



Dispute Resolution Services

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

Decision

Dispute Codes: RI

Introduction

This hearing was scheduled in response to the landlord's application for an additional rent increase, pursuant to section 43(3) of the *Residential Tenancy Act (Act)*.

Two representatives for the landlord and twelve tenants attended the hearing. The agent for the landlord stated that all of the tenants, with the exception of the tenant in rental unit xxx, were personally served with copies of the Application for Dispute Resolution and Notice of Hearing. He stated that the tenant in rental unit xxx, who attended the hearing, was served with copies of the Application for Dispute Resolution and Notice of Hearing by registered mail. In the absence of evidence to the contrary, I find that all tenants were properly served with notice of this hearing, although some did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to increase the rent in an amount that is greater than the annual amount prescribed by section 22 of the Residential Tenancy Regulation and, if so, how much of an increase should be authorized.

Background and Evidence

The landlord has applied for an additional rent increase of 15.3 percent over the permitted rent increase for 2008 of 3.7%, for a total increase of 19%. This represents total monthly rent increases between \$105.00 and \$166.00 for the effected tenants. The landlord submitted written documentation that shows the last rent increase for these tenants occurred in February of 2007.

The landlord has applied for the additional rent increase on the grounds that the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that could not have been foreseen under reasonable circumstances and will not recur within a time period that is reasonable for the repair or renovation, pursuant to section 23(1) (b) of the Residential Tenancy Regulation.

The agent for the landlord stated that the current landlord purchased the residential complex in September of 2007. The landlord submitted documentation that shows a pre-purchase building inspection was completed by ABC Building Inspection Services in August of 2007. The following excerpts from the report are significant:

- “Although a repair and maintenance budget is provided it is suggested an additional 5% of the purchase price of the building be included in your overall budget at this time for unforeseen issues that may appear.”
- “Every effort has been made to accurately disclose the current condition of the building however, due to the limited amount of access to many particular components of the building and the general nature of this type of inspection some visual and or concealed items may have been overlooked.”
- “In general you are purchasing a used building that may have some issues not picked up on at this time may show up late. Please keep this in mind.”

- “The concrete patios and other landscaping along the base of the building are built up too high allowing surface water to collect against the base of the exterior walls and will need to be torn out and refinished to slope away from the building and facilitate better drainage.”
- “A possible scenario of expenditures is presented on the following list. It should be noted that the estimates are based purely on a guess as to what extent there is concealed damage that has to be dealt with and an additional 25% should be set aside for potential unforeseen repairs.”

Although not specifically mentioned in the written report from ABC Building Inspection Services, it appears that the inspector advised the landlord that the garage ceiling was leaking. In a written submission, dated November 15, 2008, the agent for the landlord stated that the inspector “further recommended that the (re-grading) work be coordinated to address leaks found coming through the underground garage ceiling”.

The repair and maintenance budget submitted by ABC Building Inspection Services estimated that the costs of repairs required in the first year would be \$330,525.00. ABC Building Inspection Services recommended that 25% of the budget, or \$82,631.25, should be set aside for “potential unforeseen repairs”. The repair and maintenance budget submitted by ABC Building Inspection Services included an estimate of \$35,000.00 to “re-grade concrete patios and other landscaping”. The budget does not appear to include the cost of repairing the leaks in the underground garage ceiling.

The agent for the landlord stated that after purchasing the building the landlord discovered a shallow ground cover over top of the concrete slab which serves as the ceiling of the underground parking. The shallow ground covering prevented the landlord from re-grading the concrete patios and other landscaping, as was anticipated. The landlord determined that the water egress needed to be addressed by removing all of the existing ground cover, re-sloping the perimeter of the building using synthetic material, and re-waterproofing the concrete slab over the underground parking.

The landlord submitted receipts, in the amount of \$157,416.95, which relate to repairs related to water egress, a small portion of which related to interior damage that occurred during the course of the repairs.

The landlord is seeking to recover the difference between the true cost of repairing the water egress issues and the anticipated cost of repairs, which is \$122,416.95. The landlord is also seeking to recover the costs of financing a four-year loan for the repairs, in the amount of \$21,033.68, for a total of \$143,450.63.

Each tenant in attendance was provided with the opportunity to provide relevant evidence and to ask relevant questions. Tenants were not permitted to address issues relating to the general condition of the residential complex or their rental unit, as those matters were not relevant to the application made by the landlord. With the exception of two tenants who argued that the estimate for re-grading and re-landscaping was unreasonably low, none of the tenants raised issues that were relevant to my decision in this matter.

Analysis

Section 23(1)(b) of the Residential Tenancy Regulation stipulates that a landlord may apply for an additional rent increase if the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that could not have been foreseen under reasonable circumstances and that will not recur within a time period that is reasonable for the repair or renovation.

There is no evidence before me that would cause me to conclude that similar problems with water egress issues will recur within a time period that is reasonable for the repair or renovation.

The evidence establishes that the landlord recently completed repairs to the perimeter of the building to repair a problem with water egress into the building and into the garage. The evidence establishes that the landlord was aware that there was a problem with water egress before it purchased the building in August of 2007. The evidence establishes, specifically, that the landlord was aware that the landscaping would need to be re-graded and that the garage ceiling was leaking. Therefore, I can not conclude that the required repairs could not have been foreseen under reasonable circumstances, as is required by the legislation. The legislation does not authorize me to grant the landlord an additional rent increase in circumstances where the cost of the repairs exceeded the amount budgeted for the repairs.

I find this to be particularly true when the budget for repairs is speculative, as it was in these circumstances. Of note in these circumstances are the repeated warnings in the report from ABC Building Inspection Services that there may be concealed damage; that the landlord did not budget for repairing the garage ceiling; and the ABC Building Inspection Services recommended that 25% of the repair and maintenance budget should be set aside for such unforeseen repairs.”

Conclusion

As the landlord has not established that the repairs were unforeseen, I hereby dismiss the landlord’s application for an additional rent increase on the basis of section 23(1)(b) of the Regulation.

Dated: January 22, 2009