



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RI

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order regarding the landlord's request for an additional rent increase pursuant to section 43 and 69.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the landlord's 1<sup>st</sup> documentary evidence package. The landlord stated that the second documentary package was served to the tenants in person sometime in February 2017. The tenants' dispute this claim stating that no second documentary evidence package was served to them. Both parties confirmed that the tenant served the landlord with their only documentary evidence package.

I accept the affirmed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package and the one documentary package provided as per section 90 of the Act.

As for the landlord's second documentary evidence package I find on a balance of probabilities that the landlord failed to properly serve the tenants. Although the landlord claims that her son/other tenant personally served the tenants with the second documentary evidence package, the tenants disputed this claim. The landlord is unable to provide sufficient supporting evidence of service. As such, without sufficient evidence to support the claim of service, I find that the landlord's second documentary evidence package shall be excluded from consideration in this hearing and decision.

Issue(s) to be Decided

Is the landlord entitled to an additional rent increase?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that this tenancy is approximately 4 ½ years old and currently on a month-to-month basis. The current monthly rent is \$1,475.00 payable on the 1<sup>st</sup> day of each month.

In this application the landlord applies for an additional rent increase on the grounds that

After the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic area, as the rental unit or site.

Both parties agreed that this rental premises is a Upper level 3 bedroom unit with 1 bath, 1 unsuited, 1 "toilet room", 1 enclosed garage with approximately 1200 square feet and has a separate laundry space. Utilities are not included.

In this case, the allowable rent increase for 2017 is 3.7% (\$54.75) of the \$1,475.00 monthly rent allowing for a new rent total of \$1,529.58. The landlord seeks a total increase of \$375.00 for a new monthly rent total of \$1,850.00.

The landlord identified six rental premises considered to be the most comparable and are described as follows:

Comparable #1	\$1700, 3 bedroom, 1200 sq.ft., 1 bath, shared laundry, 60% of Utilities, on a busy street
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Comparable #2	\$1800, 3 bedroom, 1200 sq.ft., 1 bath, shared laundry, renovated, no parking, 60% of utilities
Comparable #3	\$1900, 3 bedroom, 1210 sq.ft., 2 baths, shared laundry, covered parking, Upper Level
Comparable #4	\$1900, 3 bedroom, 1410 sq.ft., 2 baths, Upper Level, updated Kitchen, large private balcony, off street parking, shared utilities
Comparable #5	\$1900, 3 bedroom, 1210 sq.ft., 2 baths, shared laundry, carport
Comparable #6	\$2000, 3 bedroom, 1500 sq.ft., 2 baths, onsite laundry, no parking, Upper level

The landlord claims that these are all comparable rental units in the same geographical area where the listed rents are higher than that of the current allowed monthly rent for the tenant.

Both parties had agreed to a voluntary increase to \$1,535.00 per month, but the landlords still claim that this is well short of the current comparable rentals in the same geographical area.

The tenants dispute the landlord's request stating that comparable rental #1 is not newly renovated, but is comparable. The tenants argued that comparable rental #2 is renovated and has new cabinets and a microwave as compared to their unit which has dated cabinets and no renovations. The tenants stated that comparable rental #6 has a broken fence. The tenants provided "no comment" on the remaining comparable rental units provided by the landlord.

In response the tenants have provided 2 comparable rental units which provide a lower monthly rental rate which are:

Comparable #1	\$1500, 3 bedroom, 1407 sq.ft., 1 bath, shared utilities(50%), carport parking, shared laundry and newly renovated
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Comparable #2      \$1650, 3 bedroom, 1300 sq.ft., 2 bath, laundry, utilities included,  
private deck

The tenants provided a 3<sup>rd</sup> comparable rental premises, but confirmed that it was not within the same geographical area and was not considered.

The landlord argued that the tenants' comparable rental #1 was not the same as it was a basement suite in comparison with all of the listed upper levels provided by the landlord. The landlord also argued that the tenants' comparable rental #2 is a 4 plex, which is not allowed in the city (illegal rental) which requires licensing.

The tenants conclude that all of the comparable examples provided by the landlord were renovated/upgraded as compared to their rental premises and that no upgrades have been made to the property.

The landlord argued that extensive landscaping upgrades have been made to the rental premises.

### Analysis

Pursuant to section 43 of the Act, a landlord may impose a rent increase only up to the amount:

- (a) calculated in accordance with the regulations,
- (b) ordered by the director, or
- (c) agreed to by the tenant

The allowable percentage rent increase for each calendar year is calculated according to the inflation rate. The rate for the year 2017 is 3.7% making the allowed increase amount \$54.75 for an allowed new monthly rent of \$1,529.58.

In this case, the landlord seeks a total rental increase of \$375.00 making the monthly rent \$1,850.00. The landlord relies on 6 rental units within the same geographical area which the landlord claims are comparable. The tenant has provided 2 rental units as lower priced comparable(s). The tenants have argued that the majority of the landlord's comparable rental units are renovated/upgraded in comparison. The landlords have argued that the two comparable(s) provided by the tenants are not comparable as one is a basement unit and the second was an illegal (unlicensed) rental.

Section 23 states I must consider a number of factors, if relevant, inclusive of relevant submissions from affected tenants. The landlord has provided largely unopposed submissions in respect to the pool of comparable(s) submitted by both parties. It is noted that there are no identical units within the subject comparable(s) submitted by the landlord or the tenants.

I have based my decision on a reasonable interpretation of the landlord's supporting material and the relevant submissions of the tenants. I have given consideration, in part, to similarity in square footage as a measure of similarity in size but I have also considered similarity as to location, building construction, exterior and interior appearance, amenities and the age of the residential property. The decision is not based solely on the parameters of square footage. I have looked to Residential Guideline #37 – as a *guideline*, choosing to primarily rely on the provisions of legislation.

Section 75 of the Residential Tenancy Act (the Act) states, in part, that I may admit, and consider as evidence that which is:

75. 75(a) necessary and appropriate, and

75(b) *relevant to the dispute resolution proceeding.*

As a result, I accept the landlords' submissions with respect to their research involving 6 advertised rental units as comparable(s). The tenant's submissions referenced two relevant rental units which they believed to be comparable to the units in the subject building. However, this was contrasted against the landlord's unopposed claims that comparable #1 was a basement unit and #2 was an illegal (unlicensed) rental. The tenants submit that none of the landlord's comparable(s) are valid as they are all renovated/upgraded in comparison with their rental.

I have reviewed all of the comparable(s) submitted by the landlord and have determined that they can be considered sufficiently similar.

With relatively minor exceptions, in general, the amenities included in the rent for the advertised units otherwise appear to be comparable. I also note that the tenants' claims that the comparable rental units provided were largely renovated/upgraded in some fashion, however, this does not detract from the current rental market costs.

Section 23(4) of the Regulation provides, in part:

23(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...

After careful consideration of the documentary evidence and testimony, I find on a balance of probabilities that the landlord has met the burden of proving that, after a rent increase permitted by the Regulation, the rent for the subject rental unit is significantly lower than rent payable for other rental units similar to and in the same geographic area as the subject rental unit. Accordingly, the landlord's application is hereby allowed.

I note the length of time from the date of the application filed and find in the circumstances that upon receipt of this decision the new monthly rent shall be \$1,850.00 to begin on the 1<sup>st</sup> day of the next month.

I decline to make any orders back dating the start of the new monthly rent.

#### Conclusion

The landlord's application for an additional rent increase after a rent increase permitted by the Regulation is hereby granted.

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: June 29, 2018

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Residential Tenancy Branch