



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: O

Introduction

This hearing dealt with an application by the landlord for an additional rent increase, on the basis that the rent for the rental unit is significantly lower than the rent payable for other rental units similar to and in the same geographic area as the rental unit in question. The landlord and the tenant both submitted documentary evidence and gave affirmed testimony in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to an additional rent increase?

If so, by what amount should the rent be increased?

When should the increase take effect?

Background and Evidence

The tenancy began in April 2006. The rental unit in question is a condo in City A. The monthly rent since the outset of the tenancy has been \$700 including utilities. The landlord seeks to increase the rent to \$1150 plus utilities. The landlord's written description of the unit is as follows:

X bedrooms, X full baths; 949 sq ft; building is 6 years old (built in 2002); partial mountain view; concrete building, 2 underground parking stalls, gas fireplace, garburator, in suite washer and dryer, dishwasher, bright, clean, and open layout, shopping nearby, exercise gym in building. Apartment came with a TV and stand, sofa, 2 chairs, dresser, and mattress.

The landlord provided 16 comparables, including another X-bedroom, X-bathroom

condo in the same building which rents for \$1150 plus utilities. The other comparables were primarily X-bedroom, X-bathroom condos of similar size to the rental unit, located in City A, City B and one in City C. Most of the landlord's comparables are similar to the rental unit in size, and in fairly new buildings, The rental prices ranged from approximately \$1100 plus utilities to \$1600, with an average of all 16 comparables of approximately \$1280.

The tenant submitted that the market rent on the suite that she rents is far below the \$1150 that the landlord seeks. In support of her response, the tenant provided 14 of her own comparables, most of which were X-bedroom units in City A with rent in the range of \$750 to \$995. The landlord's response to the tenant's comparables was that he contacted as many of the landlords as possible for each of those rental units and discovered that many of the units were townhouses or basement suites in older buildings, with fewer amenities than the rental unit in question.

The tenant raised several other reasons why she felt a rent increase was not warranted, as follows: the landlord's reasons for wanting to increase the rent do not relate to a change in the market rates since the beginning of her tenancy; the landlord has not provided proof of his submissions of hardship; the tenant has not had use of the storage locker or the additional parking stall; the landlord left items behind in the unit and the storage when he left and the tenant began renting; the landlord did not clean the unit before the tenant moved in; the tenant has been mailing receiving and forwarding the landlord's mail to his home in the [other country], thus providing the landlord with the benefit of a Canadian address; the tenant has assisted the landlord in dealing with repairs; and the tenant has been repeatedly disrupted by realtors and prospective purchasers, which has greatly disturbed her quiet enjoyment and should be seen as negatively affecting the market value of the property. The tenant also provided evidence that hydro is not included in the rent, as she has had the hydro in her name and has paid the hydro bills since the beginning of the tenancy.

The landlord's response on some of these points was as follows: the tenant may begin using the storage and additional parking stall if she wishes to do so; the landlord left

items of furniture behind because it was his understanding that the tenant wished to use those items; and the landlord had a good informal relationship with the tenant where the tenant agreed to pay to forward the landlord's mail and the landlord at the tenant's request purchased approximately \$100 dollars worth of vitamins in the [other country] and brought them to the tenant when he was traveling back to Canada. The landlord also stated that if he is successful in his application to increase the rent, he will immediately take the property off the market, as he will not need to sell it.

Analysis

Section 23 of the Residential Tenancy Act provides that a landlord may apply for an above-guideline rent increase if, "(a) after the rent increase allowed under section 22, the rent for the rental unit is significantly lower than the rent payable for the other rental units that are similar to, and in the same geographic area as, the rental unit."

Having reviewed the testimony and evidence of the parties, I find that the landlord has established that the rent currently paid is significantly lower than that of similar properties. The Regulations require that the landlord provide comparables, but does not require that landlord to complete a statistical survey or comprehensive market research. I find that the landlord is entitled to a rent increase above that provided for in the Regulations. The rent will continue to be applicable to all services and facilities that were included in the original terms of the tenancy agreement, including any utilities that have been included in the rent. Having considered the fact that the landlord could have but chose not to give notice of any rent increases for the two and a half years of the tenancy, I find it appropriate to phase in the rent increase.

Conclusion

I order that the rent increase be phased in over a period of 18 months. The landlord must serve on the tenant a notice of rent increase in the prescribed form together with a copy of this decision. The first notice will increase the rent to \$850 per month and will take effect 3 full months after the notice is served. After the first rent increase has taken effect, the landlord may serve another notice of rent increase in the prescribed form

which will take effect no earlier than 6 months after the first notice has taken effect and no earlier than 3 full months after the landlord serves the notice. The second notice will increase the rent to \$1000 per month. After the second increase has taken effect, the landlord may serve another notice of rent increase in the prescribed form which will take effect no earlier than 6 months after the second notice has taken effect and no earlier than 3 full months after the landlord serves the notice. The third notice will increase the rent to \$1150 per month. For the sake of clarification, if the first notice is served in the month of December 2008, the first rent increase will take effect April 1, 2009. If the landlord serves the second notice in June 2009, the second rent increase will take effect October 1, 2009. If the landlord serves the third notice in December 2009, the third rent increase will take effect April 1, 2010.

Dated: December 16, 2008