



Dispute Resolution Services

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

Decision

Dispute Codes: ○

Introduction

This hearing dealt with the landlord's application for an additional rent increase over and above the amount provided for in the Residential Tenancy Regulation ("Regulation"). All parties, including agents for the tenants, participated in the hearing and gave affirmed testimony.

Issue to be Decided

- Whether the landlord is entitled to a rent increase beyond the amount permitted by the legislation

Background and Evidence

The landlord purchased what is a ten unit building in January 2005. The landlord's agent took over management responsibilities for the building in September 2008. The original building is thought to have been constructed in the 1960's with significant additional construction taking place in the 1980's.

The landlord makes no claim for an increase in rent on the basis that he has completed significant repairs or renovations to the units, or that he has incurred a financial loss from an extraordinary increase in the operating expenses of the building, or that he has incurred a financial loss for the financing costs of purchasing the building. Rather, the landlord's application is made on the basis that after the rent increase permitted by the

Regulation, the rent for the three subject units is significantly lower than rent being paid for other units similar to and in the same geographic area.

For their part, the tenants in these units consider there is no justification for a rent increase beyond the amount provided for in the Regulation. The landlord's documentary evidence reveals that the renters in the three subject units are the longest standing tenants in the building and that their rents have been raised in each of the two preceding years. An overview of the tenancies and rent increases is as follows:

#2: Tenancy began December 1, 2005 with rent set at \$550.00 per month; rent increased on February 1, 2008 to \$572.00 / MTH, with a time-limited increase to \$750.00 / MTH. for the period for July, August & September 2008.

Current rent: \$572.00; 3.7% rent increase of \$21.16 permitted = \$593.16 / MTH

(40% increase in rent sought to \$800.00 / MTH.)

#5: Tenancy began July 1, 2003 with rent set at \$450.00 / MTH; rent increased on March 1, 2007 to \$468.00 / MTH; rent increased on March 1, 2008 to \$486.50 / MTH.

Current rent: \$486.50; 3.7% rent increase of \$18.00 permitted = \$504.50 / MTH.

(64% increase in rent sought to \$800.00 / MTH.)

#10: Tenancy began before December 1, 2004 with rent set at \$450.00 / MTH; rent increased on March 1, 2007 to \$468.00 / MTH; rent increased on March 1, 2008 to \$486.50 / MTH.

Current rent: \$486.50; 3.7% increase of \$18.00 permitted = \$504.50 / MTH.

(54% increase in rent sought to \$750.00 / MTH.)

Tenancies for the remaining seven units in the building began within the range of from July 7, 2007 to November 1, 2008. Rents in these units were raised to current levels following the departure of previous tenants, the completion of some upgrading in the units and the arrival of brand new tenants.

All units in the building are identical in size at 965 square feet and have identical floor plans (3 bedroom, 1 full bathroom, F/S included, W/D hookup, 2 private entrances). Unit #2 & #5 are on the ground level where other rents are currently \$800.00 per month. Unit #10 is on the second level where other rents are currently \$750.00 per month; the second level units share a balcony outside of one entrance and have a private balcony and stairs outside the second entrance.

Analysis

Sections 41, 42 and 43 of the *Act* address, respectively, rent increases, timing and notice of rent increases, and amount of rent increases. As to amount of rent increase, section 43(3) states:

43(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1)(a) by making an application for dispute resolution.

Section 23(1)(a) of the Regulation states:

23(1) A landlord may apply under section 43(3) of the *Act* [*additional rent increase*] if one or more of the following apply:

- (a) after the rent increase allowed under section 22 [*annual rent increase*], the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit;

Residential Tenancy Policy Guideline #37 addresses Rent Increases. As for an application which relies on the argument of “significantly lower rent,” this Guideline provides, in part, as follows:

The landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide some evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

“Similar units” means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

The “same geographic area” means the area located within a reasonable kilometer radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependant on particular attributes of the subject unit, such as proximity to a prominent landscape feature (e.g., park, shopping mall, water body) or other representative point within an area.

The landlord has been successful at renting out similar units in the same residential property at a higher rate. However, these units have undergone some renovation / upgrading and brand new tenants have commenced their tenancies at raised levels of

rent. There have been no upgrades in the subject units where tenants have resided for periods ranging from 3 to more than 5 years. In the result, I am unable to conclude that these units can be considered to be “similar units” as defined above in the Guideline.

Further, as rents have been raised in the subject units in each of the two previous years, I do not consider there are any exceptional circumstances that would support an increase which is beyond what is provided for in the Regulation.

Finally, even if I were to conclude that the subject units were similar to other units in the building where higher rents are being paid, the Guideline further provides:

Additional rent increases under this section will be granted only in exceptional circumstances. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord’s recent success at renting out similar units in the residential property at a higher rate.

The general increase in market rent is already factored into the allowable annual increase under Part 4 of the *Act*. Clearly, market rent is not the critical factor in determining significantly lower rent.

Conclusion

The landlord has failed to meet the burden of proving that he is entitled to an order permitting an above guideline rent increase and, accordingly, the landlord’s application is dismissed.

I therefore order that any notice of a rent increase introduced by the landlord be limited to the amount provided in the Regulation (3.7%), that 3 month notice of any such increase be provided in the proper form, and that the effective date of the increase be not less than one year from the effective date of the last rent increase.

DATE: January 19, 2009
