

**Briefing from Jess Hadley (the Seafield's lawyer) about
Clements v. Gordon Nelson Investments Inc., 2010, BCSC 31**

Background info - the purpose of BC's rent control provisions

- Since 2004, landlords in BC have been given the benefit of a fixed annual increase that they are automatically entitled to as long as they give tenants the proper notice. This amount is advantageous to landlords – inflation plus 2%.
- If landlords want to charge more than the fixed annual increase, as they did in this case, the law requires them to go through a dispute resolution hearing process, where the tenants have a right to appear and make submissions. At the hearing they have to prove that an exceptional increase is justified, under very specific legal tests.
- As the judge in this case points out, the rent control provisions in BC are thus intended to balance the rights of tenants and landlords.

Market rents and how they relate to this case

- The landlord in the Seafield's case has focused, in the media, on a claim that the Seafield tenants are paying below market rent (i.e. less than the landlords think they could attract for a similar, newly vacated unit).
- But this case is not about market rents.
- Rather, it's about rent control provisions that protect ongoing tenants from the unaffordable and unpredictable rent increases that could occur in a totally free rental market where the only limit is what the market can bear.

From the decision in the Seafield case, I think the 2 key legal points are:

- In a geographical rental market where most tenants are paying similar or lower rents for similar rental units, a landlord isn't entitled to an additional rent increase simply on the basis that a couple of tenants are paying higher rents for a similar unit. In considering rent increase applications, dispute resolution officers must look at all the evidence about the whole market for similar units in the same area, not just the evidence dealing with a few higher rents that are being paid.
- The judge also expressed "doubt" that the rent increase legislation is meant to let a landlord use the higher rents it's getting for newly rented units to bootstrap up the rent in other units in the same building. This reinforces what is already stated in Guideline #37.

The Court also corrected the decision-maker on some extremely basic errors that are, unfortunately, very common at the Residential Tenancy Branch:

- Failing to consider all the relevant evidence (this officer ignored a huge amount of the tenants' evidence);
- Basing the decision on analysis that is clearly not reasonable or logical; and
- Applying the legal test incorrectly.