



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ARI

### Introduction

The landlords apply for an additional rent increase from the existing monthly rent of \$1022.00, to a new rent of \$1256.25; a 20% increase, pursuant to s. 43 (3) of the *Residential Tenancy Act* (the “Act”) and s. 23 (1) of the Residential Tenancy Regulation. That regulation provides:

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;

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the rent for this rental unit is significantly lower than that for other, similar rental units in the area?

### Background and Evidence

The rental unit is a two bedroom home on a city lot in a coastal town. The tenants began their tenancy in October 2012 with the previous owners as their landlords. Apparently the terms of the tenancy arrangement were verbal.

The applicant landlords purchased the property in May 14, 2014. The attending landlord Ms. W. claims that the rent had been \$1100.00 but temporarily reduced to \$1000.00 by the previous owners in consideration of the inconvenience to the tenants

caused while the premises were being offered for sale. The tenants deny it. They say the rent was always \$1000.00 per month.

It is agreed the landlords hold a \$500.00 security deposit, transferred over from the vendors at the time of sale closing. The tenants pay the utility costs in addition to rent and are required to attend to yard over and above simply cutting the grass.

A day after the purchase, on May 15, 2014, the parties entered into a written tenancy agreement at a new rent of \$1022.00 plus utilities and including the same yard work obligation.

The testimony surrounding the discussion the parties had before signing the agreement is contradictory. The attending landlord says she wanted to raise the rent back to \$1100.00 but the tenants' were unwilling. The tenants disagree, saying that the new rent of \$1022.00 was freely agreed to and that they did not demand the required statutory notice for that rent increase.

The landlord Ms. W. indicates that later the tenants were asked for a mutual agreement to raise the rent but they refused.

There is no indication that the landlords' formally expressed their intention to seek an additional rent increase to the tenants either before, during or after the negotiations for the written tenancy agreement and until this application.

In support of the application the landlord Ms. W. has provided a detailed inventory of rental units she considers to be similar and which were being advertised for rent in the area during the months of August, September and October 2014. Further, out of thoroughness, she has included rental units admittedly not quite similar or a bit further away and which were being advertised for rent during that time. The landlord Ms. W. went through a summary of each of the properties. Though not directly stated, her evidence would indicate that since last August similar accommodation in the area has been offered for a rent of about \$1200.00 to \$1250.00 per month.

She does not know what rents were ultimately agreed upon for the rental units in her comparisons, but she says it is fair and logical that the advertised rental units were rented for the amounts being asked. She opines that is unusual for people to haggle about the rent amount and that commonly the amount of rent is not negotiable.

The tenants disagree.

The landlord Ms. W. calculates that it would take the landlords about eight years of regular, annual statutory rent increases to bring the rent up to that requested in the application.

The tenant's take the position that how long it would take the landlords to "recoup" their costs by annual statutory increases is not relevant.

The tenants have provided an extensive list of their own, intended to show that there are a number similar accommodations in the area that are being offered at comparable or lower rents. They argue that there are significant differences in the landlords' "comparables" from the home they rent. They emphasize that the level of luxury in the rental units in the landlords' materials is generally higher than that found in their home. They say that some of the landlords' comparables have fireplaces or storage areas and some of them come furnished.

In reply, the landlord Ms. W. makes the point that the tenants' comparable properties are in different, less desirable areas and that the reference to condominium or apartment units is not a reference to similar accommodation.

### Analysis

The Residential Tenancy Branch has issued a guideline to the public regarding additional rent increases. As it relates to the type of additional rent increase sought here, Residential Tenancy Policy Guideline 37 "Rent Increases" provides:

#### **Additional Rent Increase under the Residential Tenancy Act**

The Residential Tenancy Act allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. The policy intent is to allow the landlord to apply for dispute resolution only in "extraordinary" situations. The Residential Tenancy Regulation sets out the limited grounds for such an application. A landlord may apply for an additional rent increase if one or more of the following apply:

- (a) after the allowable 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 evidentiary requirement imposed on a landlord is to show that the rent for the rental unit in question is significantly lower "than the rent payable for other rental units" similar to and in the same areas as the subject rental unit. It is meant to be comparison of the spectrum of rents currently being paid by tenants of other rental units, not merely a

comparison with the current “market” rents being obtained for newly rented units or the asking rents for vacant units.

In a later portion, Policy Guideline 37 states:

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.

Similarly, it is not sufficient for a landlord to show that a rental unit has a significantly lower rent than similar units in the same geographic area recently rented out or being offered to rent. Evidence of what is commonly called “market rent” is of only limited value.

This may be seen to impose an almost impossible evidentiary burden on the landlord. Requesting information about the current rents being received for similar accommodation in the area would be requesting information that neighbouring landlords and tenants may very well not wish to divulge. Likely that is why the application form issued by the government and the Policy Guideline itself are for the most part directed to apartment building style rental units, where a landlord has control over sometimes hundreds of similar apartments in the same geographical area.

Nevertheless, that is the evidence required to establish that a rent is significantly lower than the rent payable for similar rental units in the same area.

The evidence presented by the landlords on this application is intended to show that the rent for this rental unit is significantly lower than new rents recently being asked for similar accommodation in the area. I find that the evidence presented on this application does not show that the current rent for this rental units significantly lower than the rent actually payable for similar accommodation in the area.

From another viewpoint, were it otherwise, then the statutory scheme of rent control legislated by the *Act* would be rendered ineffective. In a rising market a landlord could bypass the permitted rent increase rules for existing tenancies set by regulation each year, by making an application for an additional rent increase based solely on the climbing rents being obtained for similar accommodation in the area.

For this reason I would deny the landlords’ application for an additional rent increase.

Additionally, the Guideline notes that applications of this nature are to be granted only in “extraordinary situations” and later, “exceptional circumstances.” The landlords’ indicate that the exceptional circumstances in this case are that they are new owners and have inherited pre-existing tenants with a pre-existing tenancy agreement.

That is not an exceptional circumstance nor is it extraordinary. To be blunt, the landlords were not forced to purchase this rental unit. The existence of the tenancy they would be obliged to assume and the terms of that tenancy were known or could have been known to them before they entered into an agreement to buy the property. I would assume that in a normal commercial transaction, the benefit or detriment of the terms of that tenancy would have been factored into any offer or price.

In any event, the parties negotiated and voluntarily entered into a new and binding tenancy agreement at an increased rent only eight months ago. There have arisen no exceptional circumstances since then. The tenants were led to believe that was the new rent. That agreement appears to have been made in good faith by the tenants and the landlords must hold to it.

#### Conclusion

The landlords’ application for an additional rent increase must be denied.

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: January 14, 2015

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Residential Tenancy Branch

