37. Rent Increases

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This guideline deals with rent increases permitted under the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the Legislation).

The Legislation permits a landlord to impose a rent increase up to the amount
(a) calculated in accordance with the regulations, or
(b) ordered by an arbitrator on application[1].

A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least 3 months before the increase is to take effect. The tenant's rent can only be increased once every 12 months. A rent increase that falls within the limit permitted by the applicable Regulation[2] cannot be disputed at a dispute resolution proceeding.

Rent Increase Calculated in Accordance with the Residential Tenancy Regulation ("Annual Rent Increase")

A landlord may impose an Annual Rent Increase up to, but not greater than, the percentage amount calculated as follows:

inflation rate + 2%

The allowable percentage rent increase for each calendar year will be available on the Residential Tenancy Branch website in September of the previous year, when the numbers to calculate the all-items Consumer Price Index (CPI) become available.

The "inflation rate" is defined in the regulations and means the 12 month average percent change in the all-items CPI for British Columbia (BC) ending in the July that is most recently available for the calendar year for which a rent increase takes effect. The Residential Tenancy Branch publishes the inflation rate for the year on the Branch website: www.gov.bc.ca/landlordtenant.

As the Act specifies that the rent increase **cannot exceed** the percentage amount, a landlord should not round up any cents left in calculating the allowable increase. For example, if the base rent is $800 and the maximum allowable increase is $36.80, the landlord can issue a Notice of Rent Increase for a new rent of up to $836.80, but not $837.

Rent Increase Calculated in Accordance with the Manufactured Home Park Tenancy Regulation ("Annual Rent Increase")

A landlord may impose an Annual Rent Increase up to, but not greater than, the amount

1 *Residential Tenancy Act,* section 43(3), *Manufactured Home Park Tenancy Act*, section 36(3).
2 Residential Tenancy Regulation, section 22; Manufactured Home Park Tenancy Regulation, section 32.

calculated as follows:

inflation rate + 2% + proportional amount[3]

The allowable percentage rent increase (inflation rate + 2%) for each calendar year will be available on the Residential Tenancy Branch website in September of the previous year, when the numbers to calculate the all-items Consumer Price Index (CPI) become available.

The "inflation rate" is defined in the regulations and means the 12-month average percent change in the all-items CPI for British Columbia (BC) ending in the July that is most recently available for the calendar year for which a rent increase takes effect. The Residential Tenancy Branch publishes the inflation rate for the year on the Branch website: www.gov.bc.ca/landlordtenant.

The "proportional amount" is the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the manufactured home park.

The "change in local government levies" is the local government levies for the 12-month period ending at the end of the month before the month in which notice under section 35(2) of the Act was given, less the local government levies for the previous 12-month period. The formula for the change in local government levies is:

this year's levies – last year's levies

The "change in utility fees" is the utility fees for the 12-month period ending at the end of the month before the month in which notice under section 35(2) of the Act was given, less the utility fees for the previous 12-month period. The formula for the change in utility fees is:

this year's fees – last year's fees

The term "local government levies" means the sum of the payments respecting a manufactured home park made by the landlord for property tax values, and municipal fees under section 194 of the *Community Charter*.

The term "utility fees" means the sum of the payments respecting a manufactured home park made by the landlord for the supply of electricity, natural gas, water, telephone services or coaxial cable services provided by the following:

a) a public utility as defined in section 1 of the *Utilities Commission Act*;
b) a gas utility as defined in section 1 of the *Gas Utility Act*;
c) a water utility as defined in section 1 of the *Water Utility Act*;
d) a corporation licensed by the Canadian Radio-television and Telecommunications Commission for the purposes of that supply.

Expenses that do not meet the definition of "local government fees" and "utility fees" cannot be included when calculating a rent increase. If electricity is generated by diesel fuel, for example, a landlord may not include the increased cost of diesel fuel. The fees must be paid to a local government or a regulation utility in order to be included.

3 Effective July 18, 2007.

As the Act specifies that the rent increase **cannot exceed** the calculated amount, a landlord should not round up any cents left in calculating the allowable increase. For example, if the base rent is $800 and the maximum allowable increase is $36.80, the landlord can issue a Notice of Rent Increase for a new rent of up to $836.80, but not $837.

Tenant May Agree to a Rent Increase Greater than the Prescribed Amount

A landlord who desires to increase a tenant's rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount. If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to an arbitrator for approval of that rent increase. The landlord must still follow requirements regarding the timing and notice of rent increases.

The tenant's written agreement to a proposed rent increase must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars), and the tenant's agreement to that increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Additional Rent Increase under the Residential Tenancy Act

The Residential Tenancy Act allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. The policy intent is to allow the landlord to apply for dispute resolution only in "extraordinary" situations. The Residential Tenancy Regulation[4] sets out the limited grounds for such an application. A landlord may apply for an additional rent increase if one or more of the following apply:

(a) after the allowable Annual Rent Increase, the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit;

(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;

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

4 RT Reg, s. 23.

An additional rent increase under paragraphs (a) or (e) can apply to a single unit. If the landlord applies for an increase under paragraph (b), (c), or (d), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage. If one or more tenants of rental units in the residential property agree in writing to the proposed increase, the landlord must include those rental units in calculating the portion of the rent increase that will apply to each unit, however the tenants need not be named and served on the Application for Additional Rent Increase (AARI).

A landlord cannot carry forward any unused portion of an allowable rent increase or an approved additional increase that is not issued within 12 months of the date the increase comes into effect without an arbitrator's order.

Additional Rent Increase under the Manufactured Home Park Tenancy Act

The Manufactured Home Park Tenancy Act allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. The Manufactured Home Park Tenancy Regulation[5] sets out the limited grounds for such an application. A landlord may apply for an additional rent increase if one or more of the following apply:

(a) after the allowable Annual Rent Increase, the rent for the manufactured home site is significantly lower than the rent payable for other manufactured home sites that are similar to, and in the same geographic area as, the manufactured home site;

(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;

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the manufactured home park;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the manufactured home park, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same manufactured home site.

An additional rent increase under paragraphs (a) or (e) can apply to a single manufactured home site. If the landlord applies for an increase under paragraph (b), (c), or (d), the landlord must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage. If one or more tenants of sites in the manufactured home park agree in writing to the proposed increase, the landlord must include those sites in calculating the portion of the rent increase that will apply to each site, however the tenants need not be named and served on the Application for Additional Rent Increase (AARI).

5 MHPT Reg, s. 33.

A landlord cannot carry forward any unused portion of an allowable rent increase or an approved additional increase that is not issued within 12 months of the date the increase comes into effect without an arbitrator's order.

Application for Additional Rent Increase

Unless a tenant agrees to a rent increase of an amount that is greater than the prescribed amount, a landlord must apply for dispute resolution for approval to give the additional rent increase. The landlord must properly complete the application. The rent increase identified on the AARI must be the total proposed rent increase, which is the sum of the annual rent increase + the additional rent increase:

Proposed rent increase = annual rent increase + additional rent increase

The application will be considered by the arbitrator in relation to the circumstance(s) identified as applicable to each application. Select items relevant to each circumstance are discussed below.

In order to ensure that an additional rent increase is issued in accordance with the Legislation, and cannot be disputed by a tenant, the landlord should either obtain the tenant's consent, in writing, or apply for the increase before issuing the first Notice of Rent Increase that will include the additional rent increase. If the application results from significant repairs or renovations, or a financial loss resulting from an increase in operating expenses or financing costs, the application should be made before the first Notice of Rent Increase for the calendar year is issued.

Each tenant named on the application must be served with a copy of the Application and hearing package. The landlord is required to provide affected tenants with copies of the evidence used in support of the Application for Additional Rent Increase, including relevant invoices, financing records, and financial statements if applicable. **The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount.** The tenants will have an opportunity to appear at the hearing of the application, question the landlord's evidence, and submit their own evidence.

In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors. The arbitrator will determine which factors are relevant to the application before him or her:

- the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;
- the rent history for the affected unit for the preceding 3 years;
- any change in a service or facility provided in the preceding 12 months;
- any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;
- a relevant submission from an affected tenant;

- a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation[6];
- whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;
- whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;
- whether an arbitrator has set aside a notice to end a tenancy within the preceding 6 months; and
- whether an arbitrator has found, in a previous application for an additional rent increase, that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.

An arbitrator's examination and assessment of an AARI will be based significantly on the arbitrator's reasonable interpretation of:

- the application and supporting material;
- evidence provided that substantiates the necessity for the proposed rent increase;
- the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation[7]; and
- the tenant's relevant submission.

Evidence regarding lack of repair or maintenance will be considered only where it is shown to be relevant to whether an expenditure was the result of previous inadequate repair or maintenance. A tenant's claim about what a landlord has not done to repair and maintain the residential property may be addressed in an application for dispute resolution about repair and maintenance.

Significantly lower rent[8]

The landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

The rent for the rental unit may be considered "significantly lower" when (i) the rent for the rental unit is considerably below the current rent payable for similar units in the same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit. In the former, $50 may not be considered a significantly lower

6 *RTA*, s. 32; *MHPTA*, s. 26.
7 RT Reg, s. 23; MHPT Reg, s. 33.
8 RT Reg, s. 23(1)(a); MHPT Reg, s. 33(1)(a).

rent for a unit renting at $600 and a comparative unit renting at $650. In the latter, $50 may be considered a significantly lower rent for a unit renting at $200 and a comparative unit renting at $250.

"Similar units" means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

The "same geographic area" means the area located within a reasonable kilometer radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependant on particular attributes of the subject unit, such as proximity to a prominent landscape feature (e.g., park, shopping mall, water body) or other representative point within an area.

Additional rent increases under this section will be granted only in exceptional circumstances. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar units in the residential property at a higher rate. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. To determine whether the circumstances are exceptional, the arbitrator will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and any additional separate charges for services or facilities (e.g.: parking, laundry) that are included in the rent of the comparable rental units in other properties. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographical area, it is **not** sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord.

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 with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range. For example, an arbitrator may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

Significant repairs or renovations

In conventional tenancies[9], a landlord's completion of a repair or renovation is a circumstance under which he or she can apply for an additional rent increase if: (1) the repair or renovation is significant; (2) the repair or renovation could not have been foreseen under reasonable circumstances10; and (3) the repair or renovation will not reoccur within a time period that is reasonable for the repair or renovation.

In manufactured home park tenancies[11], a landlord's completion of a repair or renovation is a circumstance under which he or she can apply for an additional rent increase if: (1) the repair or renovation is significant; (2) the repair or renovation is reasonable and necessary; and (3) the repair or renovation will not reoccur within a time period that is reasonable for the repair or renovation.

A repair or renovation may be considered "significant" when (i) the expected benefit of the repair or renovation can reasonably be expected to extend for at least one year, and (ii) the repair or renovation is notable or conspicuous in effect or scope, or the expenditure incurred on the repair or renovation is of a noticeably or measurably large amount.

In order for a capital expense for a significant repair or renovation to be allowed in an AARI for a conventional tenancy, the landlord must show that the repair or renovation could not have been foreseen under reasonable circumstances and will not reoccur within a time period that is reasonable for the repair or renovation. An example of work that could not have been foreseen under reasonable circumstances is repairs resulting from a ruptured water pipe or sewer backup even though adequate maintenance had been performed. Another example is capital work undertaken by a municipality, local board or public utility for which a landlord is obligated to pay (e.g., sewer system upgrade, water main installation), unless the work is undertaken because of the landlord's failure to do the work. An example of work that could have been foreseen under reasonable circumstances, and for which a rent increase would not be allowed, is a new roof.

In order for a capital expense for a significant repair or renovation to be allowed in an AARI for a manufactured home park tenancy, the landlord must show that the repair or renovation was reasonable and necessary, and will not reoccur within a time period that is reasonable for the repair or renovation. A repair or renovation may be considered "reasonable" when (i) the repair or renovation, (ii) the work performed to complete the repair or renovation, and (iii) the associated cost of the repair or renovation, are suitable and fair under the circumstances of the repair or renovation. A repair or renovation may be considered "necessary" when the repair or renovation is required to (i) protect or restore the physical integrity of the manufactured home park, (ii) comply with municipal or provincial health, safety or housing standards, (iii) maintain water, sewage, electrical, lighting, roadway or other facilities, (iv) provide access for persons with disabilities, or (v) promote the efficient use of energy or water.

9 RT Reg, s. 23(1)(b).
10 Refer also to Guideline 40.
11 MHPT Reg, s. 33(1)(b).

Where an expenditure incurred on the repair or renovation has been, is anticipated to be, or will be reimbursed or otherwise recovered (e.g., by grant or other assistance from a government, by an insurance claim), a rent increase will not be ordered.

In considering a landlord's capital expense for a significant repair or renovation, the arbitrator will consider only those expenditures which have not been included in full or in part in a previous rent increase given to the tenant before the subject proposed rent increase. A landlord can apply for an additional rent increase on significant repairs that were done before the Legislation came into effect if the landlord hasn't previously had an opportunity to obtain an increase for those repairs. For example, if the rent increase the landlord gave (or could have given) to take effect in 2003 was for a fiscal year that ended in March 2002, and the repairs were done in September 2002, then the landlord could request an additional rent increase in 2004 for the cost of those repairs.

An application can be made at any time after the landlord has made the repairs or renovations and is able to provide proof of their cost. The landlord does not have to have completed paying for the repairs or renovations. A landlord could complete a major renovation project in phases, and seek an additional rent increase at the completion of each phase. However, the additional rent increase must apply equally to all rental units in the building.

The landlord must provide documentary evidence (e.g. invoices) of the costs of those repairs or renovations, and must also be prepared to show why those costs could not have been foreseen (conventional tenancy) or are reasonable and necessary (manufactured home park tenancy), and that they will not recur within a reasonable time period.

Financial loss

"Financial loss" means the amount by which the total costs that have been experienced by a landlord in respect of a residential property for an annual accounting period exceed the revenue for the same period. Proof of financial loss normally consists of an audited or certified financial statement that (i) summarizes the financial condition of the landlord, (ii) includes a balance sheet, (iii) includes a statement of profit and loss, and (iv) is signed by an individual authorized to sign audited financial statements in the Province of British Columbia, certified by a professional accountant, or accompanied by a sworn affidavit of the landlord that the financial statements are true.

If an application is made on the basis of a financial loss, the landlord is not required to provide tenants with more than an audited financial statement at the time of application. If an audited financial statement(s) is not available, the landlord must provide before or at the hearing sufficient evidence (for example, all relevant financial records supporting the application) to prove the financial loss. It is in the landlord's best interest to provide this evidence in sufficient time before the hearing to allow the arbitrator and tenants to thoroughly review the evidence in advance of the hearing. In considering an application under this section, the arbitrator may order that the landlord must provide to the arbitrator and tenants an audited financial statement as proof of the financial condition of the landlord. An example of when an arbitrator may make an order for an audited financial statement is the landlord has more than one corporate entity involved with the residential property.

The landlord can request an increase sufficient to cover the loss experienced as a result of the increase in operating or financing costs. The additional rent increase must apply equally to all rental units in the building. The application cannot be made until after the fiscal year end of the rental property, in order that the landlord is able to show the financial loss incurred.

If an application results from a significant increase in operating expenses[12], the landlord must show what costs have increased, provide documentary evidence of the increase in costs (e.g. invoices for the most recent and the preceding year), and the impact on the landlord's financial position. "Operating expenses" includes utility charges (including heat, hydro, water), municipal taxes (including property and school taxes), recycling, sewer and garbage fees payable to the local government or other party, insurance premiums, routine repair and maintenance (including interior painting done on a regular schedule), reasonable management fees for the management of the residential property, and the cost of leasing land for purposes directly related to the operation and use of the residential property. Expenses that are not operating expenses include expenses that are not related to the normal or usual operation of the residential property, non-recurring expenses, capital expenses, fines or penalties levied for failure to meet an obligation, financing costs (including interest expenses and mortgage interest), capital cost allowance or depreciation, and income taxes. A capital expense means an expenditure for a repair, renovation, or new addition that has a lasting and long term benefit to the residential property (including a roof, an appliance, carpets and exterior painting), and consists of the net cost to the landlord after an allowance for trade-in, if any.

"Extraordinary" means going beyond what is usual or regular, or exceptional to a marked extent. The landlord must prove the financial loss has incurred from an extraordinary increase in the operating expenses of the residential property. The extraordinary increase in operating expenses may be incurred over the landlord's most recent annual accounting period, or it may be an increase accumulated over previous accounting periods and resulting in the financial loss in the most recent accounting period. If, over the preceding years, a landlord has simply failed to give rent increases to capture rising operating expenses, the landlord is not allowed to recapture those previously forsaken expenses.

If an application results from an increase in financing costs[13], the landlord must prove that he or she has incurred a financial loss for the financial costs of purchasing the residential property. The landlord must provide evidence of the new financing costs, the previous financing costs, and the impact on the landlord's financial position. The landlord must prove the financing costs incurred are usual or regular. The landlord must also explain why the financing costs could not have been foreseen under reasonable circumstances. The financial loss must be incurred by a landlord acting reasonably in entering into the agreement or debt with the subject financing costs. "Financing costs" means the interest and amortization rates attributable to the purchase of the residential property made in good faith and at arm's length. The attached Table 1: 'Chartered Bank Administered Interest Rates' provides a guide for determining appropriate interest rates attributable to purchasing residential property. A landlord incurring financial costs that

12 RT Reg, s. 23(1)(c); MHPT Reg, s. 33(1)(c).
13 RT Reg, s. 23(1)(d); MHPT Reg, s. 33(1)(d).

are unusual or irregular (for example, when compared with Table 1) will be determined as not acting reasonably, unless the landlord provides clear evidence to the contrary.

In considering a landlord's financing costs, an arbitrator will not consider an increase in financing costs that is the result of a new loan or a change in the principal or term of the existing loan for the purchase of the residential property. Where there has been a reduction in the principal of a loan because of a payment against the principal other than through regular blended payments of principal and interest, the arbitrator will consider any change in financing costs on the basis of the amount of the principal of the loan after the reduction. This provision is not applicable to other costs or losses associated with the property purchase, including the direct costs of purchasing the property.

Landlord has received an additional rent increase

If a tenant receives a rent increase that includes an additional rent increase granted by an arbitrator in accordance with the Legislation, and that tenant is subletting the rental unit to a subtenant, the tenant may request an increase under the applicable Regulation[14]. The intent of an application under this provision is to pass along the rent increase received from the original landlord to the subtenant. In these circumstances, it is sufficient to provide a copy of the arbitrator's decision and order granting the original increase, and the resulting Notice of Rent Increase.

A tenant who is subletting the rental unit to a subtenant can make an application at any time after the tenant receives notice of the Application for Additional Rent Increase on his or her own tenancy, and ask that it be heard together with the "head" application. If the tenant does not wish the two matters to be scheduled together, the tenant's application cannot be heard until a decision is issued on the landlord's application.

An arbitrator may hear a tenant's application under this provision before the tenant is issued the Notice of Rent Increase that pertains to the additional rent increase sought by the landlord. In those circumstances, the arbitrator should consider allowing an additional increase of "the lesser of the percentage increase granted to the landlord or the actual increase issued to the tenant".

Arbitrator's Powers on an Application for Additional Rent Increase

In considering an application for additional rent increase, an arbitrator may:

- grant the application, in whole or in part;
- refuse the application;
- order that the increase granted be phased in over a period of time; or,
- order that the effective date of the increase is conditional on the landlord's compliance with an arbitrator's order respecting the residential property.

An arbitrator may order the landlord to supply any financial records the arbitrator considers necessary to properly consider the application, may issue a summons for such records, or may refuse the application if inadequately supported.

The arbitrator's order will set out the amount of the maximum allowed increase. That

14 RT Reg, s. 23(1)(e); MHPT Reg, s. 33(1)(e).

amount includes the annual rent increase and any additional amount granted and, if applicable, the amount to be phased in over multiple years. An arbitrator's refusal of the application will result in an order for the amount of the Annual Rent Increase.

Negotiated Agreement

If all the parties to the dispute resolution (or representatives of those parties) attend the hearing and negotiate an agreement that results in the arbitrator recording that agreement, in the absence of circumstances that render the agreement invalid – such as fraud, duress or misrepresentation – the parties are bound by the agreement.

If all the parties or the parties' representatives do not attend the hearing, the arbitrator must presume that the tenants not in attendance have no comment other than that, if any, provided by written submission. The arbitrator will give opportunity to parties in attendance to respond to the submission in accordance with Rule 8.5 of the Dispute Resolution Rules of Procedure. Where only some of the tenants named on the landlord's application attend or are represented at the hearing, the landlord still has the burden of proving his or her claim for the proposed rent increase for the remaining tenants. There is no provision in the Legislation or Dispute Resolution Rules of Procedure for an arbitrator to make default orders against respondents who do not attend hearings. Where appropriate, the arbitrator may adjourn the hearing to give those tenants who are not present or represented at the hearing the opportunity to agree to the negotiated settlement.

Phased Increases

An arbitrator's decision to order an increase phased in over a period of time will be determined in the context of the particular application. Examples in which a phased increase may be considered are (i) where an application justifies a rent increase of an amount that is significant in relation to the current rent amount, and (ii) the increase is associated with a significant repair or renovation of which the expected benefit of the repair or renovation has a lasting and long-term benefit to the rental unit or residential property. In the latter example, the period of the expected benefit is determined in association with the reasonable life expectancy of the repair or renovation.

An order for a phased-in increase applies to the existing tenant and any assignee of the tenancy agreement from the tenant. New tenants under new tenancy agreements cannot rely on phased increases previously ordered for that rental unit.

Notices of Rent Increase

If a landlord applies for an additional rent increase and the application is successful in full or in part,

(a) the landlord may give a notice of rent increase to one or all tenants of rental units in the residential property for a rent increase of an amount up to that ordered; and

(b) the landlord may give a notice of rent increase to one or all other tenants agreeing to an additional rent increase in writing, for a rent increase of an amount up to the amount agreed.

If a landlord applies for an additional rent increase and the application is not successful,

(a) the landlord may give a notice of rent increase to one or all tenants of rental units in the residential property for a rent increase of an amount up to that calculated under the applicable Regulation[15]; and

(b) the landlord may give a notice of rent increase to one or all tenants agreeing to an additional rent increase in writing, for a rent increase of an amount up to the amount agreed.

The Regulations provide that where a landlord has not fully applied an approved rent increase within 12 months of the date the increase comes into effect, the unused portion cannot be carried forward or added to another rent increase, unless an arbitrator orders otherwise[16].

Disputing a Proposed Rent Increase

A tenant cannot dispute a rent increase that does not exceed the percentage permitted as an Annual Rent Increase[17], an amount the tenant has agreed to in writing, or an amount ordered by an arbitrator as an Additional Rent Increase[18]. A tenant is not required to pay an additional rent increase until served with the Notice of Rent Increase and a copy of the arbitrator's order granting the additional rent increase.

A tenant will receive notice of a landlord's application for an additional rent increase, and will have an opportunity to provide evidence, however they may also choose to be represented by one or more of the tenants named as they are now in a joined application.

If a landlord collects a rent increase that does not comply with the Legislation, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected. In those circumstances, the landlord may issue a new 3 month Notice of Rent Increase, as the original notice did not result in an increased rent.

15 RT Reg, s. 22(2); MHPT Reg, s. 32(2).
16 RT Reg, s. 23(5); MHPT Reg, s. 33(5).
17 RT Reg, s. 22; MHPT Reg, s. 32.
18 RT Reg, s. 23; MHPT Reg, s. 33.

Table 1:
Chartered Bank Administered Interest Rates

	Monthly Series:			
Date	Series Name			
	CONVENTIONAL MORTGAGE – 1 YEAR	CONVENTIONAL MORTGAGE – 3 YEAR	CONVENTIONAL MORTGAGE – 5 YEAR	PRIME BUSINESS
30 Nov 2008	6.35	7.05	7.20	4.00
31 Dec 2008	5.60	6.25	6.75	3.50
31 Jan 2009	5.00	5.75	5.79	3.00
28 Feb 2009	5.00	5.15	5.79	3.00
31 Mar 2009	4.50	4.65	5.55	2.50
30 Apr 2009	3.90	4.15	5.25	2.25
31 May 2009	3.90	4.15	5.25	2.25
30 Jun 2009	3.75	4.55	5.85	2.25
31 Jul 2009	3.75	4.55	5.85	2.25
31 Aug 2009	3.75	4.55	5.85	2.25
30 Sep 2009	3.70	4.35	5.49	2.25
31 Oct 2009	3.80	4.45	5.84	2.25
30 Nov 2009	3.60	4.25	5.59	2.25
31 Dec 2009	3.60	4.25	5.49	2.25
31 Jan 2010	3.60	4.25	5.49	2.25
28 Feb 2010	3.60	4.15	5.39	2.25
31 Mar 2010	3.60	4.35	5.85	2.25
30 Apr 2010	3.80	4.75	6.25	2.25
31 May 2010	3.70	4.60	5.99	2.25
30 Jun 2010	3.60	4.50	5.89	2.50
31 Jul 2010	3.50	4.40	5.79	2.75
31 Aug 2010	3.30	4.10	5.39	2.75
30 Sep 2010	3.30	4.10	5.39	3.00
31 Oct 2010	3.20	4.00	5.29	3.00
30 Nov 2010	3.35	4.25	5.44	3.00
31 Dec 2010	3.35	4.15	5.19	3.00
31 Jan 2011	3.35	4.15	5.19	3.00
28 Feb 2011	3.50	4.35	5.44	3.00
31 Mar 2011	3.50	4.35	5.34	3.00
30 Apr 2011	3.70	4.55	5.69	3.00
31 May 2011	3.70	4.55	5.59	3.00

30 Jun 2011	3.50	4.25	5.39	3.00
31 Jul 2011	3.50	4.35	5.39	3.00
31 Aug 2011	3.50	4.35	5.39	3.00
30 Sep 2011	3.50	4.35	5.19	3.00
31 Oct 2011	3.50	4.05	5.29	3.00
30 Nov 2011	3.50	4.05	5.29	3.00
31 Dec 2011	Not yet available			