

Decision

Dispute Codes:

FF

RI

Introduction

This hearing dealt with an Application for Additional Rent Increase by the landlord involving two rental units on the property. The landlord and tenants from both of the affected units attended and gave affirmed testimony in turn.

The landlord submitted the application form and with attached evidence in support of the application. All of the information has been reviewed and the hearing for this application proceeded on its merits

Issue(s) to be Decided

The landlord made application to increase the rent beyond that specified in the Residential Tenancy Act, (the Act) and was seeking increases of 53.7% for one unit and 43.7% for the other. The Application identified the following grounds:

- 1) That the landlord had incurred a financial loss from an extraordinary increase in operating expenses of the residential property
- 2) That the landlord, acting reasonably, incurred a financial loss for the operating costs of purchasing the residential property, and the financing cost could not be foreseen under reasonable circumstances.

The issues to be determined based on the testimony and the evidence are:

- Whether or not the landlord is entitled to the increase requested based on the landlord proving that it incurred a financial loss from an extraordinary increase in operating costs. This is contingent

upon the landlord proving that the landlord has a) Incurred a loss; b) that this was due to an increase in operating costs and; c) that this increase in costs was extraordinary

- Whether or not the landlord is entitled to the increase requested based on the landlord incurring a financial loss for the financing costs in purchasing the property. To determine this following questions must be answered:
 - Has the landlord proven that a significant loss was incurred in financing the property?
 - Had the landlord acted reasonably?
 - Was this loss unforeseeable under reasonable circumstances?

Background and Evidence

The landlord testified that the property was recently purchased and that the costs of maintaining and insuring the property were higher than expected. The landlord testified that the landlord did not factor in the costs for water, lawn maintenance and furnace maintenance. The landlord was unable to verify exactly what these costs were. The landlord testified that the rent being charged for the units is below market value. The landlord testified that the mortgage payments are close to \$2,941.34 per month and that the incoming rent only totals \$2,250.00. The landlord submitted realty advertisements ostensibly showing rent for similar properties in the vicinity. The landlord testified that the actual operating costs at time of purchase were unknown.

The tenant testified that the landlord had improperly based the allegation of losses on two units, when in fact there is a third tenant not included in the reported income. The tenant testified that the landlord's choice to purchase without using due diligence in properly estimating the finances of the business is not a reason under the Act to transfer the landlord's financial miscalculation onto

the existing tenants. The tenant also testified that the rent was based on the condition of the rental units.

Analysis

To justify an increase of the rent beyond that specified in the regulation, it must be shown that there is an “extraordinary” increase in the operating costs. However, I find that the landlord has failed to meet the burden of proof to show that the increase was extraordinary, particularly given that the landlord had only recently purchased the property and the fact that normal/ordinary operating costs had not yet been established. In fact, the landlord was not able to furnish a statement of costs, or any formal record of changes in expenditures from one point in time to another. The landlord testified that the “extraordinary” increase in operating costs was based on anticipation rather than on verifiable figures. In regards to the landlord’s contention that a financial loss occurred due to financing the purchase, I find that, while it may be true that the landlord undoubtedly incurred significant costs in placing a mortgage on the property, this cost could certainly not be considered as unforeseeable. In arranging financing, the costs and terms of the loan would be made abundantly clear to a borrower. I also find that the landlord’s assumption that the cost of borrowing would be less than it turned out to be, does not constitute “acting reasonably”.

I find that the circumstances as described by the landlord would not suffice to meet the threshold required in the legislation to increase the rent beyond the percentage specified.

Conclusion

Based on the above I find that the landlord’s application cannot be supported. Accordingly, I hereby dismiss this application without leave to reapply.

December , 2008

Date of Decision

Dispute Resolution Officer