

## RESOLVING A RENTAL DISPUTE

The landlord suggests the rent is \$20.00, the tenant thinks it should be \$10.00. The best way to resolve the dispute is through negotiation, but both sides think they are correct!!! Support for your position is needed, so compile a list of rents in comparable properties and present them to the other side. If you don't have them, your realtor or appraiser can provide them (there may be a cost!). If the other side produce comparables, check information is correct. If the other side still disagrees, ask them to explain why they feel the evidence does not support your position.

Alas, you still cannot agree! So what alternatives are available?

- (a) **An Appraisal:** - both sides agree on an appraiser who assembles data and provides his opinion of the rent; prior to finalization, the appraiser could, if the parties agreed, submit his report in draft for feed back. This approach helps all involved feel the process has been conducted fairly.
  
- (b) **Two appraisals:** - Each side obtains an appraisal. If the difference is less than 10% the rental opinions are averaged. If not a 3<sup>rd</sup> appraiser is chosen, who reviews the appraisals, discusses them with the two appraisers and arrives at his conclusion of the rental.
  
- (b) **A Mediation:** - each side submits information to a meeting of parties (and their appraisers, if they have them). The issues may be resolved between the parties; the mediator can give a non-binding opinion or the case can be referred to arbitration;
  
- (c) **An Arbitration:** - This can take several formats:
  - (i) each side provides written evidence to an arbitrator;
  - (ii) attend a hearing where both sides present evidence, each having an opportunity to provide rebuttal;
  - (iii) attend a full fledged arbitration with appraisers and lawyers.

This process should seem simple; both sides produce comparables and the arbitrator makes a decision. If it was so simple, there wouldn't be a need for an arbitration.

The wording of the lease clause can result in a different answers:

For example:

1. Is there a specific use clause? If so, the rent may be the rent paid by those types of users.
2. Is it market rent or a fair rent between the parties or a rent to be agreed upon? Fair rent takes into account other issues, both present and historic, that may affect the rent.

3. Should the rent be for bare space or with the improvements that now exist? Who put in the improvements and does it matter?
4. Should there be free rent or tenant inducements given, particularly if these were provided at the commencement of the lease?
5. Is the rent the same for a review or a renewal? May be or maybe not...

The answers lie in the interpretations of lease terms by the courts, which guide arbitrators and mediators.

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