

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

between

s.22

Applicant(s)

and

WHITWORTH HOLDINGS LTD., Landlord(s),

Respondent(s)

Re: An application pursuant to sections 79 and 81 of the *Residential Tenancy Act* regarding the rental unit at:

s.22 **1221 Lawrence Ave., Kelowna, British Columbia**

Date of review consideration: February 15, 2008

REVIEW CONSIDERATION DECISION

- [1] This review consideration is in response to an application by the tenant under section 79(2)(b) of the Act which reads:

79 (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.

(2) A decision or an order of the director may be reviewed only on one or more of the following grounds:

(b) a party has new and relevant evidence that was not available at the time of the original hearing;

- [2] The landlord had initiated an application to increase the tenant's rent pursuant to section 43 of the Act. A hearing was held by conference call on December 27, 2007 to determine the matter.
- [3] The tenant was present at the original hearing. The tenant had ample opportunity to voice his position regarding the landlord's requested rent increase.
- [4] Prior to attending the hearing the tenant provided a very descriptive and detailed written submission. The submission was considered by the Dispute Resolution Officer in making a determination that the landlord's application would be permitted only in part.

[5] The applicant has identified the following information as new and relevant evidence that was not available to the time of the original hearing:

- Decisions of dispute resolution hearings related to other buildings owned by the landlord
- Square footage of suites in a comparable building (Carman Manor)
- being approximately 1000 square feet.

Copies of the decisions were provided by the applicant; however, no evidence has been provided to substantiate the claim that units in the Carman Manor are approximately 1000 square feet. Even if I were to accept this evidence, I note that the applicant's previous submission addressed the size of the Carman Manor suites. Therefore, size of the Carman Manor suites is not new evidence that was not available at the time of the original hearing.

[6] Pursuant to section 64(2) of the Act, each decision must be made on the merits of the case as disclosed by the evidence admitted and the Dispute Resolution Officer is not bound to follow other decisions. Accordingly, I find that the decisions of other dispute hearings are not relevant information as they relate to other hearings and other buildings.

CONCLUSION

[7] I dismiss the applicant's request for review pursuant to section 81(1)(b)(ii) and (iii) which states:

81 (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

(b) the application

(ii) does not disclose sufficient evidence of a ground for the review,

(iii) discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied

[8] As determined above, the applicant has not met the grounds for a review pursuant to section 70(2)(b) by not providing new and relevant evidence that was not available at the time of the original hearing. Also, the applicant has not provided any reasons on which I would set aside or vary the original decision.

[9] The original decision of January 26, 2008 stands and is enforceable.

Dated February 15, 2008.

C. REID
Dispute Resolution Officer

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

between

WHITWORTH HOLDINGS LTD., Landlord(s),

Applicant(s)

and

s.22

Respondent(s)

Re: An application pursuant to section 43 of the *Residential Tenancy Act* regarding the rental unit at:

s.22

1221 LAWRENCE AVENUE , KELOWNA, British Columbia

Appearances for applicant(s): s.22

Appearances for respondent(s): s.22

Date of hearing: December 27, 2007, by conference call.

DECISION AND REASONS

INTRODUCTION

- 1) The applicant landlord seeks an order under s. 43(3) of the Act approving a rent increase for the rental units in the residential property in an amount that is greater than the amount calculated under the regulations. It seeks a rent increase up to \$725, an increase of 29% for 10 units and 20.83 % for one unit, including the permitted increase of 3.7%..
- 2) The grounds for the application are under s. 23(1)(a) of the regulation, on the basis that 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;

ISSUES

- 3) The issues I have to decide are, broadly stated:
 - a Whether the landlord has met the timing and notice requirements of s. 42 and s. 43(4) of the Act;
 - b Whether, having considered the grounds for the application, the evidence of the parties, and the factors set out in s. 23(3) of the regulations, I should approve the application for a rent increase, and if so, on what terms as set out in s. 23(4) of the regulations.

BACKGROUND AND FINDINGS OF FACT

- 4) The residential property is located at Kelowna, and the complex has 32 one bedroom apartments and 32 two bedroom apartments within six detached two storey walkup buildings constructed between 1961 and 1964. The landlord says that all of the one bedroom units range from 625 sq. ft. to 657 sq. ft. with similar layout and condition and include an outside entry, a living room with sliding glass door to either a rear patio or deck, a kitchen, one full bathroom and one bedroom. Rental rates include electric heat, electricity and one uncovered parking stall. There is an in-ground pool that is available for use in the summer time heated by the sun. With the exception of five units rented at \$750 a month including utilities, rents in the rest of the rest of the building range from \$540 to \$600 a month including utilities.
- 5) The landlord says that the relevant geographical area is within a two km radius while the tenant says that the landlord's comparables are closer to the downtown area and the public park and beach on Okanagan Lake and are therefore not within the same geographic area for comparison. The tenant
s.22 provided a detailed submission containing a map of the downtown area showing the

location of the units said to be comparable by each party, also showing the location of local amenities. After hearing the evidence of the parties, I find that the comparables of the landlord are within the same geographic area for the purposes of the Act.

- 6) The landlord provided particulars of comparable rents in four apartment complexes for both one and two bedroom units. I find the two bedroom units not to be similar to the one bedroom units and do not consider the evidence regarding them to be as relevant as the evidence regarding one bedroom units. The four comparables of the landlord are the Riviera Villas (Riviera), Inlander, Fraser Manor (Fraser) and Carmen Manor (Carmen). The main factors I consider in determining this application are as follows:
 - a Age. All of the comparables and the subject units were constructed between 1961 and 1967. I consider this narrow range of age to be a similarity among the units.
 - b Size of units. The subject units are from 625 to 657 sq. ft according to the landlord, the Riviera units range from 600 to 756 sq. ft, the Inlander units are 650 sq. ft plus or minus, the Fraser units are 800 sq. ft more or less and Carmen range from 660 to 800 sq. ft in size. I find the Riviera and Inlander to be the most similar in this factor in that the range in size is 625 to 756 sq ft.
 - c Monthly rent. The range of rent for the comparables is, according to the landlord, \$540 to 600 for the subject units, \$700 to 800 for Riviera, \$520 to 650 for Inlander, \$675 to 730 for Fraser and \$675 to 700 for Carmen. The overall range of rents is \$520 to \$800. Excluding the highest rent in the Riviera of \$800, the range narrows from \$520 to \$730, which I consider to the more representative range.
 - d Utilities. All apartments include heat in the rent, and the subject units and Riviera include electricity for other purposes. The landlord provided figures showing the average cost of electricity including electric heat for the subject units to be \$89 a month. I have no breakdown of the cost of heat versus other electricity such that I cannot determine how much rent difference should be attributed to electricity and how much to heat for any of the comparables or the subject units.
 - e Laundry. All comparables and the subject units include access to coin operated laundry facilities, but the subject property has outside access only, where as the comparables have inside access to laundry.
 - f Security and access. The subject units have outside access and no elevator while the comparables have front door lobby security and an elevator. The tenants argue their units are more susceptible to break-ins and vandalism than the comparables, and while this may be true, there was no evidence to support this position in fact.
 - g Parking. Only Riviera provides covered parking while the other comparables and the subject unit have uncovered parking. The subject units, Riviera and Inlander include parking in the rent.
 - h Air conditioning. Only Fraser and Carmen have air conditioning and cable included in the rent.
 - i Other amenities. The subject units have an outdoor pool, which would compensate somewhat for the other comparables being closer to the beach. Both the pool and the lake are heated by the sun.
- 7) The tenants say their units are not as well kept as the comparables nor as big. s.22 provided photos of the interior of his unit and a one bedroom unit in the Riviera, and it appears that the Riviera is more spacious with a larger kitchen area, more modern bathroom fixtures and flooring.
- 8) With respect to the factors set out in s. 23(3) of the regulations, the evidence presented and my findings of fact on each of the factors is as follows:
 - a The rent payable for similar rental units in the residential property immediately before the proposed increase is to come into effect is \$561 per month for four rental units, \$562 per month for six rental units, and \$600 per month for one rental unit;
 - b The rent history for the affected rental units for the preceding 3 years is that the permitted increase was given in 2006 and 2007 with no rent increase taken in 2005 ;
 - c Within the last 12 months, the landlord has not changed the services or facilities in the residential property;
 - d There is no evidence of any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years.

- e In considering the relationship of such a change described in (d) to the additional rent increase applied for, this is not applicable.
- f The relevant submissions from the affected tenants are set out above. I find the submissions of the tenants as to the major affordable housing problem in the Kelowna area and the health and financial challenges of the tenants not criteria that I can consider under the Regulations.
- g I find no evidence that the landlord has failed to maintain or repair the residential property in accordance with s. 32(1) of the Act.
- h I find the other factors listed in s. 23(3) of the Regulation not applicable to this application.

ANALYSIS and DECISION

- 9) I find, as to the first issue, that the landlord has met the timing and notice requirements of s. 42 and s. 43(4) of the Act, in that the proposed rent increase will not take effect until on or after April 1, 2008.
- 10) As to the second issue, I consider it appropriate to grant the application for a rent increase in part only. My reasons for doing so are as follows:
 - a I find the relevant range of rent for comparable units to be in the \$520 to \$730 range. The average of this range is approximately \$625.
 - b I find the subject units are dissimilar from the comparables in that they have no elevator, all outside entrances, no private balconies, and outside access to the laundry service.
 - c The evidence submitted by s.22 is much more detailed and extensive than that provided by the landlord.
 - d The landlord has not proven on the balance of probabilities that the rent for similar units in the same geographic area is \$725, which I find to be at the high end of the range of rents for similar units.
- 11) I find the rent for the subject units is significantly lower than the average rent for similar units in the same geographic area and that it should be increased to \$625 a month for all units from the current rent, which increase includes the permitted rent increase of 3.7% for rent increases effective in 2008. In particular, the rent increases for the units is as follows:
 - a For units with current rent of \$561, the approved increase (including the permitted increase of 3.7%) is 11.4089 % or \$64 from \$561 to \$625;
 - b For units with current rent of \$562, the approved increase (including the permitted increase of 3.7%) is 11.20999 % or \$63 from \$562 to \$625;
 - c For the unit with current rent of \$600, the approved increase (including the permitted increase of 3.7%) is 4.1667 % or \$25 from \$600 to \$625;

CONCLUSION

- 12) The landlord's application for approval of a rent increase in an amount that is greater than the amount calculated under the regulations, is granted in part, as set out in the preceding paragraph.

Dated January 26, 2008.

D. Anderson, Dispute Resolution Officer



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

File No: 761083

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

Between

Fraser Plaza Apartments Ltd., Landlord(s),

Applicant(s)

And

s.22

Respondent(s)

s.22

s.22 7440 Fraser Street, Vancouver, BC

Date of Hearing: December 02, 2010, by conference call.

Date of Decision: December 02, 2010

Attending:

For the Landlord:

s.22

For the Tenant:

s.22

DECISION

Dispute Codes RI

Introduction

This hearing dealt with an application by the Landlord for a rent increase above the limit set by the Residential Tenancy Regulations. Both parties were represented in the conference call hearing and had opportunity to be heard.

The Tenants in rental units s.22 have not attended the conference call hearing and are not represented by anyone at the hearing.

At the beginning of the hearing the Landlord has requested that the Tenant's for rental units s.22 be removed from the application as s.22

s.22

The Tenant has filed evidence late on November 30, 2010 in response to the Landlord's evidence package received November 24, 2010 on the evidence submission deadline date. The Tenant has requested an adjournment to have the matter put over to accommodate the Tenant's evidence package not meeting the submission deadline.

The Tenant contends that the applicant has submitted evidence in a manner that did not give sufficient notice for the Tenant to review the evidence and submit a response before the evidence submission deadline. The Landlord has conceded that the majority of evidence submitted was available to the applicant prior to the submission deadline and does not object to the Tenant's evidence package being filed late. As the Applicant has conceded that no bias has occurred in the late filing of evidence of the Tenant, I accept the evidence and find that an adjournment is not required and the hearing can proceed.

Issues(s) to be Decided

After a rent increase permitted by the Regulations, is the rent for these rental units significantly lower than rent payable for other rental units similar to and in the same geographic area as the rental units?

Background and Evidence

The residential property is a 48 unit apartment building known as Fraser Plaza Apartments. Built in the late 1970's, it has 1, 2, and 3 bedroom apartments. Among the rental units affected in this application, tenancies began as early as 1993. Rent increases have been implemented in the rental units, but all rents fall within the allowed amounts as per the Regulations. The Landlord has testified that since the owners have decided on the future of Fraser Plaza Apartments, two years ago, a new caretaker was hired to begin the process of bringing their rents in line with market rents. Of the 48 units, 34 are one bedroom units. The Landlord states that 5 of recently vacated 1 bedroom rental units have been rented at the \$750.00 per month rate. The remaining 1 bedroom units not involved in this dispute are all rented at the \$750.00 rate level as a result of mutual agreements to a rent increase. The Landlord stated that the rent history shows that rent increases have been kept at a minimum and below the amount allowed in the Regulations as shown by the rent history of the Tenant in unit s.22 This Tenant began their tenancy

s.22

s.22

The Landlord admits to the rent increase oversight.

The Landlord has provided a map from the CMHC Rental Market Report released in the Fall of 2009. I note that the Landlord has also provided a schedule called a Private Apartment Average Rents by Zone and Bedroom Type for Vancouver CMA. The Vancouver CMA (Zones 1-10) show an average rent of \$936.00 to \$990.00. Zone 10 also known as Southeast Vancouver, show an average rent of \$821.00 to \$849.00. These rent averages are for the time period between October 2008 to October 2009.

The Landlord has provided information that the average square footage for each one bedroom unit from Fraser Plaza Apartments is 636 sf. (not including patio space). In most units, the hall-way and the bedroom is hardwood floor and the living room space is carpeted. The kitchen, dining and bathroom areas have vinyl flooring and in some cases the kitchen and dining areas in laminated floors. Heating is by boiler with hot water piped into radiators to provide heat, which is included in the rent. Electricity is not

included in the rent. The kitchens are provided with standard appliances of a fridge and stove. Two laundry rooms with coin operated machines are provided. Designated underground parking is available, but is not included in the rent.

The Landlord has submitted information on 11 apartment buildings for comparison, but only one fall within the geographic area known as zone 10, Southeast Vancouver. The Landlord has noted that he could have included several properties close to the area bordering what is known as zone 6, the Westside/Kerrisdale also known as Oakridge. The Landlord feels that although within the geographic area, it is known as a preferred living area geographically over that of where the Fraser Plaza Apartments are and is not a comparable because of the higher rating. The Landlord has submitted approximately 10 other similar properties with some basic information for comparison consideration. The Landlord has also submitted some recent newspaper postings, but I find that there is insufficient information provided as to the location or condition of these units and I have not considered these units. The Landlord has stated that there are no other comparables within the geographic zone 10 because it is occupied primarily with residential houses. I note that the 4940 Fraser Street property falls on the border of the geographic area and include this because I find this property similar enough in attributes, but also noting the difference in apartment size and location versus that of the higher rent. The Landlord states that although the properties are in different zones, they show enough similar attributes for a comparison to take place, but taking note of their location.

4940 Fraser Street: This is a residential building with 54 units consisting of 1 and 2 bedroom apartments, built in the late 80's. The current rent advertised for a 1 bedroom is \$875.00 per month. The average square footage of a 1 bedroom apartment is approximately 427.9 feet, not including patio space. The apartments are carpeted with standard kitchen appliances of a fridge and stove. Heating is electrical and is not included in the rent. The average monthly electrical bill is \$60.00 - \$70.00. The building has a laundry room with coin operated machines. Underground parking is provided and is included in the rent.

605 South East Marine Drive: Known as Sharp Villa's, this residential property consists of bachelor and 1 bedroom apartments. The current rent advertised for a 1 bedroom is \$750.00 (heat and hot water included) per month. The average square footage for a 1 bedroom apartment here is 415 feet. The apartments are carpeted, but do not have a dining area, but has a small living room, bedroom and kitchen. The kitchen area has the standard appliances of a fridge and stove, but show rotted cabinets and cabinet doors. Severe decay is displayed in some cabinets and some drywall. Heating is provided from a boiler with hot water piped into radiators to provide heat. The building has a laundry room with coin operated machines. Underground parking is included in the rent.

The Tenant's have provided a summary of the Landlord's East Vancouver comparables. The Tenant's state that all of the property units are classified as, "Mount Pleasant/ Renfrew Heights", in zone 8 and as such should not be used, save one.

Analysis

The Landlord bears the burden of proving that the rent for the rental units is significantly lower than other comparable rental units. Having reviewed the evidence and the testimony provided by both parties, I find that 605 South East Marine Drive is a comparable property.

The CMHC fall 2009, rental market report for the City of Vancouver (Zones 1-10) show an average 1 bedroom apartment rent of \$936.00 to \$990.00. Specifically zone 10, Southeast Vancouver show an average 1 bedroom rent of \$821.00 to \$849.00. The current rent for Fraser Plaza Apartments are between \$618.00 to \$643.00. The Mount Pleasant/Renfrew Heights show an average rent rate between \$778.00 to \$796.00. Based upon geographic location zone 25 shows as the least desirable when looking at proximity to the downtown Vancouver core when in comparison to zone 10. The details of the rental units in the Mount Pleasant/Renfrew Heights provided do not give weight to an exact comparison, but do provide enough details to perform a

comparison. The buildings are of a comparable age, offer less square footage than that of the Tenant's units, but show on average a higher rent rate of between \$750.00 and \$1,100.00. I find that when considering average rental rates, the rates for zone 10 and that of zone 8 are skewed in favour of zone 8 because of their location. I take into consideration the average rent, community location and amenities versus square footage.

Although not taken into consideration for my decision, I find that if the Landlord had maintained their diligence in raising the rent at below the prescribed allowed percentages calculated at 2%, the Landlord would have a current averaged rental rate of \$765.00. The Landlord's application is still below that.

The Landlord has also provided information that 5 of recently vacated similar 1 bedroom rental units at Fraser Plaza Apartments have been rented at the \$750.00 per month rate. I order that the Landlord be permitted to raise the rent on units

s.22

s.22

Vancouver, BC, to \$750.00 per

month. The Landlord must serve these Tenants with a 3-month notice of rent increase in the proper form and the effective date of the increase must not be less than one year from the effective date of the last rent increase.

Conclusion

The Landlord's application has been 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: December 17, 2010.

K. LAM
Dispute Resolution Officer

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

between

Whitworth Holdings Ltd., Landlord(s),

Applicant(s)

and

s.22

Respondent(s)

Re: An application pursuant to section 43 of the *Residential Tenancy Act* regarding the rental unit at:

1251 Lawrence Avenue, Kelowna, British Columbia

Date of hearing: December 28, 2007, by conference call.

Appearances:

s.22

s.22

DECISION AND REASONS

- [1] This hearing dealt with an application by the landlord for approval of a rent increase in excess of the amount allowed by the Regulations to the *Residential Tenancy Act*. Both parties participated in the conference call hearing and had opportunity to be heard.
- [2] There are 10 rental units affected by the landlord's application. Currently, the rent payable on those units ranges from \$600 - \$728 per month. The landlord seeks to raise the rent on the three one-bedroom units to \$725 per month and on the seven two-bedroom units to \$850 per month, which represents increases

which range from 17% - 28%. In 2005 no rent increases were implemented, but in 2006 and 2007 rent was increased pursuant to the Regulations.

- [3] Rent in the subject building includes heat, electricity, parking and access to an unheated inground swimming pool and laundry facilities which are accessible from outside the building.
- [4] The landlord testified that there were no buildings in the area which were built in the same era and had the same character, including private entrances and no common area lobby. The landlord compared the building to four other buildings, each of which were secured buildings with a common entrance. The one-bedroom units in the subject building are approximately 625 – 657 square feet and the two-bedroom units are 760 square feet according to the landlord and 707 square feet according to s.22 who resides in one of these units and testified s.22 measured her suite.
- [5] The landlord testified that the subject building is further from Okanogan Lake and the City Park from the comparables, but is located closer to a recreation centre, a major grocery store and the Capri Centre Mall. The tenants testified that the comparables are just a few blocks from the lake and City Park, closer to Bernard Street shopping and closer to downtown Kelowna.
- [6] The landlord compared the one-bedroom units in the subject building with units of a comparable size at the Riviera Villas (which units also include a den) and rent for \$700 – \$800 per month. The units at the Inlander were also of a comparable size and rent for \$520 – \$650 per month. The units at the Fraser Manor and the Carman were at least 750 – 800 square feet, respectively, and I

do not find them comparable. As the units at the Riviera Villas include a den, I do not find these to be equivalent to the units in the subject building either. I find the units at the Inlander to be the only units which can be adequately compared to the units in the subject building. The most expensive unit at the Inlander is rented for \$650.00 per month, which is only \$50 per month more than the rent currently charged for the one-bedroom units at the subject building. Although the rent for the units in the subject building includes electricity which the rent for the units in the Inlander do not, I find that the Inlander has other features, including its close proximity to the water and park, which make it more commercially attractive. I find that the landlord has not proven that the rent in the subject building is significantly lower than that of the one building which I found to be roughly comparable and accordingly deny the landlord's application to increase the rent for the one-bedroom apartments. The landlord's application to increase the rent in S22 which is occupied by s.22 s.22 which is occupied by s.22 and S22 which is occupied by s.22 is dismissed.

- [7] The landlord compared the two-bedroom units in the subject building with the one bedroom plus den units of a comparable size at the Riviera Villas and rent for \$700 – \$800 per month. The units at the Fraser Manor are slightly larger, but in my view roughly comparable and rent for \$825 – \$880 per month. The units at the Inlander and the Carman were between 140 – 210 square feet larger than the two-bedroom units in the subject building and I do not find them comparable. I find the units at the Riviera Villas and the Fraser Manor to be the only units which can be adequately compared to the units in the subject

building. The Riviera Villas and Fraser Manor are both located in a location which can attract higher rents. However, I find that even accounting for the difference in the location, the rents are significantly higher in those buildings than in the subject building. Taking into account the difference in location, the fact that the subject building is not a secured building and does not have inside laundry access and includes the cost of electricity whereas the comparables do not, I find that the rent for the two-bedroom units at the subject building should be set at \$750 per month and I hereby authorize the landlord to raise the rent to that amount subject to the timeframes set out in this decision. To effect the rent increases, the landlord must serve the approved form of Notice of Rent Increase, giving 3 calendar months' notice to the tenants together with a copy of this decision. If that form is served during January, the rent increase would be effective as of May 1, 2008.

[8] S22 which is occupied by s.22 and is currently renting at \$728 per month, will not be affected by this decision and the landlord is at liberty to raise the rent for that unit in accordance with the rate established by the Regulations.

[9] Rental S22 which is occupied by s.22 and is currently renting at \$700 per month will be raised to \$750 per month 3 full months after the landlord has served the Notice of Rent Increase together with a copy of this decision.

[10] The rent payable for the remaining two bedroom units, unit numbers S22 and S22 will be increased to \$700 per month 3 full months after the landlord has served the Notice of Rent Increase together with a copy of this decision. The

landlord may raise the rent to \$750 per month 6 months after the first rent increase has taken effect by serving the tenants a second rent increase. To illustrate the timeline, if in January 2008 the landlord serves the tenants with a notice increasing their rent to \$700, the increase would take effect in May 2008. In July the landlord may serve the second notice increasing the rent to \$750 effective November 1, 2008. Any further rent increases cannot take effect until one full year after the second increase has been implemented.

Dated December 28, 2007.

K. MILLER
Dispute Resolution Officer