensions don't increase by 15%.

**The third tenant** (JQ) testified that the landlord obtained a 2013 report saying that the shingles were in good condition but have outlasted their date. In 2008 an increase was imposed for consideration of a new roof. How could the landlord consider that it could not have been foreseen? In 2015 there was a 2.5% increase and the Residential Tenancy Branch granted an additional 5.5%, bringing it to an 8% increase. That was at the

landlord's request to cover lining, not piping in the water system. In 2016 a 2.9% increase was imposed.

The tenant further testified tenants were told the building does not qualify for subsidy because it is already subsidized. The tenant proposes that the current allowable increase only be imposed.

**The fourth tenant** (MH) testified that the landlord has hired a number of consultants and paid them but did not comply with their findings. The tenant questions why the landlord didn't ask for an additional rent increase at the time of the roof replacement.

The written submissions of the tenant also questions why the landlord has not provided the roof reports of 2014 and 2015, and suggests that this application is for an arbitrary amount and not supported by an audited financial statement.

**The fifth tenant** (HC) testified that seniors are also on a budget and have expenses. The tenants need some predictability. The *Residential Tenancy Act* gives a measured amount, but when tenants get extraordinary expenses, it's difficult to deal with and difficult to find alternate accommodation. The tenant has been resident in the rental property for close to 11 years, and submits that with the SAFER program, the tenant would pay the same rent in a bigger unit.

**The sixth tenant** (FB) testified that the tenants have been asking for financial statements for 2015 and 2016. The tenant has resided in the rental complex since 2006 and in 2009 the tenants were told that an increase was a result of the roof, but the report showed it wasn't necessary at that time.

In 2009 the allowable amount was 3.7% but rent increased by 5.9%. In 2010 the tenants were asked again when the allowable increase was 3.2% but went up 5.1%. In 2011 the allowable amount was 2.3% and the rent increased by 3.5%. In 2012 and 2013 rent was increased by the allowable amounts.

In 2015 the landlord asked for a 15% increase, and the Arbitrator ordered 8%.

The tenant further submits that the buildings the landlord compared to at a previous hearing have air conditioners and washers, not comparable to these units.

**The seventh tenant** (MH) testified that as a newer tenant, since September, 2015, the tenant pays higher rent. The previous tenant paid \$408.00 and rent went up by 23%. The tenant now pays \$514.00 per month since the last increase in December, 2016. Newer tenants pay more, and have to pay a higher increase than tenants who have been there longer.

In some rental units, the living conditions are not very good inside, but the tenants keep paying for major capital improvements, and the one who benefits is the owner.

**The eighth tenant** (MF) testified that an increase from \$527.00 per month to \$606.00 per month is too high and asks the landlord to re-consider. The tenant has larger expenses now, having lost a daughter in June, and would have relied on her for support.

**The ninth tenant** (LI) testified that receiving only disability rent is already too much, and seeks that a lesser increase be imposed. The tenant is worried.

Letters from several tenants have also been provided as evidence for this hearing. One letter states that when the writer moved in her rent was increased from the previous tenancy of \$408.00 to \$500.00, a 23% increase. Then in December 2016 another increase was imposed of about 3% bringing the writer's rent to \$514.00 monthly which was to cover some costs for replacing roof last year from wood to metal. The writer feels that this application is an attempt by the landlord to justify window replacement.

Another letter containing the signatures of several tenants states that in the past 10 years, the landlord has increased rent 5 times more than what was allowed for those years even when there was no improvement done. An increase of 7.8% in 2015 was imposed in addition to the 2.5% allowed for that year again due to the repair to the roof.

### Analysis

The *Residential Tenancy Act* states that a landlord may only increase rent in accordance with the regulations.

### The Legislation

The regulations to the *Residential Tenancy Act* state:

#### **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;

(b) the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

- (i) could not have been foreseen under reasonable circumstances, and
    - (ii) will not recur within a time period that is reasonable for the repair or renovation;
  - (c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;
  - (d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;
  - (e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.
- (2) If the landlord applies for an increase under paragraph (1) (b), (c), or (d), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage.
- (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.
- (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.
- (5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

The landlord applies under subsection (1) (b) due to the cost of the new roof, and the onus is on the landlord to establish that the new roof could not have been foreseen and will not be a recurring repair.

There is no doubt that the complex houses senior citizens, most or all of whom survive on fixed incomes. However there is no doubt that the landlord is a non-profit society that counts on rent income to finance the maintenance of the complex.

I have reviewed the evidentiary material of the parties, and particularly the letters from tenants, the rent history for each unit and the unaudited financial statement of the landlord. I agree with the tenants that some of the landlord's evidentiary material is un-readable and the photographs are not helpful. The tenants also take issue with respect to the financial statement of the landlord not being audited.

The testimony and evidentiary material of the parties is inconsistent respecting the years of previous rent increases and what they were for. I accept that the landlord applied for a 15% increase and was successful in obtaining an order for an 8% increase in 2015 when the allowable increase without an order was 2.5%.

Section 22(2) of the regulations (above) specifies what I must consider:

- (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;

Rents vary from \$452.00 per month to \$529.00 per month due to new tenancy agreements. The total rents payable for 2017 at the current rates amount to \$190,800.00 for 12 months. The current allowable increase rate is 3.7% which would increase the annual income of the landlord to \$197,859.60. Since this hearing didn't begin until well into September, 2017, the effective date of any increase if given now would not come into effect until 2018 which is 4% and would amount to an annual increase of \$198,432.00 collectively. A 15% increase would increase rents to \$219,420.00.

The tenants paying the highest amount of rent (\$529.00 per month), at a 4% increase would amount to \$21.16 per month and at 15% would be an increase of \$79.35 per month. The tenants paying the lowest amount of rent (\$452.00 per month) would receive an increase of \$18.08 per month with a 4% increase, and \$67.80 per month with a 15% increase.

- (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;

The rent history for the last 3 years shows an increase of 2.9% for 2016; 8% for 2015 and 0% for 2014. The allowable rent increases for those years was 2.9%; 2.5% and 2.2% respectively. The 8% increase in 2015 was approved upon application by the landlord for infrastructure repairs to do with lining water pipes. Collectively, the increases for the last 3 years would have been 7.6% but was actually 10.9%.

There have been no changes to services or facilities and therefore the consideration of (c) above does not apply to this dispute.

- (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;

The landlord's material also suggests that the landlord targets a 10% profit each year to fund improvements, and the landlord, as of June, 2017 is 28% short of its \$16,600.00 year-to-date target.

The unaudited financial statement of the landlord is for the third quarter of the 2017 fiscal year, October 1, 2016 to June 30, 2017 and revenue/expenditures for 2015 as well as 2016. It shows a profit of \$2,719.00 for 2015 and \$16,483.00 for 2016. It also shows a

profit of \$11,957.00 for 2017 and in completing the math the landlord expects a profit of about \$15,942 for 2017.

A 4% increase would provide the landlord with assumingly a profit of \$16,579.00 for 2018 ( $\$15,942.00 \times .04 = \$637.00 + \$15,942.00 = \underline{\$16,579.00}$ ). The landlord has increased rents by 10.9% over the last 4 years, including the current year (2014, 2015, 2016 and 2017) and the landlord expects a profit of \$35,504.00 for 2015, 2016 and 2017 combined ( $\$2,719.00 + \$16,843.00 + \$15,942.00 = \underline{\$35,504.00}$ ). A 4% increase in 2018 will assumingly have increased the landlord's profit to \$52,083.00 since 2015 ( $\$35,504 + \$16,579 = \$52,083$ ), slightly more than half the cost of the roof.

A 15% increase, if expenses remain similar to 2016, would provide the landlord with another profit of \$44,957.00 ( $\$219,420.00 - \$174,463.00 = \$44,957.00$ ). That, in addition to the \$35,504.00 is \$80,461.00. The rent for 2015, 2016 and 2017 amount to about \$457,000.00 and 10% of that is \$45,700.00.

Based on the evidence before me, I am not satisfied that the application for a 15% rental increase is justified. I also find that such an increase would bring the landlord's profit margin to higher than the 10% over operating costs. I also find that the 4% allowable increase for 2018 will provide the landlord with a profit margin of about \$52,000 from 2015 to 2018.

There has been no finding that the landlord has contravened Section 32 of the *Residential Tenancy Act*, or a finding that any increase in costs has resulted from inadequate repair of a previous year. Therefore, the considerations of (g) and (h) above do not apply to this dispute. Similarly, there is no evidence of the landlord failing to perform the landlord's obligations and paragraph (i) above does not apply.

There has been no evidence of any notice to end the tenancy, or any submission of misleading evidence or of the landlord failing to comply with an Order of the director. Therefore, the considerations of (j) and (k) above do not apply to this dispute.

Finally, I refer to Residential Tenancy Policy Guideline #37 – Rent Increases, which states, in part:

"In order for a capital expense for a significant repair or renovation to be allowed in an AARI for a conventional tenancy, the landlord must show that the repair or renovation could not have been foreseen under reasonable circumstances and will not reoccur within a time period that is reasonable for the repair or renovation. An example of work that could not have been foreseen under reasonable circumstances is repairs resulting from a ruptured water pipe or sewer backup even though adequate maintenance had

been performed. Another example is capital work undertaken by a municipality, local board or public utility for which a landlord is obligated to pay (e.g., sewer system upgrade, water main installation), unless the work is undertaken because of the landlord's failure to do the work. An example of work that could have been foreseen under reasonable circumstances, and for which a rent increase would not be allowed, is a new roof."

### Conclusion

For the reasons set out above, the landlord's application is denied. The landlord is at liberty to increase rent by the allowable 4% effective 3 months after serving each tenant with a Notice of Rent Increase.

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 29, 2017

---

Residential Tenancy Branch