DECISION

Dispute Codes RI

Preliminary Issues

A faxed document was received at the Residential Tenancy Branch on June 11, 2009, issued from the applicant landlord.

Rule 11.5 of the *Residential Tenancy Branch Rules of Procedure* stipulate that the Dispute Resolution Officer may refuse evidence if the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.

I find that all parties who attended the hearing were given ample opportunity to provide each party with their documentary evidence, were all given opportunity to provide verbal testimony and to cross exam all parties. Based on the above I find that to accept evidence from an applicant after the hearing, would prejudice the other parties and would breach the principles of natural justice as the other parties have not been given opportunity to receive or refute the additional evidence and so the additional evidence referred to above will not be considered in this decision.

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order for an Additional Rent Increase as the current rent is lower than comparable units or sites.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail to each tenant on April 23, 2009. The tenants were deemed to be served the hearing documents on April 28, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and all 4 tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the landlord entitled to an Order for an additional rent increase, under Section 43(3) of the *Residential Tenancy Act,* for an amount that is greater than the amount calculated under the regulations?

Background and Evidence

The landlord purchased the side by side duplex June 30, 2006 and the existing tenancies were transferred to the new owner. The units were built in 1982, are approximately 1400 square feet, consist of a main floor with living room, dining room, ½ bath, kitchen and an upper level with 3 bedrooms and one full bathroom.

Tenants "A" – Tenancy began December 2005 and the current monthly rent is due on the 1st of each month in the amount of $1,065.00 and does not include utilities.

Tenants "B" – Tenancy began April 2005 and the current monthly rent is due on the 1st of each month in the amount of $1,009.00 and does not include utilities.

Since owning the rental property the landlord has replaced the roof, installed gutter covers, soffitts, replaced both hot water tanks, installed one new tub surround, a new tub, repaired a section of mouldy drywall, and supplied paint. The landlord stated that when she purchased the property the real estate agent told her that the roof should last 3 to 5 years.

The tenants provided written testimony which states that the items the landlord has listed as being repaired were brought to the landlord's attention at the time she purchased the property.

The landlord has implemented a rent increase for every year she has owned the rental property as follows:

Tenants "A"	$950.00 increased to $988.00	effective March 1, 2007
	$989.00 increased to $1,027	effective March 1, 2008
	$1,027 increased to $1,065	effective March 1, 2009
Tenants "B"	$900.00 increased to $936.00	effective November 1, 2006
	$936.00 increased to $973.00	effective November 1, 2007
	$973.00 increased to $1,009	effective November 1, 2008

The landlord testified that she is requesting a rent increase to have both units to be rented at $1,300.00 per month as the current amounts being charged are lower than the current market rent and that her application may not display the correct percentage rate of the requested increase. The landlord stated that she owns another duplex that she has recently rented for $1,300.00 per month and it is located just three blocks away from the rental property in question.

The landlord stated that the rental property is in the North part of the city which is more of a middle class, safe, single family, residential area, and is close to shopping, schools and a lake.

The landlord testified that she is losing money on this rental property since having to conduct the required repairs. The landlord advised that the property taxes have stayed around $3,500.00 per unit since she has owned the property.

Tenants "B" – Testified that the landlord has submitted units that are not comparable as they are larger and with more services such as dishwashers, washer, dryer, thermal windows, and some even include utilities. The tenants submitted utility bills in evidence in support of their testimony.

The tenants advised that the central and southern part of the city consist of more multi unit housings such as apartments, condos, and more rentals where as the northern part of the city consists of more single family dwellings.

The tenants drew attention to examples they had submitted into evidence and stated that the comparable units range from $975.00 per month up to $1,300.00 but that some had additional services such as washers, dryers, and fireplaces.

Tenants "A" – Testified that the landlord's comparables include items which they do not have such as gas fireplaces, dishwashers, washers, dryers, a den, included hydro and cable, microwaves, ocean views, double garages, and workshops.

The tenants stated that most of the units listed for rent have been recently renovated and painted. The tenants stated that their rental units have not been painted since they occupied them and in one unit they are missing two cupboard doors. The tenants advised that this rental unit backs onto the E&R railway tracks, where a train travels twice daily, with only their fence separating their yard from the railroad tracks.

The tenants testified that the comparables provided by the landlord are from all over the city and not just in the northern portion of the city and have no mention of backing onto the railway track.

Tenants "B" – Testified that the tub surround is new but that tub was never replaced and the paint that the landlord stated she supplied was to paint over the new drywall that was left unfinished. The tenants did the painting themselves to assist the landlord with the costs of the repairs.

The tenants stated that they sent the landlord an e-mail informing her that the ceiling drywall installer had reported evidence of rodents in the ceiling and that the tenants had requested the landlord look into this issue. The tenants testified that to date the landlord has not taken action with their request and they are requesting that the landlord have someone attend to this issue.

Tenants "A" – Stated that it has been their experience in the past that when they have asked the landlord to repair items such as the telephone jack that the landlord responded by saying there is one working jack in the rental unit so the landlord would not pay to repair the jack on the main floor.

The tenants stated that they find their residence a nice place to live, that they take pride in keeping the landlord's property clean and well groomed.

Tenants "B" – Testified that they had previously considered moving as they had concerns with the previous occupants of the other unit and they had concerns about sharing the yard with them. The tenants stated that they have gotten to know the other tenants and they have developed a good neighbour relationship with each other and are able to work together to keep the landlord's property well maintained.

The landlord commented by asking why the tenants don't move. The Dispute Resolution Officer reminded all the parties that this hearing was not created to break down the business relationship that the parties have been able create and that the tenants' comments have been brought forth to defend their case in requesting that the rent not be allowed to be increased above the legislated allowable amount in response to the landlord's application.

The landlord testified that she has never issued a notice to end tenancy to either party and that both parties have not been in arrears with their rent payments. The landlord

stated that she attempts to respond to her tenant's requests as quickly as possible and that if they inform her of issues she will act on them.

Analysis

With respect to the frequency and amount of rent increases issued to the current tenants, I find that the landlord has contravened Section 43(1)(a) of the *Act* in relation to Tenants' "A" rental increases, as the amounts are not calculated in accordance with the *Regulations*. The *Residential Tenancy Policy Guideline* #37 stipulates that a landlord is not to round up any cents left in calculating the allowable increase as the annual increase **cannot exceed** the percentage amount.

Pursuant to Section 43(5) of the *Act* if a landlord collects a rent increase that does not comply with the *Regulations*, the tenant may deduct the increase from rent or otherwise recover the increase. In calculating the allowable increase the tenants are to deduct the following amounts from their July 1, 2009 rent and implement the new rent amounts as follows:

TENANTS "A"

DATE	Allowable Increase	START RENT	ALLOWABLE NEW RENT	AMOUNT CHARGED	OVER PAID	NEW RENT
Mar.1/07	4 %	$950.00	$988.00	$988.00	NIL	$988.00
Mar.1/08	3.7 %	$988.00	$1,024.55	$1,027.00	2.45 x 12	$1024.55
Mar.1/09	3.7 %	$1024.55	$1,062.45	$1,065.00	2.55 x 4	$1,062.45

Based on the above I find that tenants "A" have overpaid a total of $39.60 in non-allowable rent increases. I find that, in accordance with the *Act,* tenants' "A" monthly

rent is due in the amount $1,062.45 from this day forward and that they are to deduct $39.60 from their July 1, 2009 rent payment making their rent payable at $1,022.85 for July 1, 2009.

TENANTS "B"

DATE	Allowable Increase	START RENT	ALLOWABLE NEW RENT	AMOUNT CHARGED	OVER PAID	NEW RENT
Nov 1/06	4%	$900.00	$936.00	$936.00	NIL	$936.00
Nov 1/07	4%	$936.00	$973.44	$973.00	NIL	$973.00
Nov 1/08	3.7 %	$973.00	$1,009.00	$1,009.00	NIL	$1,009.00

Based on the above, I find that the rent increases issued to tenants "B" have been done in accordance with the *Regulations* and no amendment is required.

Section 43(3) of the *Act* states that in 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.* The circumstances prescribed in Section 23 of the *Regulations* provides for a request on the grounds that, after the annual rent increase for the allowed amount under section 22, 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.

Section 37 of the *Residential Tenancy Policy Guideline* #37 states that additional rent increases under the section of "Significantly lower rent" will be granted only in **exceptional circumstances** and that 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 at a higher rate.

To determine the exceptional circumstances I must consider the relevant circumstances of the tenancy, the duration of the tenancy, and the frequency and amount of rent increases given during the tenancy.

The landlord testified that she inherited the tenants and their tenancy agreements when she purchased the rental unit on June 30, 2006. I note that Tenants "A" began their tenancy in December 2005 and Tenants "B" began their tenancy in April 2005 and that the landlord has consistently issued rent increases on an annual basis to both tenants.

The landlord contends that she is losing money on this rental unit as a result of charging lower than market value rent and having to install a new roof and conduct some minor repairs to the rental unit. I find that based on the testimony and evidence before me that the landlord knew the roof had to be replaced within 3 to 5 years of her purchasing the rental unit and that this does not constitute as unforeseen or exceptional circumstances. I also note that the landlord has not applied for an additional rent increase under the grounds of significant repairs or renovations or extraordinary increase in operating costs.

The landlord has applied for the additional rent increase on the basis that the current rent is lower than comparable units or sites. I have considered the comparable units that have been provided by both the landlord and tenants and have attached two spreadsheets at the end of this decision which list the comparables provided by each party.

Taking into consideration all of the comparables provided by the parties, I have listed the units in the north part of the city separately from the other areas. I also note that the type of unit, renovations or updates, number of bedrooms, and laundry provisions need to be considered when determining comparables. I have high lighted in red the listings which I felt were most comparable to the existing rental unit. I note that on the comparisons provided by the landlord in other areas of the city that the two that could

be considered comparable had laundry services provided so I found that $35.00 needed to be removed from the asking rent to accommodate for the increased services.

Based on the testimony I find that the landlord and tenants considered the north part of the city as a more desirable place to live, which is where the rental unit is located, and that rents charged for rental units located in the north part of the city are at a higher rate than in other areas of the city.

I find that the comparable units in the north part of the city, provided by the landlord, charge an average rent of $1,115.00 and the comparables provided by the tenants in the north part of the city charge an average rent of $1,000.00. I find that the average rent charged between comparables provided by both the landlord and tenants are $1,057.50 per month.

Based on the above I find that Tenants' "A" current rent is $1,062.45 which includes the annual rent increase for 2009 is above the average comparable rents provided in this hearing.

Tenants' "B" current rent is $1,009.00 and once the 2009 increase of 3.7% comes into effect, if the landlord charges tenants "B" the full increase in November 2009, their rent will be $1,046.33 which is only $11.17 lower than the comparables.

Based on the aforementioned I find that the rent that tenants "A" and tenants "B" are currently being charged are not significantly lower rents than those being charged for comparable units, and that the landlord has not proven that there are exceptional circumstances to warrant a rent increase of just over 23 % for tenants "A" and just over 29% for tenants "B". Based on the aforementioned I dismiss the landlord's application for an additional rent increase.

I find that the landlord has implemented the 3.7% allowable rent increase for 2009 to tenants "A" effective March 1, 2009 and that the landlord is restricted to the allowable

3.7% rent increase applicable to tenants “B” effective November 1, 2009 providing proper notice is issued in accordance with the *Act.*

Conclusion

I HEREBY ORDER that the monthly rent for Tenants “A” effective July 1, 2009 is to be charged at $1,062.45 and that Tenants “A” are to deduct an amount of $39.60, of overcharged rent, from their July 1, 2009 rent payment leaving a balance owing for July 1, 2009 of $1,022.85.

I HEREBY DISMISS the landlord’s application for an additional rent increase without leave to reapply.

I HEREBY ORDER that the landlord is restricted to implementing the 3.7% allowable rent increase to Tenants “B” in accordance with Section 41 of the *Act.*

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 11, 2009.

Dispute Resolution Officer