



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI O

### Introduction

This hearing was convened upon the applications from both the landlord and the tenant. The landlord is seeking an additional rent increase for the rental unit, while the tenant is looking to dispute this additional rent increase.

Both parties appeared at the hearing and were given an opportunity to present testimony, to make submissions and to call witnesses. Both parties confirmed receipt of each other's applications for dispute resolution and I find that both parties were duly served in accordance with the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an additional rent increase for this property?

### Background and Evidence

Testimony presented by both parties confirmed that this tenancy began in November 2013. Rent was \$1,100.00 per month at the outset of the tenancy and rose to its current level of \$1,200.00 per month. The tenant said that she has lived in the rental unit since May 2006 and when she paid a security deposit of \$487.50. The landlord confirmed that she received this security deposit from the former landlord/owner and continues to hold it.

On October 27, 2017 the landlord sent the tenant a letter informing her that rent in the unit would be increasing from \$1,200.00 per month to \$1,550.00 per month, starting on March 1, 2018. During the hearing, the landlord argued that rent for the three bedroom unit currently occupied by the tenant was substantially lower than other three bedroom rental units in the building. The landlord explained that the rental unit is situated in a

housing complex made up of several buildings all of which are the same age and that the three bedroom units are all 1023 square feet. As a part of her evidentiary package the landlord provided a breakdown of other three bedroom units in the complex which share similar square footage. Rents for similar units ranged from \$1,500.00 to \$1,900.00. The landlord acknowledged she had not visited the other suites so could not confirm if they had been recently renovated. The landlord said she had gathered the current rental rates from owners of the other units.

The tenant disputed the evidence of comparable rental units provided by the landlord, arguing that she lived on the 1<sup>st</sup> floor and had no balcony, while all but one unit listed by the landlord in her comparison table had balconies and were located on upper floors.

### Analysis

Section 43 of the *Act* allows a landlord to apply to for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

The *Residential Tenancy Regulation* (the *Regulation*) pursuant to the *Act* sets out the limited grounds for applying for an Additional Rent Increase. In this case, the landlord has applied for additional rent under the following provisions of subsection 23(1)(a) of the *Regulation* [since repealed]:

*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;...*

Section 23(3) of the *Regulation* previously listed a number of factors that I must consider in deciding whether to approve an application for an additional rent increase pursuant to section 23(1) of the *Regulation*. In reaching my decision, I have considered these factors, and in particular, subsection (a) which reads as follows:

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

*Residential Tenancy Policy Guideline # 37* provides further guidance on what must be considered when considering an application for an additional rent increase. This *Guideline* notes, “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 them:

- the rent payable for similar 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;

This *Guideline* continues by explain what must be considered in an application to increase rent which is alleged to be “significantly lower” than current rent payable for similar units.

*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...*

*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...*

*“Similar units” means rental units of comparable size, age (of unit and building), construction, interior and exterior ambience (including view), and sense of community...*

*Additional rent increases under this section will be granted only in exceptional circumstances. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar units in the residential property at a higher rate...*

*The landlord must clearly set out all the sources from which the rent information was gathered...*

*Residential Tenancy Policy Guideline #37* allows the landlord to apply for dispute resolution only in “extraordinary” situations...to determine whether the circumstances are exceptional, the arbitrator will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

I find that the landlord has failed to demonstrate that an extraordinary situation exists as contemplated by the *Policy Guidelines* and the *Regulations* within the context of her rental agreement with the tenant. A landlord has a right to increase rent in a unit by a legislated amount, every twelve months. The landlord has only increased the rent on

one occasion and is now attempting to dramatically increase the rent of the unit in a short time period. This proposed rent increase would have brought the rent in line with rents being commanded by other units in the building. Had the landlord increased the rent by the legislated amount every twelve months (as they are legally entitled) they would now be collecting rent closer to those being commanded by other units in the building. An Additional Rent Increase is not an opportunity for a landlord to correct a past failure to increase rent. No evidence was presented at the hearing that there has been any change in service or facilities within the past twelve months, furthermore, I find little evidence that anything at all has changed in the apartment since the tenant first took possession of the unit. For these reasons, I dismiss the landlord's application for an additional rent increase.

As the tenant was successful in her application, she may pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In lieu of a monetary award, the tenant may withhold \$100.00 from a future rent payment on **one** occasion.

Rent is to remain at \$1,200.00 per month until it is increased in accordance with the *Act*.

#### Conclusion

The landlord's application for an additional rent increase is dismissed. Rent is to remain at \$1,200.00 until it is increased in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on **one** occasion.

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: February 16, 2018

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Residential Tenancy Branch