Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 799277

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

S22 **Tenant(s),**

Applicant(s)

And

S22 **Landlord(s),**

Respondent(s)

Regarding a rental unit at: S22 KELOWNA, BC

Date of Clarification: March 08, 2013

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION ON REQUEST FOR CLARIFICATION

The applicant has requested a correction to the Residential Tenancy Branch decision dated February 25, 2013.

Section 78 of Residential Tenancy Act / Section 71 of the Manufactured Home Park Tenancy Act enables the Residential Tenancy Branch to clarify a decision or order.

The applicant requests states:

> The ruling grants the application in full which includes charging the tenants utilities but has provision for a rental ramp up period. It does not address the point at which the tenant must start paying utilities.

The application which was the subject of the Decision rendered February 25, 2013 was an application made by the landlord seeking an Additional Rent Increase. The landlord requested an increase of a total of 64.7% increasing the rent from $850.00 per month to $1,400.00 per month. The landlord's written submission stated:

> S22 (the landlord) requests that: (a) the discount in rent of $200.00 per month be changed because S22 has undertaken the repairs identified by the Tenancy Branch; and (b) the rent for the S22 be increased from $850.00 to $1,400.00 per month because the rental rate for the S22 is significantly lower than rent payable for comparable units in the area.
>
> *(reproduced as written although identifiers removed)*

The Decision indicates that at the hearing the landlord testified that S22 was "...requesting that rent be increased to $1,400.00 per month plus utilities."

A written tenancy agreement was not submitted in evidence. It is not, therefore, within my ability to address the terms of the tenancy agreement. However an Arbitrator hearing an Application for an Additional Rent Increase does not have the authority to

alter the terms of a written or oral tenancy agreement save for the issue of the amount of rent to be paid and the timing of any increases allowed. In short, an Arbitrator is not able to add a clause that the tenants must now pay utilities if no such clause existed. If the tenants were required to pay utilities under their tenancy agreement then that requirement remains. If they were not required to pay utilities under their tenancy agreement then such a term may only be added by agreement between the parties.

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: March 08, 2013

D. SIMPSON, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

Now that you have your decision…

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The RTB website (www.rto.gov.bc.ca) has information about:

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In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended.

between

S22 **Landlord(s)**

Applicant(s)

and

S22

S22 **Tenant(s),**

Respondent(s)

Regarding a rental unit at:

S22 1731 Commercial Drive and S22 1731 Commercial Drive, Vancouver, BC

Date of Hearing: October 10, 2012, by conference call

Date of Decision: October 11, 2012

CORRECTION

Upon receiving an application from the landlord to deal with a typing error in my decision of October 11, 2012, I have determined that I made a typing error in reversing two of the dates identified as part of the settlement agreement reached by the landlord and the tenant in S22 and S22 advocate. These dates were inadvertently switched with one another. I find it is appropriate to amend page 5 of my decision by:

- replacing October 31, 2012 with October 24, 2012 at Item 2 of the settlement agreement; and by
- replacing October 24, 2012 with October 31, 2012 at Item 4 of the settlement agreement.

I therefore issue the attached corrected decision which shall replace the decision dated October 11, 2012. I note that these are the only changes to the October 11, 2012 decision. I apologize for any inconvenience that the inaccurate information in my previous decision may have caused to the parties.

This correction 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 October 26, 2012

_____
D. Bryant
Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 797669

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

S22 **Landlord(s),**

Applicant(s)

And

S22

S22 **Tenant(s),**

Respondent(s)

Regarding a rental unit at: S22 1731 Commercial Drive and S22 1731 Commercial Drive, Vancouver, BC

Date of Hearing: October 10, 2012, by conference call

Date of Decision: October 11, 2012

Attending:

For the Landlord: S22

For Tenant at S22 No one attending

For Tenant at S22 S22 (Advocate)

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction
This hearing dealt with the landlord's application pursuant to section 43(3) of the *Residential Tenancy Act* (the *Act*) and 23 of the *Residential Tenancy Regulation* (the *Regulation*) for an additional rent increase beyond that allowed under section 42 of the *Act* for S22 of this rental property.

The tenant in S22 did not attend this hearing, although the hearing lasted 70 minutes, allowing the tenant in S22 until 12:10 p.m. to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant in S22 and S22 advocate (the advocate) did attend the hearing as did the landlord. The parties in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss this dispute with one another.

The tenant in S22 confirmed that he received a copy of the landlord's application for a rental increase and dispute resolution hearing package sent by the landlord by registered mail on September 7, 2012. The landlord testified that S22 sent an identical hearing package to the tenant in S22 by registered mail on September 4, 2012. The landlord provided the Canada Post Tracking Number to confirm this registered mailing, noting that the Canada Post Online Tracking System confirmed that his package was delivered to the tenant in S22 on September 5, 2012. I am satisfied that the landlord served these notices to the tenants in accordance with the *Act* and the *Regulation*.

Issues(s) to be Decided
Is the landlord entitled to increase the monthly rent for these two rental units by an amount in excess of the 4.3% allowed under section 42 of the *Act*?

Background and Evidence
These one bedroom rental units are two of four such units on the second floor of this 100-year old building. The main floor of this property contains three commercial tenants (i.e., a coffee shop, a restaurant, and a skate shop). The landlord testified that S22 family has owned this property for 50 years. The property passed from S22 to the landlord and S22 in 2001. The landlord testified that the building is self-financing

and no allowances have been retained on an annual basis for major brick restoration work that has become necessary in recent years.

The parties agreed that the monthly rent for both rental units at the time of the landlord's issuance of the Application for Additional Rent Increase (the Application) on August 30, 2012, was set at $485.03. The landlord entered undisputed written evidence that S22 last received a rent increase for these two rental units in April 2011.

Subsequent to the landlord's Application, a Dispute Resolution Officer (DRO) appointed under the *Act* considered an application for dispute resolution from the tenant in S22 In the decision issued by DRO R. Morrison on September 12, 2012 (the September decision) and entered into written evidence by the tenant in S22 (the tenant), the DRO considered the application from the tenant for an order requiring the landlord to conduct repairs and for a reduction in rent for the loss in value of this tenancy due to the landlord's failure to conduct repairs or to adequately maintain the premises. The September decision allowed the tenant to reduce S22 monthly rent by $25.00 as a result of the operation of a smoke house in the commercial property on the ground floor of this building. DRO Morrison "ordered that the rent be reduced by $25 per month commencing October 1, 2012 and on the first day of each month thereafter until the smoke operation of the commercial tenant is closed or the landlord installs a sufficient ventilation system."

Based on this evidence and the advocate's admission that the tenant's correct initial monthly rent was $485.03 and not $479.82 as reported in DRO Morrison's decision, I find that the correct monthly rent as of the date of this hearing was $460.03, as a result of DRO Morrison's order of the $25.00 monthly reduction in rent to S22

The landlord's Application noted that the allowable 4.3% increase under section 42 of the *Act* would lead to a monthly rent increase of $20.85 for the tenants in S22 of this rental property. Using these calculations, the landlord would be entitled to a monthly rent of $505.88 (i.e., $485.03 + $20.85 = $ 505.88) in accordance with section 42 of the *Act* without seeking an additional rent increase. I note that the monthly rent for S22 had been reduced by $25.00 as a result of the September 2012 decision until such time as the smoke problem had either been removed or rectified.

The landlord applied for an additional rent increase of 14.0432 % for both S22 in this building. This resulted in a total requested monthly rent increase of 18.3432 % for both of these rental units. This requested increase was designed to raise the monthly rent for both rental units to $574.00, the same amount that the landlord had obtained as a result of a negotiated agreement with the tenants in the one bedroom

suites in S22 in this property. The landlord entered into written evidence copies of December 27, 2011 letters sent to the tenants in S22 which confirmed that both tenants had given their written permission to increase their monthly rent to $574.00 as of April 1, 2012.

The landlord's Application and written evidence identified the following two reasons for seeking an increase in monthly rent from the tenants in S22 as set out in section 23(1) of the *Regulation*:

> ***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;*
> >
> > *(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;...*

In this case, the landlord asked for an additional rent increase to $574.00, the amounts agreed upon by the tenants in the other two residential rental suites in this property. S22 also provided written evidence to support S22 assertion that the tenants in S22 were paying significantly less than were the tenants in other comparable one bedroom rental properties in this vicinity. The landlord submitted that these rental units were renting for $177.00 to $359.00 less than comparable suites in this area.

The landlord's application for an increase in monthly rent on the basis of significant repairs he had to undertake was based on the landlord's recent expenditure of $118,569.00 for brickwork that needed to be performed. S22 maintained that the magnitude of this work was unexpected and could not have been foreseen under reasonable circumstances.

Analysis – Landlord's Application for an Additional Rent Increase for S22

Section 42 of the *Act* reads in part as follows:

42 *(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

Section 43 establishes the process whereby a landlord can obtain an additional rent increase:

43 *(1) A landlord may impose a rent increase only up to the amount*

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing...

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

In the absence of any evidence or submissions from the tenant in S22 I find that the landlord's undisputed oral and written evidence demonstrated the landlord's entitlement to an additional rent increase pursuant to section 23(1)(a) of the *Regulation.* In coming to this decision, I find that the monthly rent resulting from the annual rent increase allowed under section 42 of the *Act* and section 22 of the *Regulation* would result in a monthly rental for this unit that would be significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit. I allow the landlord's application for an additional rent increase enabling the landlord to obtain a monthly rent of $574.00 per month from the tenant in S22

In accordance with section 88 and 90 of the *Act*, the tenant in S22 was deemed to have been served with a copy of the landlord's Application for Additional Rent Increase on September 9, 2012, the fifth day after its registered mailing. In order to allow the tenant in S22 three full months' notice of this increase in accordance with section 42(2) of the *Act*, I find that the landlord's successful Application takes effect on January 1, 2013, three full months after its initial service to the tenant in S22 I order the

landlord to serve the affected tenant with a copy of this decision which advises the tenant of my order that the monthly rent as of January 1, 2013 increases to $574.00.

Analysis – Landlord's Application for an Additional Rent Increase for S22
Pursuant to section 63 of the *Act,* the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the landlord, the tenant in S22 and S22 advocate discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

1. Both parties agreed that the monthly rent for this tenancy as of November 1, 2012 will be set at $520.00, an amount that reflects the $25.00 reduction provided in the DRO's decision of September 12, 2012.
2. The landlord agreed to replace the flooring of the bathroom of S22 excluding the area under the bathtub with new glued linoleum flooring by October 31, 2012.
3. Both parties agreed that in the event that the landlord does not replace the bathroom flooring in accordance with the terms of this settlement agreement that the tenant's rent will be reduced by $15.00 per month as of November 1, 2012 and for all subsequent months until such time as this flooring has been replaced.
4. The landlord committed to inspect S22 by October 24, 2012, to determine the repairs required. The landlord agreed to conduct repairs that S22 considers necessary to meet the statutory obligations of a landlord under the *Act*.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the issues in dispute at this time arising out of this tenancy.

Conclusion

I order that the monthly rent for S22 in this rental property is set at $574.00 as of January 1, 2013.

In order to give effect to the above settlement reached between the landlord and the tenant in S22 and in accordance with the *Act* and the *Regulation*, I order that the monthly rent for S22 is set at $520.00 as of November 1, 2012, an amount that reflects the $25.00 reduction provided in the DRO's decision of September 12, 2012.

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: October 11, 2012

D. Bryant

Residential Tenancy Branch

RTB-136

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Date of Hearing: October 10, 2012, by conference call

Date of Decision: October 11, 2012

Attending:

For the Landlord: S22

For Tenant at S22 No one attending

For Tenant at S22 S22 (Advocate)

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON OCTOBER 26, 2012 AT THE PLACES AT ITEMS 2 & 4 AS INDICATED ON PAGE 5.

_____
RESIDENTIAL TENANCY BRANCH

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction
This hearing dealt with the landlord's application pursuant to section 43(3) of the *Residential Tenancy Act* (the *Act*) and 23 of the *Residential Tenancy Regulation* (the *Regulation*) for an additional rent increase beyond that allowed under section 42 of the *Act* for S22 of this rental property.

The tenant in S22 did not attend this hearing, although the hearing lasted 70 minutes, allowing the tenant in S22 until 12:10 p.m. to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant in S22 and S22 advocate (the advocate) did attend the hearing as did the landlord. The parties in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss this dispute with one another.

The tenant in S22 confirmed that S22 eceived a copy of the landlord's application for a rental increase and dispute resolution hearing package sent by the landlord by registered mail on September 7, 2012. The landlord testified that S22 sent an identical hearing package to the tenant in S22 by registered mail on September 4, 2012. The landlord provided the Canada Post Tracking Number to confirm this registered mailing, noting that the Canada Post Online Tracking System confirmed that S22 package was delivered to the tenant in S22 on September 5, 2012. I am satisfied that the landlord served these notices to the tenants in accordance with the *Act* and the *Regulation*.

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Is the landlord entitled to increase the monthly rent for these two rental units by an amount in excess of the 4.3% allowed under section 42 of the *Act*?

Background and Evidence
These one bedroom rental units are two of four such units on the second floor of this 100-year old building. The main floor of this property contains three commercial tenants (i.e., a coffee shop, a restaurant, and a skate shop). The landlord testified that S22 family has owned this property for 50 years. The property passed from S22 to the landlord and S22 in 2001. The landlord testified that the building is self-financing

and no allowances have been retained on an annual basis for major brick restoration work that has become necessary in recent years.

The parties agreed that the monthly rent for both rental units at the time of the landlord's issuance of the Application for Additional Rent Increase (the Application) on August 30, 2012, was set at $485.03. The landlord entered undisputed written evidence that S22 last received a rent increase for these two rental units in April 2011.

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Based on this evidence and the advocate's admission that the tenant's correct initial monthly rent was $485.03 and not $479.82 as reported in DRO Morrison's decision, I find that the correct monthly rent as of the date of this hearing was $460.03, as a result of DRO Morrison's order of the $25.00 monthly reduction in rent to S22

The landlord's Application noted that the allowable 4.3% increase under section 42 of the *Act* would lead to a monthly rent increase of $20.85 for the tenants in S22 of this rental property. Using these calculations, the landlord would be entitled to a monthly rent of $505.88 (i.e., $485.03 + $20.85 = $ 505.88) in accordance with section 42 of the *Act* without seeking an additional rent increase. I note that the monthly rent for S22 had been reduced by $25.00 as a result of the September 2012 decision until such time as the smoke problem had either been removed or rectified.

The landlord applied for an additional rent increase of 14.0432 % for both S22 in this building. This resulted in a total requested monthly rent increase of 18.3432 % for both of these rental units. This requested increase was designed to raise the monthly rent for both rental units to $574.00, the same amount that the landlord had obtained as a result of a negotiated agreement with the tenants in the one bedroom

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The landlord's Application and written evidence identified the following two reasons for seeking an increase in monthly rent from the tenants in S22 as set out in section 23(1) of the *Regulation*:

> ***23*** *(1) A landlord may apply under section 43 (3) of the Act [additional rent increase] if one or more of the following apply:*
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> > *(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;*
> >
> > *(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;...*

In this case, the landlord asked for an additional rent increase to $574.00, the amounts agreed upon by the tenants in the other two residential rental suites in this property. S22 also provided written evidence to support S22 assertion that the tenants in S22 were paying significantly less than were the tenants in other comparable one bedroom rental properties in this vicinity. The landlord submitted that these rental units were renting for $177.00 to $359.00 less than comparable suites in this area.

The landlord's application for an increase in monthly rent on the basis of significant repairs S22 had to undertake was based on the landlord's recent expenditure of $118,569.00 for brickwork that needed to be performed. S22 maintained that the magnitude of this work was unexpected and could not have been foreseen under reasonable circumstances.

Analysis – Landlord's Application for an Additional Rent Increase for S22

Section 42 of the *Act* reads in part as follows:

42 *(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

Section 43 establishes the process whereby a landlord can obtain an additional rent increase:

43 *(1) A landlord may impose a rent increase only up to the amount*

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing...

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

In the absence of any evidence or submissions from the tenant in S22 I find that the landlord's undisputed oral and written evidence demonstrated the landlord's entitlement to an additional rent increase pursuant to section 23(1)(a) of the *Regulation.* In coming to this decision, I find that the monthly rent resulting from the annual rent increase allowed under section 42 of the *Act* and section 22 of the *Regulation* would result in a monthly rental for this unit that would be significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit. I allow the landlord's application for an additional rent increase enabling the landlord to obtain a monthly rent of $574.00 per month from the tenant in S22

In accordance with section 88 and 90 of the *Act*, the tenant in S22 was deemed to have been served with a copy of the landlord's Application for Additional Rent Increase on September 9, 2012, the fifth day after its registered mailing. In order to allow the tenant in S22 three full months' notice of this increase in accordance with section 42(2) of the *Act*, I find that the landlord's successful Application takes effect on January 1, 2013, three full months after its initial service to the tenant in S22 I order the

landlord to serve the affected tenant with a copy of this decision which advises the tenant of my order that the monthly rent as of January 1, 2013 increases to $574.00.

Analysis – Landlord's Application for an Additional Rent Increase for S22
Pursuant to section 63 of the *Act,* the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the landlord, the tenant in S22 and S22 advocate discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

1. Both parties agreed that the monthly rent for this tenancy as of November 1, 2012 will be set at $520.00, an amount that reflects the $25.00 reduction provided in the DRO's decision of September 12, 2012.
2. The landlord agreed to replace the flooring of the bathroom of S22 excluding the area under the bathtub with new glued linoleum flooring by October ~~31~~**24**, 2012.
3. Both parties agreed that in the event that the landlord does not replace the bathroom flooring in accordance with the terms of this settlement agreement that the tenant's rent will be reduced by $15.00 per month as of November 1, 2012 and for all subsequent months until such time as this flooring has been replaced.
4. The landlord committed to inspect S22 by October ~~24~~**31**, 2012, to determine the repairs required. The landlord agreed to conduct repairs that he considers necessary to meet the statutory obligations of a landlord under the *Act*.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the issues in dispute at this time arising out of this tenancy.

Conclusion
I order that the monthly rent for S22 in this rental property is set at $574.00 as of January 1, 2013.

In order to give effect to the above settlement reached between the landlord and the tenant in S22 and in accordance with the *Act* and the *Regulation*, I order that the monthly rent for S22 is set at $520.00 as of November 1, 2012, an amount that reflects the $25.00 reduction provided in the DRO's decision of September 12, 2012.

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: October 11, 2012

D. Bryant
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

Now that you have your decision…

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 797669

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

S22 **Tenant(s),**

Applicant(s)

And

S22 **Landlord(s),**

Respondent(s)

Regarding a rental unit at: S22 731 Commercial Drive, Vancouver, BC

Date of Review Decision: November 14, 2012

REVIEW DECISION

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

This is an application by the tenant to review the decision of D. Bryant dated October 11, 2012 relating to the above-noted rental unit.

I refer to section 79(2) of the Act which provides that a decision or order of the director may be reviewed only on one or more of the following grounds:

a. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;

b. A party has new and relevant evidence that was not available at the time of the original hearing;

c. A party has evidence that the director's decision or order was obtained by fraud.

The tenant applied for a review on the basis of the first and third grounds, namely: that S22 was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond S22 control, and that S22 has evidence the decision was obtained by fraud. With respect to the first ground, in the application the tenant claimed as follows: "I was primary care for S22 and unable to attend".

Residential Tenancy Policy Guideline #24, Grounds For Review of an Arbitrator's Decision contains the following passage concerning a review on the ground that the party was unable to attend the hearing:

In order to meet this test, the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- not anticipated.

> A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

The tenant was served with the application and Notice of Hearing on September 5, 2012. S22 had ample time to make arrangements to be available for the hearing, or to request an adjournment; S22 did neither. The application for review is denied on this ground.

With respect to the allegation of fraud, the tenant said that:

> I believe that the landlord's choices not to obtain a Worksafe BC Notice of Project or City Building Permit was an intentional deception made for personal gain or a gain of an unfair advantage.

The tenant also submitted that the landlord should not have been granted a rent increase because S22 said that the rental property has been neglected for many years and the repairs were foreseeable.

The Policy Guideline states with respect to fraud as follows:

> The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB. The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.
>
> A review may be granted if the person applying for the review provides evidence meeting **all three** of the following tests:
>
> 1 information presented at the original hearing was false;
>
> 2 the person submitting the information knew that it was false; and,
>
> 3 the false information was used to get the outcome desired by the person who submitted it.

In the decision under review the arbitrator decided that the landlord was entitled to a rent increase because of his finding that: "…the monthly rent resulting from the annual

rent increase allowed under section 42 of the *Act* and section 22 of the *Regulation* would result in a monthly rental for this unit that would be 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 tenant has not provided evidence to establish that evidence presented at the hearing was false and was a significant factor in the making of the decision. The increase was based on the finding that the rent after the allowable increase would be lower than the rent for similar units in the area. I find that the decision under review was not based on any supposedly fraudulent evidence. The tenant's application for review is denied on this ground. I therefore dismiss the application for review on the basis that the application discloses no evidence of a ground for review.

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 14, 2012.

J. Howell
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 798205

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

S22 **Landlord(s),**

Applicant(s)

And

S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

S22 ,

S22 **Tenant(s),**

Respondent(s)

Regarding a rental unit at: S22

S22

S22 445-6TH AVENUE NORTH, CRESTON, BC

Date of Hearing: November 20, 2012, by conference call.

Date of Decision: December 6, 2012

Attending:

For the Landlord: S22

For the Tenant:

S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Additional Rent Increase

Introduction

This hearing was convened in response to an application by the landlord for an Additional Rent Increase pursuant to Section 36(3) of the *Manufactured Home Park Tenancy Act*.

Issue(s) to be Decided

The landlord applies for an additional rent increase under Sections 36(1)(b) of the *Manufactured Home Park Tenancy Act* and Section 33(1)(b) of the *Manufactured Home Park Tenancy Regulation.* The issue to be determined is therefore whether the landlord has proven that S22 has completed significant repairs or renovations to the manufactured home park in which the manufactured home site is located that

(i) are reasonable and necessary, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

Background and Evidence

The landlord testified that S22 purchased the park in 2005 and it is about 35 years old. The landlord submits that over the period 2010 to 2012 S22 has undertaken extensive repairs to the park as follows:

Work Performed	Cost
Removed power poles and replaced them with underground wiring	$74,707.91
Repaired paving in common areas of the parking lot	3,248.00
Replaced one power pole, repaired/rebuilt power shed; replaced retaining wall with concrete and added new drainage	27,870.00
Total Costs	$105,825.91

The landlord submits that all of this work will last approximately 25 years. As a result of these additional expenses the landlord is seeking an additional rent increase of 6.4%

over the permitted increase of 4.3% for a total increase of 10.7%. This will result in a total rent increase of approximately $32.00 per unit per month for the majority of the 93 units and 15 units rising to a $35.00 to $39.00 per month increase.

In evidence the landlord submitted invoices and details regarding payments for the work performed.

With respect to the replacement of the poles the landlord says the poles had rotted and some of the poles had fallen down. The landlord estimates that given the age of the park it was time to replace the utilities which provide power, phone, internet and cable services to the park. Because of the layout of the park the landlord was unable to use underground services in all areas so S22 did replace one pole at a cost of $2,400.00 for the pole only. The landlord testified that installation costs were not included in the $2,400.00 cost of the pole. Given the expense of replacing the entire park with above-ground services at minimum $2,400.00 per pole for approximately 30 poles ($72,000.00) the landlord opted to install underground services at a cost of $74,707.91. The landlord testified that S22 consulted with contractors and was advised that the power company now required services to be replaced with underground services for the section leading from the road to the park. Once in the park the landlord was free to choose whether to install above-ground or underground services however the cost difference was minimal and above-ground services were not recommended. The landlord therefore opted to install underground services. The landlord says that if S22 could have found a less expensive way to replace the services S22 would have done so but this was the efficient and safe route to take.

With respect to the retaining wall and repaving the landlord says that there is an ongoing problem with water coming into the parking lot from the hillside during the spring thaw and rains. The retaining wall supporting the parking lot was previously constructed with railway ties which were in poor condition. The landlord opted to replace the railway tie retaining wall with a concrete retaining wall which is stronger and will last longer. As the parking area was in poor condition the landlord also had the parking lot repaved with asphalt.

The landlord says that S22 replaced the sheds on the property because they too were very old and in poor condition.

The tenants argue that these repairs could have been foreseen. The tenants submit that there has been no evidence to show that the landlord had the park inspected when S22 purchased it in 2005 and had S22 done so these repairs could have been foreseen. The tenants submit that had the landlord performed S22 due diligence S22 could have

anticipated these repairs and S22 could have saved monies from the rents collected over the past 7 years to pay for the repairs.

The tenants say there are no regulations requiring S22 to install underground services throughout the park and the landlord could have chosen a cheaper method to install new services.

The tenants say it was the landlord's choice to replace the retaining wall with expensive concrete instead of less expensive asphalt.

The tenants say the landlord has not properly maintained the park.

The tenants say that the landlord did these repairs to protect his own investment.

The Law

In regard to additional rent increases, Section 36 of the *Manufactured Home Park Tenancy Act* states in part:

> 1) A landlord may impose a rent increase only up to the amount
>
> (a) calculated in accordance with the regulations,
>
> (b) ordered by the director on an application under subsection, or
>
> (c) agreed to by the tenant in writing.
>
> (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

In regard to additional rent increases the relevant portions of the *Manufactured Home Park Tenancy Act Regulation* states in part:

> **33** (1) A landlord may apply under section 36 (3) of the Act *[additional rent increase]* if one or more of the following apply:
>
> (b) the landlord has completed significant repairs or renovations to the manufactured home park in which the manufactured home site is located that
>
> (i) are reasonable and necessary, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

And,

(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

(d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the manufactured home park.

Analysis

There is no dispute as to whether the landlord actually completed the repairs to the manufactured home park in which the manufactured home site is located.

While part of the tenants' argument is that there has been insufficient evidence to show that the landlord could not have foreseen these repairs, there is no requirement under the *Manufactured Home Park Tenancy Act* or *Regulation* requiring a landlord to foresee such repairs. My task is to determine whether there has been sufficient evidence to show that the repairs were reasonable and necessary, and whether they will not recur within a time period that is reasonable for the repair or renovation.

The tenants also argued that the landlord did these repairs to protect his own investment. The landlord is required to repair and maintain the park and if doing so allows for him to also protect his investment then it is of mutual benefit to the landlord and the tenants. There is certainly nothing in the Residential Tenancy Act that prevents a landlord from doing what S22 believes is necessary to protect S22 nvestment.

The tenants also argued that the landlord has not maintained the park properly however they failed to show what maintenance issues are not attended to or that they have made complaints to the landlord and/or filed an Application for Dispute Resolution with the Residential Tenancy Branch to compel the landlord to complete the maintenance they believe is necessary.

With respect to the specific repairs, the evidence is that the park is 35 years old and that the above-ground poles were rotting; some had even fallen down. Given this I find it

reasonable and probable to conclude that replacement of these services was necessary.

While the tenants argue that there may have been less expensive ways to make the repairs, they have supplied insufficient evidence to support that view. However, the landlord has been able to provide evidence that a single pole would cost $2,400.00 without installation costs and that replacing approximately 30 poles at a cost of a minimum of $72,000.00 would result in more expense than the $74,707.91 cost of installing underground services.

Based on the evidence I see nothing untoward in the landlord replacing railway tie retaining walls with concrete retaining walls. I also find nothing untoward in the landlord repaving the asphalt common areas and parking lot which must be periodically repaired and replacing the sheds n the property which may be up to 35 years old.

Overall I find that the landlord has supplied sufficient evidence to show (a) that the repairs were reasonable and (b) that they were necessary. The landlord's Application for an Additional Rent Increase is therefore allowed in the full amount requested.

Conclusion

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: December 6, 2012.

D. SIMPSON, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 799935

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

S22 **Landlord(s),**

Applicant(s)

And

S22 **Tenant(s),**

Respondent(s)

Regarding a rental unit at: S22 2928 COMMERCIAL DRIVE, VANCOUVER, BC

Date of Hearing: December 19, 2012, by conference call.

Date of Decision: January 11, 2013

Attending:

For the Landlord: S22

For the Tenant: NONE

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with an application by the landlord under section 43(3) of the Act, seeking an order approving a rent increase greater than the amount calculated under section 22 of Residential Tenancy Regulation.

Despite being served by registered mail, as confirmed by a copy of the Canada Post tracking receipt confirming mail sent on November 20, 2012, the tenant failed to attend the hearing.

At the start of the hearing I introduced myself to both of the participants who attended on behalf of the landlord. The hearing process was explained.

Both the landlord and the tenant each had an opportunity to submit documentary evidence prior to this hearing. Evidence had been received only from the landlord. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to an additional rent increase above that permitted by the Residential Tenancy Regulation?

Background and Evidence

The tenancy in question began approximately 5 years ago. The landlord testified that the tenant had previously functioned as S22 in exchange for rent. Although the landlord stated that the rent at the start of the tenancy was valued at $1,200.00, a previous dispute resolution decision found that the rent for the unit was set at $1,000.00 at the start of the tenancy. It was established that that this rental rate had remained unchanged to the date of that previous hearing held in August 2012.

The landlord testified that the rental rate was never increased during the tenancy because no rent was ever physically collected from the tenant during S22 role as S22 S22 According to the landlord, the tenant received a complete credit for all of S22 rent as payment for the S22 position. The landlord testified that the tenant now no longer functions as S22 as this job has been given to another individual. The new S22 for the building was present at the hearing.

On the "*Application for Additional Rent Increase*" form, submitted by the landlord, the landlord indicated that the maximum increase allowable under the Residential Tenancy Regulation would be 4.3% for 2012 and, based on this, the allowable increase would be restricted to $43.00. However, I find that the maximum rent increase allowed under the Regulation for 2013 is set at 3.8% for 2013. I find that any proposed rent increase would not take effect until 2013 and therefore the permitted increase would be limited to $38.00.

The landlord seeks an additional rent increase under section 23(1)(a) of the Regulation. Specifically, the landlord claims that after the $38.00 rent increase allowed under section 22, the rent will remain significantly lower than the rents for other similar units in the same residential property and neighbouring residential areas. The landlord is seeking to raise the rent to $1,400.00 or by 40%. This is an additional 36.2% beyond the allowable amount for 2013.

The landlord provided supporting documentation showing the rents for two adjacent units in the same complex, located on the same side and same floor of the building as the tenant's rental unit. The landlord provided information to show that these units have similar square footage and layout as the subject rental unit. The landlord also provided information about one other comparable in the complex located on the third floor.

The landlord's undisputed evidence confirmed that the 2 other units on the same floor were each rented for $1,400.00 per month. A copy of the building floor-plan was submitted showing locations of units S22 and S22 mmediately adjacent to the subject unit. Also in evidence were copies of tenancy agreements signed in May 2011 and October 2011 that show that the rent being charged for these two units is $1,400.00 per month.

The landlord testified that no in-suite washers or dryers were permitted and the two adjacent rental units only had use of the common area washers and dryers. The landlord pointed out that the tenant's rental unit had been enhanced by virtue of the fact that S22 had installed S22 own in-suite washer and dryer in S22 unit.

In regard to the third comparable, the landlord also provided a floor plan of the third floor of the building highlighting a suite located above and to one side of the subject rental unit. The document included a handwritten notation stating:

> "*APARTMENT SUITE S22 RECENTLY RENTED FOR $1400 PM SAME BUILDING AND SIMILAR DETAILS 2 BR, LIVING, DINING, KITCHEN, DEN, FR, STOVE, D/W, , HOT WATER INCLUDED, ON PARKING N/C. ALSO TWO MORE FAMILY WAITING IN LINE FOR RENT."* (Reproduced as written)

Other than the three specific comparable suites provided, no specific information about what rents were being charged for the remaining suites in this complex had been included in the documentary evidence.

The landlord gave verbal testimony stating that that every other rental unit in the complex is presently rented at a higher rate than the subject rental unit. The landlord's written testimony indicates:

> *"I do have similar suites available for rent on different floors within the same building that I have no trouble renting for $1,400 per month."*

The landlord did not provide additional documentary evidence, such as a list of all rents being charged for similar units in the building or copies of other tenancy agreements, to verify what actual rental rates were being charged for any of the other units in this four-story complex.

With respect to nearby rental units in the same geographic area, having similar features and square footage, the landlord had provided copies of advertisements and listed some details describing the rental suites.

Analysis

The Residential Tenancy Act allows a landlord to apply for dispute resolution for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase only in "extraordinary" situations. The Residential Tenancy Regulation sets out the limited grounds for such an application.

I find that the examination and assessment of an application for Additional Rent Increase must be based on a reasonable interpretation of the application and supporting material. I find that the landlord has the burden to prove that the rent for the subject rental unit is significantly lower than the current rent payable for similar units taking into consideration the criteria that additional rent increases under this section are to be granted only in exceptional circumstances.

I find that an additional rent increase may be supported by the fact that, after the allowable Annual Rent Increase is calculated under the regulation, the rent for the rental unit is still significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit.

I find that the tenant had an opportunity to appear at the hearing of the application, question the landlord's evidence and submit their own evidence. Had the tenant chosen to do so, the tenant's evidence would have been considered in making a decision.

However, the most important and relevant data in making a determination under this section of the Act relates to the rental rates being charged for comparable suites. I find that this is a key consideration and the tenant would not necessarily be in a position to access such records nor present data about what rents are being charged for other comparable suites occupied by others. In any case, the tenant did not to appear nor submit evidence.

In considering an Application for Additional Rent Increase, the arbitrator must consider what rent is payable for similar rental units in the property immediately before the proposed increase is to come into effect.

In this instance, I find that the landlord only saw fit to provide specific details about three other units located in this large complex. Although the landlord stated that the reason for restricting the number of examples was because he wanted to only focus on comparable middle suites located on the same side of the building close to the unit, I find that the landlord could have furnished more information about additional suites in the complex that were similar to the subject suite.

I find that, while detailed data was provided for the adjacent suites S22 and S22 and another single suite located two floors above, S22 , there was no data furnished for any of the other suites in the same proximity nor numerous rental units in this same complex which are presumably located nearby and are likely to be somewhat similar. It is possible that these suites are not exactly the same layout, but I find it likely that some of them would have equivalent floor space and features comparable to the subject suite.

When giving examples, I find it critical that the landlord provide a balanced spectrum of comparable suites and not just include recently rented suites. I find that it is not sufficient for a landlord to claim that a rental unit has a significantly lower rent because of the landlord's recent success at renting out similar units in the residential property at a higher rate.

In addition, I find that to make a case that the subject rent is significantly lower than other comparable suites, it is not sufficient to merely highlight those with the highest rental rates as examples. 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 bring it in line with the highest rent charged for such a unit.

I find that, excluding examples of existing tenancies with a lower monthly rate would also not be appropriate, but there is no way to know if this occurred because there is data missing regarding the other rental units in this complex.

With respect to the information collected about other off-site suites in the nearby geographic area, I find that the information was based primarily on descriptions contained in written advertisements, I do not find that this is sufficiently detailed or complete information that would permit a valid comparison.

Notwithstanding the above, in situations where the landlord has kept the rent low in an individual apartment for a long term renter (i.e., over several years), I find that this factor would be a valid consideration in supporting the landlord's position that an Additional Rent Increase is warranted. I find that this applies to the subject property in the case before me.

That being said, the key objective must be to bring the rent in line with other, similar apartments within the building or in the same geographic area.

According to the Residential Tenancy Guidelines, where there are a number of comparable units with a varying range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range and an arbitrator may approve an additional rent increase that based on an average rate for the similar rental units in the complex or area.

In this regard, I find that the landlord's comparables in the complex apparently only included rental suites that appear to be in the top range of rents being charged. This may or may not be the case, however I find that there is no way to verify what the precise range and the number of units with higher, or possibly lower, rental rates as that being charged for the subject suite. This is because the landlord only supplied limited data, restricted the supporting examples to three units and neglected to provide sufficient details about the actual rent currently being charged for all of the comparable units in this complex.

In light of the above, I find that the landlord has not sufficiently proven that a rental increase of $400.00 is supported in this case. However, in consideration of the fact that the rent for this suite has remained the static for a number of years, I accept that an additional increase beyond the 3.8% under the Regulation is justified and should be allowed. I therefore find that the landlord is entitled to issue the tenant with a Notice of Rent Increase to raise the tenant's rent in the amount of $125.00, per month, which is an increase that exceeds the amount that would otherwise be permitted under the Regulation**.**

Conclusion

The landlord is partially successful in the application and is granted an order permitting the landlord to issue a Notice of Rent Increase of $125.00 per month.

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 11, 2013.

J. Yuen , Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 801939
Additional File No.: 801685

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

S22 **Landlord(s),**
Applicant(s)/Respondent(s)

And

S22 **Tenant(s),**
Applicant(s)/Respondent(s)

Regarding a rental unit at: S22 Surrey, BC

Date of Hearing: January 02, 2013, by conference call.

Date of Decision: January 03, 2013

Attending:

For the Landlord: S22

For the Tenant: S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and loss of rent; and, authorization to retain the security deposit.

Both Applications for Dispute Resolution indentified two co-tenants; however, only one of the named tenants (referred to by initials S22 appeared at the hearing. S22 confirmed S22 was representing S22 and the other named tenant (referred to by initials S22).

I was provided evidence that S22 along with S22 and other occupants reside in the rental unit, but that only S22 had signed the written tenancy agreement. The written tenancy agreement had an expiry date of September 30, 2011 and required the tenant to vacate the rental unit at the end of the fixed term. Both parties were in agreement that a new tenancy agreement was not entered into after the expiry date but that the agreement merely continued on a month-to-month basis.

As S22 was not a signatory to the written tenancy agreement I found that S22 was not a tenant, as defined by the Act, and I amended the Applications for Dispute Resolution to exclude S22. S22 remained at the hearing in the capacity as an agent for S22.

After both parties had an opportunity to be heard, the parties indicated a willingness to resolve this dispute by way of a mutual agreement. I have recorded the mutual agreement in this decision and by way of the Orders that accompany it.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

The parties mutually agreed to the following terms:

1. The tenant shall pay the landlord $11,800.00 representing rent for the months up to and including January 2013 no later than 15 days after the date of this hearing.
2. If the tenant fails to fulfill the above term the landlord may serve and enforce the Order of Possession and Monetary Order that accompany this decision.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record a settlement agreement in the form of a decision or order.

I have recorded the mutual agreement reached during the hearing by way of this decision and I have provided the landlord with the following orders that may be served and enforced if the tenant fails fulfill term no. 1 of the mutual agreement:

A. An Order of Possession effective two (2) days after service upon the tenant; and,
B. A Monetary Order in the amount of $11,800.00.

I award the filing fee to the landlord and authorize the landlord to deduct $100.00 from the tenant's security deposit in satisfaction of this award. I also authorize the landlord to retain the balance of the security deposit and enforce the balance outstanding in Provincial Court in the event the tenant fails to satisfy term no. 1 of the mutual agreement in its entirety.

Conclusion

The parties resolved this dispute by way of a mutual agreement. The landlord has been provided an Order of Possession and Monetary Order that the landlord may serve and enforce if the tenant fails to fulfill term no. 1 of the mutual agreement. The landlord has been authorized to make deductions from the security deposit in accordance with this decision.

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 03, 2013.

C. Reid, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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  (Please Note: Legislated deadlines apply)

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 799277

In the matter of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended

Between

S22 **Landlord(s),**
Applicant(s)

And

S22 **Tenant(s),**
Respondent(s)

Regarding a rental unit at: S22 KELOWNA, BC

Date of Hearing: January 17 and February 14, 2013 both by conference call.

Date of Decision: February 25, 2013

Attending:

For the Landlord: S22 Legal Counsel

For the Tenant: S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ADR

Introduction

This hearing was convened in response to the landlord's application seeking an additional rent increase.

Both parties appeared at the hearing on both days and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving his claim?

Background and Evidence

At the hearing of this matter the landlord submitted that in addition to seeking to increase the rent in an amount which exceeds the current allowable amount, the landlord is also seeking to reinstate the usual rent which was previously ordered reduced.

Although the landlord did not make a separate application seeking the reinstatement of the usual rent payable, I find that in making this application seeking to increase the rent from $850.00 (the usual amount payable) to $1,400.00 that the tenants have had Notice that the landlord was also seeking to reinstate the former rental amount. I am therefore prepared to decide this claim in addition to the claim for the additional rent increase.

Reinstatement of Usual Amount of Rent

At a hearing held on February 3, 2012 under Residential Tenancy Branch File No. 782568 an Arbitrator ordered:

> **I ORDER THE LANDLORD** to investigate the tenants concerns with the above areas of the rental unit and affect any necessary repairs to maintain the unit and ensure the unit complies with the health, safety and housing standards required

> by law and make the unit suitable for occupation by the tenants. The landlord must comply with this Order within One Month of receiving this Decision.
>
> With regard to the tenants application to reduce their rent for repairs not completed by the landlord; As the landlord would have been aware that some of these repairs were required from conversations with the tenants and having sent roofing contractors to the property **I ORDER THE TENANTS** to reduce their rent by **$200.00 per month** until the landlord takes steps to remedy the repairs required in the property or until such a time as the tenancy ends.

At another hearing held on July 5, 2012 under file No. 535317 the same Arbitrator made the following findings:

> I find the tenants are entitled to pay the reduced rent of $600.00 for June, 2012 as ordered at the hearing held in May, 2012. The tenants are also entitled to continue to pay the reduced rent of $650.00 as ordered at the hearing held in February, 2012 until the landlord has complied with s. 32 of the *Act* and made repairs to the deck, the roof, the door and investigated the problems with the windows.

The landlord now states that the repairs to the deck, the roof, the door have been done and the problems with the windows has been investigated and it has been found that the windows are functioning properly. The landlord therefore seeks to have the rent returned to $850.00 per month.

The tenants agree that repairs to the roof and patio have been completed. The tenants say that new wheels were never installed on the patio door and that only a small screw was installed on the door. The tenants also say the leak in the second bedroom was never fixed and the window is still mildewing.

The landlord reiterated that repairs as stipulated in the Arbitrator's Order have been completed. The landlord submitted evidence that he spent $2,500.00 to rebuild the deck and reroofing commenced on October 1, 2012 at a cost of $11,144.00 and that the patio door is now functioning properly. The landlord states he was only required to investigate the windows and that has now been done and the condensation occurring is normal. The landlord provided a report in this regard.

Analysis and Findings – Reinstatement of Usual Amount of Rent

With respect to the return to the original rental amount of $850.00 I find this to be appropriate in the case. The landlord has provided evidence of the repairs performed and I am satisfied that the bulk of the repairs have been complete and the rental reduction should cease immediately with full rent of $850.00 becoming payable effective March 1, 2013.

Additional Rent Increase

The landlord pointed out that the Arbitrator is required to consider a number of factors when deciding whether an additional rent increase is appropriate as set out in the Residential Tenancy Act Regulation:

> (3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):
>
> > (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;
> >
> > (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;
> >
> > (c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;

The landlord testified that he purchased the property in 2002 at which time this portion of the rental building consisted of two separate units. This tenancy also commenced in 2002 with these tenants renting the upper suite which was a two-bedroom unit. The tenants were paying a rental sum which was appropriate for a two-bedroom unit and other tenants rented the two-bedroom lower suite at a rental rate of $1,000.00 per month. The landlord was therefore receiving $1,850.00 for the two units (without giving consideration to the rental discount these tenants had been awarded).

The landlord submits that in December 2011 the City of Kelowna advised the landlord that having the rental unit divided into two suites did not comply with 2006 British Columbia Building Code. The landlord was required to obtain a Building Permit to perform renovations to have the building meet the code. The landlord submitted invoices for the work performed to bring the rental unit into compliance with the Code.

The landlord has submitted the opinion of a property manager who has advised that a rent between $1,400.00 to $1,600.00 per month plus utilities is appropriate for this rental unit as it now is. With the property manager's report the landlord has included summaries of the comparable properties in the area. The landlord is requesting that the rent be increased to $1,400.00 per month plus utilities.

The tenants do not agree with the rent increase. The tenants say they have no desire to occupy the lower portion of the rental unit and that the landlord should have known from the beginning that the basement suite was illegal. The tenants state that the landlord has already earned more for the rental unit than he should have as he was receiving $1,000.00 per month for the basement suite which was illegal and never should have existed.

The tenants say they have had their rent increased twice during their tenancy which began in 2002 resulting in their rent increasing from $650.00 to $850.00. The tenants say they paid these increases because they were reasonable however they have only ever wanted to rent the upper portion of the house which is a two-bedroom suite not a four-bedroom suite. The tenants say they do not believe they should be forced to pay more because the landlord was forced to make the rental unit "…become legal…"

The landlord responded that the request from the City of Kelowna came as a surprise and S22 had no idea that the basement suite was not up to the building code. The landlord testified that S22 had previous dealings with the City of Kelowna during which time they never mentioned that there was a problem with the basement suite. The landlord stated that in one instance S22 was required to upgrade the electrical system for the rental building and S22 separated the two electrical systems between the suites paying $5,000.00 for the work. The landlord says that if S22 had known the suite was illegal and the unit should have been one dwelling S22 would not have spent $5,000.00 to provide two separate electrical services for the units.

The tenant responded that the electrical issue came up because the electrical system was dangerous and the City Inspector made the landlord separate the electrical to the units. The tenants submit that the landlord should have known when S22 bought this place that the suite was illegal and the landlord's own S22 who previously rented the place knew it was illegal.

Analysis and Findings

First, I will consider item (3)(b) as set out above. I find that there has been insufficient evidence that there have been unusual factors with respect to the rent history of this unit. There have been no other extraordinary rent increases and no evidence that the landlord has failed to raise rents on a regular basis in which case S22 now wishes to catch up. On the contrary, the evidence shows that regular rent increases have taken place over the course of this 11 year tenancy and they have been reasonable and agreed to by the parties.

Before I can consider (3)(a): Comparable units, I will consider item (3)(c) to determine if there has there been a change in the service or facility.

I find that the undisputed evidence shows that by way of an order from the City of Kelowna the landlord was required to perform renovations to "…ensure the entire building is free flowing and interconnected". The result of these renovations is that the rental unit has gone from being two separate single family units comprised of two two-bedroom suites to one single family four-bedroom unit. There is no doubt that the facility that the landlord provides has now changed.

However, while the facility has changed, the tenants only pay an amount of rent that is consistent with a one story two- bedroom upper suite as opposed to a two story four-bedroom unit. The landlord submits that the tenants' rental unit has effectively doubled in size while their rent has not. Further, where once the landlord received $1,850.00 in rent for the two units ($1,000.00 for the lower suite and $850.00 for the upper suite) he is now only receiving $850.00 in rent.

The tenants argue that they do not need or want a four bedroom home and they do not intend to occupy the lower area which is now open to them to occupy. The tenants argue that the landlord ought to have known the lower suite was illegal. However the facts show that whether the tenants wanted a four bedroom unit or not, the City has ordered that their two-bedroom unit be renovated to merge two units into one and the tenants now have a four bedroom unit available to them and the landlord is out-of-pocket $1,000.00 in rent for the lower unit. I do not accept their argument that the landlord has somehow been unfairly advantaged by having received $1,000.00 per month for the lower suite. It was a suite and it rented for that sum. It is no longer a suite and it will not be available for rent to another family because it has been merged into one unit.

With respect to the argument whether or not the landlord knew the lower suite was illegal these tenants have lived in the rental unit since 2002. The evidence of the landlord is that S22 has had the City on site on previous occasions and the City did not state that the suite was illegal. In fact, the evidence shows that it was the 2006 Building Code that was applied to make the determination that the two rental units had to be merged into one. However, whether the suite was illegal at the start of this tenancy or not, I find to be irrelevant to the questions of whether the rental unit is one that should rent for $1,400.00 now as opposed to $850.00. Based on the comparables supplied I find that it is.

Therefore in considering the points of the legislation I have asked to consider I find as follows:

(a) the rent payable for similar rental units is closer to $1,400.00 than $850.00;

(b) the rent history for the rental unit in the 3 years preceding the date of the application is unremarkable;

(c) the facility that the landlord has provided for the residential property has changed.

In considering this application the legislation states that I 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

Having found that $1,400.00 per month is a reasonable rental sum for this rental unit, I will allow the application in full.

Giving consideration to the size of the increase I direct that the increase be phased in over a period of time:

- Effective June 1, 2013 the rent shall increase from $850.00 to $1,125.00 per month;
- Effective August 1, 2013 the rent shall increase once again from $1,125.00 per month to $1,400.00 per month.

The anniversary date of this increase shall be August 1, 2013. This means that the rent may not be increased again until August 1, 2014 and shall be subject to the allowable rental increase amount that shall be fixed at that time.

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 19, 2013

D. SIMPSON, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

Now that you have your decision…

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
  Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
  Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
  Fact Sheet RTB-111: *Correction of a Decision or Order*
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