



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WING YIP ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing was convened in response to an application by the landlord for a rent increase above the limit set by *Residential Tenancy Act Regulation* respecting 2 rental units of the same residential property. The landlord applied on the basis of *Regulation 23(1)(a) and 23(1)(b)*.

All parties were represented in the hearing and had opportunity to be heard, present evidence, ask questions and discuss the application. The parties were provided opportunity to mutually settle this matter, however to no avail. Each party acknowledged receiving all the evidence from the other as further provided to this proceeding. I have accepted and reviewed all submitted evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues is described in this Decision. The landlord submitted a quantum of late evidence one week before the hearing which the tenants testified not having time to review or were prepared to respond to it. As a result I determined the late evidence inadmissible however it was available to the landlord to provide any evidence orally. Prior to concluding the hearing all parties acknowledged presenting all the relevant evidence they wished to present.

Preliminary matters

In part, the landlord's application for an additional rent increase is pursuant to **Residential Tenancy Regulation 23(1)(b)**, which states,

23 (1) A landlord may apply under Section 43(3) of the Act [*additional rent increases*] if one or more of the following apply:

(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.

Regulation 23(2) states,

23 (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. (emphasis mine)*

The landlord's application is for an additional rent increase respecting 2 of the larger number of rental units in the residential property, however the landlord has not submitted relevant information, calculations respecting the other units, or other evidence supporting an application or an *ex parte* consideration relevant to Section 23(1)(b) to increase the rent for **all** rental units in the residential property. Therefore, at the outset of the hearing the parties were informed it is my decision this proceeding would not hear the landlord's application pursuant to Regulation 23(1)(b), which I preliminarily dismissed.

None the less, the hearing proceeded on the merits of the landlord's remaining application pursuant to **Regulation 23(1)(a)**, as follows,

(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;*

Issue(s) to be Decided

Has the landlord provided sufficient evidence showing that *after* a rent increase permitted by the *Residential Tenancy Act Regulation* (Regulation), the rent for the 2 subject rental units is *significantly lower than rent payable for other rental units similar to and in the same geographic area as the subject units?*

Background and Evidence

It must be noted that as preliminary to discussion of evidence the parties were informed that given the urban situate in this matter I would consider a 1 kilometer radius of the subject units as a reasonable measure of "same geographic area".

In addition the parties were informed that I would consider factors or characteristics as follows in determining similarity of units.

Size of unit, age of the residential property or unit renovation, unit configuration (bedrooms / bathrooms), general construction of unit / building, presence of elevator and other amenities, parking attributes, condition or state of repair of the residential property and the unit, what is included in rent vis a vis utilities or other amenities, and agreed characteristics termed as ambiance or décor.

The current payable rent, and the rent payable after applying a permitted increase by Regulation for the current year 2017 is as follows:

Unit	Current payable rent	permitted rent increase for 2017 of 3.7%	Rent payable after permitted increase for 2017
209	\$831.00	\$30.75	\$861.75
303	\$917.00	\$33.30	\$950.93

The landlord seeks the following *additional* rent increase.

Unit	Payable rent after permitted rent increase	claimed comparable rent	<u>additional</u> increase requested / % increase requested
(209)	\$861.75	\$1250.00 +	\$388.00 + / 45% +
(303)	\$950.93	\$1250.00 +	\$299.00 + / 31% +

The subject rental units occupy the second (209) and third (303) floors of the residential property. The landlord provided that the residential property contains 40 tenanted units. The 3 story wooden building is located in the lower Lonsdale area of the City of North Vancouver. The residential property is close to typical amenities of an urban setting, inclusive of transportation opportunities.

It is undisputed the subject rental units are each 600 square feet, with 1 bedroom, 1 bathroom, a balcony and provided storage space. The building is approximately 45 years old. The units are described as “original” in *appointment/decor/condition*, and generally not updated. The building has an elevator. Flooring is described as having older carpeting and older linoleum. I do not have benefit of tenancy agreements, however it is undisputed the rental units do not include a dishwasher, and there is separate coined laundry on site. Utilities other than heat and hot water are the responsibility of the tenant. Parking is provided in the rent. The tenants presented undisputed testimony describing the ‘ambiance’ of the rental units as dated or lacking updating or renovation when compared to some of the comparables presented by both parties.

The subject tenancies both exceed 10 years and the evidence is that historically there have been routinely applied rent increases, as permitted by Regulation. The landlord argues the rent for the units are low in comparison to other units in the same residential property and to other online advertised units claimed as having similar characteristics, all as provided into evidence. The landlord seeks to increase the rents to \$1250.00 or more which they claim is within the current spectrum of prospective or market rents in the same geographic area, as exemplified by their 'comparables'. The landlord argued that market rents have risen dramatically in contrast to the regulated increases and that they have recently easily rented similar units at market rent.

The landlord provided the following evidence in support of their application.

- 3 online advertisements with their prospective rent amounts, each outside of the *same geographic area*, but also 20%, 25%, and a non-1 bedroom unit.[#8,10 and 4 respectively]
- 1 online advertisement with its prospective rent amount, of a unit considerably larger (26%) and also with undeterminable other characteristics. [#3]
- 1 online advertisement with its prospective rent amount, of a larger unit (16%) and also with undeterminable other characteristics. [#1]
- 2 online advertisements with their prospective rent amounts of units undeterminable in size and with undeterminable other characteristics. [#2,6]
- 2 online advertisements with their prospective rent amounts, of units within the same area, configuration and reasonably same size as the subject units, however with undeterminable other characteristics. [#7,9]
- 1 online advertisement with its prospective rent amount, of a unit within the same area, same configuration and reasonably same size as the subject units, also 3 story building, elevator, coined laundry, inclusive of parking and locker, heat and hot water, also lacking a dishwasher, however no mention of its construction or age. The advertisement also boasts of a view. [#5]

The landlord further provided a series of receipts and invoices in respect to the building wide fire safety system upgrade in 2013, the associated electrical upgrades, the garage door of the residential property, and for repairs to the balcony for one of the subject units.

The landlord also provided witness S.S. whom provided affirmed testimony. S.S. testified they are a resident manager for the landlord of another property and has been in capacity as a landlord for 24 years. The witness testified they successfully rented a 1 bedroom apartment in August 2017 for \$1350.00.

The tenants provided the following evidence.

- A series of notices for annual *regulated* rent increases for both subject units spanning the last 10 years.
- 2 signed letters inclusive of payable rents each from residents *outside the same geographic area*, one 15% and the other 30% larger, with the latter a 2 bedroom unit. [#1T, 4T]
- 2 signed letters inclusive of payable rents each from residents of rental units *within the same geographic area*, both larger than the subject units however both with payable rents lower than the subject units before a permitted rent increase.[2T,3T]
- 1 signed letter inclusive of payable rent from a resident of a rental unit *within the same geographic area* occupying at least the same square footage as the subject units and with payable rent more than \$200.00 below the landlord's minimum requested rent of \$1250.00 [#5T]. The tenants testified they have been to the rental unit and claim the unit has newer carpeting and other newer fixtures and a, "beautiful courtyard" unlike their own residential property.

The tenants testified they have personal knowledge of their referenced rental units and in particular of units 2T and 3T having many similar attributes to their own units in respect to condition, décor and amenities included in rent.

The tenants also provided into evidence a copy of Residential Policy Guideline #37 respecting rent increases. The tenants highlighted a series of prescribed details in the policy addressing requirements toward a successful an application for an additional rent increase. The tenant further highlighted the policy statement that an additional rent increase is granted only in exceptional circumstances.

Analysis

The full text of the Act, Regulation, and other resources indicated can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

*I am satisfied both parties have a copy of **Residential Tenancy Policy Guideline #37**. I have reviewed all relevant evidence in this matter.*

Residential Tenancy Regulation 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.

The landlord has the burden to provide the following evidence,

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

As required I have considered **subsections (3)(a) through (3)(k)** of Residential Tenancy **Regulation 23**. In summary as follows,

- 3(a) No evidence provided.
- 3(b) there has been annually applied rent increases as permitted in the 3 years preceding the date of the application in respect to both tenancies .
- 3(c) No identified changes in services or facilities in the past 12 months.
- 3(d) The landlord's evidence of costs associated with updating the fire safety system for the residential property as mandated by local government. The landlord's evidence of refurbishment of one of the balconies of the subject units in the past year. The parties agreed it was beyond its useful life. Testimony the other balcony of the subject units has not been refurbished.
- 3(e) The landlord's claim of updating costs as a reason for seeking an additional rent increase, however secondary to bringing rents in line with market rent.
- 3(f) The affected tenants' written and oral submissions arguing against the landlord's Application. Tenant's submissions that their own payable rents are currently

higher than or in line with payable rents for other units within the same area, and in a similar state of decor and condition.

3(g) No evidence provided.

3(h) Other than the parties evidence respecting a balcony refurbishment, no evidence provided.

3(i) Does not apply.

3(j) Does not apply.

3(k) Does not apply.

I accept the evidence of both parties in respect to the rental units portrayed as within the same prescribed geographic area in lower Lonsdale, North Vancouver.

I find that the landlord's evidence of online advertisements for available rental units to be for prospective rents and of generally insufficient information to assign them meaningful evidentiary weight vis a vis their similarity to the 2 subject rental units. It must be known that prospective rent and payable rent are not the same. None the less, if I were to accept *asking rent* or *prospective rent* and *payable rent* as being the same, I would find the landlord's evidence of proposed comparable unit #5, advertised for \$1150.00, marginally meets the test to be considered similar to the subject rental units. However, I find that a single comparable is not sufficient evidence to establish that the rents of the 2 subject rental units are significantly lower than the rents payable for *other rental units*.

I find that the tenants have provided rebuttal evidence, albeit limited, indicating that the payable rents for the subject units are currently higher than other units in the same area with a similar state of décor and their general condition.

On preponderance of evidence and after careful consideration of all the documentary evidence and testimony I find that the landlord has not met the burden of proving on balance of probabilities that after a rent increase allowed under the Regulation, rents for the subject units are significantly lower than rents payable for other rental units that are similar to, and in the same geographic area as the subject units. Moreover, I find there is insufficient useful or detailed evidence to support the position that the subject units are comparable to units for which rent is higher or for which higher rent is asked.

Residential Tenancy Policy Guideline #37 aptly describes the nature of such detail sought in an application, which the landlord has failed to sufficiently address.

Accordingly, the landlord's application for an additional rent increase after an increase permitted by the Regulation is hereby denied.

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 a rent increase as permitted by Regulation.

Conclusion

The landlords' application for an additional rent increase in respect to the subject unit 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: November 20, 2017

Residential Tenancy Branch