



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the landlord filed under the *Residential Tenancy Act* (“Act”) for an additional rent increase.

On September 6, 2017 the parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. After 51 minutes it was clear that additional time would be necessary to consider all of the evidence and to hear additional testimony. As a result, the hearing was adjourned and an Interim Decision was issued dated September 6, 2017, which should be read in conjunction with this decision.

Neither party raised concerns regarding the service of documentary evidence. I have considered all relevant evidence that was served in accordance with the Rules of Procedure and have referred only to the evidence below that is relevant to my decision.

Issue to be Decided

- Has the landlord provided sufficient evidence to support an additional rent increase under the *Act*, and if so, in what amount?

Background and Evidence

The landlord’s application is based on the following three reasons:

1. After the rent increase permitted by the Regulation, the rent for the rental unit is significantly lower than the rent payable for other rental units similar and in the same geographic area, as the rental unit.
2. The landlord has completed significant repairs or renovations in which the rental unit is located.
3. The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property.

The landlord is seeking the following rent increases by rental unit:

- A. **719 Basement:** 32.3% increase from current rent of \$1,177.00 to \$1,557.17 or an additional rent increase of \$380.17. The landlord indicates that the increase includes the landlord charging the tenant for utilities which are currently included in the monthly rent.
- B. **719 Main:** 12.3% increase from current rent of \$1,550.00 to \$2,000.00 which I find does not equal 12.3% and is actually closer to a 29.05% increase. The landlord indicates that the increase includes the landlord charging the tenant for utilities which are currently included in the monthly rent.
- C. **721 Basement:** 32.3% increase from current rent of \$1,100.00 to \$1,400.00 on application which actually works out to \$1,455.30 or an additional rent increase of \$355.30. The landlord indicates that the increase includes the landlord charging the tenant for utilities which are currently included in the monthly rent.
- D. **721 Main:** 12.3% increase from current rent of \$1,607.00 (application incorrectly states \$1,550.00 current rent) to \$2,000.00 which I find does not equal 12.3% and is actually closer to a 24.5% increase. The landlord indicates that the increase includes the landlord charging the tenant for utilities which are currently included in the monthly rent.

I will organize the evidence and testimony in relation into three categories; 1. Significant repairs, 2. Extraordinary expenses; and 3. Geographic comparisons of rent.

1. Significant repairs

For this category, the landlord testified that the significant repair is related to a new roof valued at \$20,420.00 plus GST. The landlord submitted an estimate in support of this amount in evidence. None of the parties disputed that a new roof is required.

2. Extraordinary expenses

For this category, the landlord testified that the extraordinary expenses are as follows:

- A. January 18th, 2017 emergency roof repair: \$262.50
- B. Circuit breaker checker, November 16, 2012: \$63.00
- C. Replaced dryer, September 19th, 2016 (721 Main): \$497.98

The landlord also writes in his summary of expenses that for 2016 gas utilities for 721 which includes the main and basement for gas was \$638.15 and for hydro was \$1,974.99. The landlord did not submit the actual utility bills in evidence. The landlord did not break down the usage between the main and basement. The landlord could not explain why the numbers for 2016 were included twice and why the numbers didn't match and were different.

3. Geographic comparisons of rent

For the ease of reference for the geographic comparisons of rent, I will organize evidence relevant to each of the 4 rental units described above that are subject to the landlord's application for an additional rent increase.

719 Basement: 1,170 square feet ("SF") with \$1,177.00 current rent including utilities:

The landlord submitted the following which I have summarized below:

Example 1:	Page 33, Walking distance from rental unit
Rental unit -	2 bedroom basement suite with large windows. Large living and dining area and newly renovated. Fireplace and private security system.
SF	1,100SF
Rent	\$1,400.00 plus ½ utilities

Example 2:	Page 36, 8-10 kms away in different area than rental unit
Rental unit -	Laminate flooring throughout, LG front load washer and dryer, stainless steel smooth cooktop range, high ceiling, very spacious and clean, beautiful area with quiet neighbourhood, 5 minute walk to river and little beach.
SF	1,200SF
Rent	\$1,350.00 (utilities not indicated)

Example 3:	Page 37, 3-4 kms away from rental unit
Rental unit -	Near leisure complex, bus and park. Private entrance, washer and dryer. 2 bedroom and 1 bathroom.
SF	1,200SF
Rent	\$1,425.00 + \$75.00 utilities

The landlord testified that he is relying on the same evidence for the two basement units.

The tenants' response to these three examples described above is as follows:

Example 1: The first example provided by the landlord is newly renovated which the rental unit is not. The tenants also testified that the private security system on the landlord's first example is not something they have in their rental unit.

Example 2: Regarding the second landlord example, the tenants stated that it appears to have brand new appliances which their rental unit does not have and also has stainless steel appliances which the rental unit does not have.

Example 3: Regarding the third example provided by the landlord, the kitchen is “top notch” according to the tenants and that the tenants do not have any backs to their cupboards so items fall between one shelf and the lower shelves. The tenants also stated that in their rental unit you can see the plumbing and tubing where you can’t in the example provided as comparison by the landlord. The tenants stated that they also have breaker problems and don’t have access to a thermostat for heating and that they can’t install heaters as they will blow the breakers and that over 30% increase seems extremely high for a unit that is extremely cold in the winter and extremely hot in the summer.

The landlord responded by stating that he has not raised the rent in previous years to which the tenants responded by stating that the landlord has not been inside their rental unit for three to four years.

719 Main: 1,230 SF with \$1,550.00 current rent including utilities:

The landlord submitted the following which I have summarized below:

Example 1:	Page 39, Lincoln Park (10 kms away)
Rental unit -	Three bedroom upper floor of house. Big back yard. Large kitchen and patio deck for entertaining. 3 minute walk to Hyde Creek rec centre.
SF	1,200SF
Rent	\$2,000.00* plus 2/3 utilities (*reduced from \$2,100.00 on original ad described below updated price above)

Example 2:	Page 40, different area however distance not provided
Rental unit -	Upper floor with 3 bedrooms and a den/office space. Master bedroom with ensuite. Small family room off kitchen with a deck. A formal living room with beautiful large arched window and formal dining room. Is fully furnished but can be without furniture.
SF	1,800SF
Rent	\$1,900.00 plus 50% utilities

Example 3:	Page 41, according to landlord “doesn’t know where it is”
Rental unit -	Upper level newly renovated 3 bedroom home in Glenwood area (landlord testified that he did not know where it was located) in prime location across from park. 2 washrooms overlooking park with nice view.
SF	1,850SF
Rent	\$1,850.00(utilities not described)

The landlord testified that he is relying on the same evidence for the two main floor units. He also stated that the kitchen in this unit has been renovated but admitted that there is no parking garage and no full laundry room.

The tenant's response was that she does not have storage outside or a carport and uses a shared outdoor parking area instead of a garage or carport. The tenant stated that the rental unit faces a very busy street and is on both an ambulance route and a police route. The tenant did not provide her own comparable properties for consideration.

721 Basement: 1,100SF with \$1,141.00 current rent including utilities:

The landlord submitted the following which I have summarized below:

Example 1:	Page 33, Walking distance from rental unit
Rental unit -	2 bedroom basement suite with large windows. Large living and dining area and newly renovated. Fireplace and private security system.
SF	1,100SF
Rent	\$1,400.00 plus ½ utilities

Example 2:	Page 36, 8-10 kms away in different area than rental unit
Rental unit -	Laminate flooring throughout, LG front load washer and dryer, stainless steel smooth cooktop range, high ceiling, very spacious and clean, beautiful area with quiet neighbourhood, 5 minute walk to river and little beach.
SF	1,200SF
Rent	\$1,350.00 (utilities not indicated)

Example 3:	Page 37, 3-4 kms away from rental unit
Rental unit -	Near leisure complex, bus and park. Private entrance, washer and dryer. 2 bedroom and 1 bathroom.
SF	1,200SF
Rent	\$1,425.00 + \$75.00 utilities

The tenants' response to these three examples described above is as follows:

Example 1: This unit is in a more prestigious area and has a backyard to enjoy which the rental unit does not have and the rental unit front yard is shared with four other units. This example also has a dining area which the rental unit does not have and includes a security system which the rental unit does not have.

Example 2: This unit is in a different area and is not comparable as a result. It also has more SF and high ceilings which the rental unit does not have.

Example 3: This unit has much more cupboards based on the photos which the rental unit does not have. The unit also has more counter space than the rental unit and that the rental unit does not have storage or decks and does not have access to the thermostat.

The tenants presented their comparable properties of their own. The first comparable submitted by the tenants is on page 14 which is \$1,000.00 per month for 800SF which is 300SF less and that comparable includes utilities, wifi, and cable. The tenants also provided another comparable on page 15 which is 750SF for \$1,100.00 per month which was brand new and shared utilities. The tenants' third comparable was not discussed further as it was deemed to be too small to be compared at only 650SF.

The landlord's supplemental testimony was that the tenants have a gas range and custom kitchen and full ceilings. The landlord also stated that the tenants' first example on page 14 was quite a bit smaller and is in an area that is not as desirable, and has no parking or pictures which is not a good sign for an advertisement. Regarding page 15, the landlord stated that the unit is 1/3 smaller than the rental unit.

721 Main: 1,200SF with \$1,607.00 current rent including utilities:

The landlord submitted the following which I have summarized below:

Example 1:	Page 39, Lincoln Park (10 kms away)
Rental unit -	Three bedroom upper floor of house. Big back yard. Large kitchen and patio deck for entertaining. 3 minute walk to Hyde Creek rec centre.
SF	1,200SF
Rent	\$2,000.00* plus 2/3 utilities (*reduced from \$2,100.00 on original ad described below updated price above)

Example 2:	Page 40, different area however distance not provided
Rental unit -	Upper floor with 3 bedrooms and a den/office space. Master bedroom with ensuite. Small family room off kitchen with a deck. A formal living room with beautiful large arched window and formal dining room. Is fully furnished but can be without furniture.
SF	1,800SF
Rent	\$1,900.00 plus 50% utilities

Example 3:	Page 41, according to landlord "doesn't know where it is"
Rental unit -	Upper level newly renovated 3 bedroom home in Glenwood area

	(landlord testified that he did not know where it was located) in prime location across from park. 2 washrooms overlooking park with nice view.
SF	1,850SF
Rent	\$1,850.00(utilities not described)

The tenants' response to these three examples described above is as follows:

Example 1: "This is located in a prestigious area and close to a rec centre and has a big back yard whereas our back yard is small and our front yard is not usable as it faces the street and is shared with the other units." The tenants also stated, "our street is very busy and is an ambulance route".

Example 2: The tenants indicated that this example has more rooms and an attached garage whereas they have a carport and is not a closed in garage. The tenants also stated that this example is much bigger than their unit.

Example 3: The tenants stated that this example is newly renovated and is in a nice location and has a family and living so extra SF and rooms compared to their unit.

The tenants also raised the issue of the landlord's reported income in the landlord's documents being related to only this home when in fact the landlord has other rental properties. The landlord responded by stating that each rental property is its' own entity and that he can't combine the properties together as they are operated separately and have their own profits and losses, which I fully accept and agree. As a result, I will not be placing any weight to the tenants' testimony regarding reported income not including other rental properties.

The landlord also made a statement about the values of homes in the area where the rental unit is located however was unable to present any documentary evidence to support this description of the values.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

In this case, the landlord bears the burden of proving any claim for a rent increase that is greater than the prescribed amount.

Firstly, I will deal with the landlord's attempt to add the cost of utilities into his calculations for an additional rent increase. In the matter before me, all four of the tenancy agreements include the cost of utilities and the only way to change that term is my mutual agreement of the parties which none of the respondents have agreed to. While the cost of utilities may be relevant when submitting evidence to support the landlord's operating expenses, I find the landlord is not

entitled under the *Act* to have the utilities not included in the monthly rent as I find that to be a material term of all four tenancy agreements. Therefore, I dismiss the landlord's attempt to add the cost of utilities on top of the currently monthly rent.

The Residential Tenancy Regulations provide circumstances where a landlord may seek to increase the rent greater than the prescribed rent increase. In this case, the landlord is seeking to increase the rent on for three reasons; 1. Significant repairs, 2. Extraordinary expenses; and 3. Geographic comparisons of rent.

I will first deal with the landlord's claim of significant repairs. Pursuant to section Residential Tenancy Branch ("RTB") Policy Guideline 37 Rent Increases it reads regarding significant repairs the following in part:

"In order for a capital expense for a significant repair or renovation to be allowed in an Application for Additional Rent Increase for a residential 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.**"

[My emphasis added]

As the landlord's only claim for a significant repair is a new roof, I dismiss this portion of the landlord's claim due to insufficient evidence without leave to reapply as I find a new roof is most certainly a foreseeable expense that does not meet the burden of proof and is a normal part of home maintenance.

I have also carefully analyzed the landlord's submissions regarding extraordinary expenses and find that the costs are not extraordinary by any means. As a result, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

RTB Policy Guideline 37 provides the policy intent of the legislation with respect to rent increases. The policy guideline provides an interpretation of the terms "similar units" and the "same geographic area", as follows:

"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 dependent 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.

[Reproduced as written]

In terms of geographic comparisons of rent, I find that a majority of examples provided by the landlord are not in the same geographic area and therefore I afford no weight to those examples. In other words, I find those examples to be too far in radius from the subject rental unit. Furthermore, the remaining examples I find are not close enough to be sufficient comparisons under the *Act* as they have either better appliances, larger square footage, are newly renovated or have additional features such as a security system, wifi, or a large backyard etc.

Based on the above, I find the landlord has not submitted sufficient evidence to meet the burden of proving their claim for a rent increase that is greater than the prescribed amount. Therefore, I dismiss the landlord’s application in full due to insufficient evidence, without leave to reapply.

I do not find it necessary to consider the examples submitted by the tenants based on the above as I find the landlord’s evidence does not meet the burden of proof.

Conclusion

The landlord’s application is dismissed due to insufficient evidence without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 27, 2017

Residential Tenancy Branch