

DECISION

Dispute Codes RI

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order to allow the Landlord to impose an additional rent increase above the legislated 3.2 % rent increase allowed during 2010.

Service of the hearing documents, by the Landlord to each Tenant was completed on November 25, 2009 and were either handed personally to each Tenant or posted to the Tenant's door if the Tenant was not at home at the time of service. The three Tenants who attended all confirmed receipt of the Landlord's hearing package.

The Landlord and three Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Tenant (2) provided picture evidence of her rental unit and confirmed that she did not provide copies of the photos to the Landlord.

Issues(s) to be Decided

Is the Landlord entitled to an Order allowing the Landlord additional rent increases to the affected Tenants under section 43 of the *Residential Tenancy Act*?

Background and Evidence

Tenant (2) confirmed that they did not provide the Landlord with copies of their evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Landlord has not received copies of Tenant (2)'s evidence I find that Tenant (2)'s photo evidence cannot be considered in my decision. I did however carefully consider all of the testimony.

The Landlord confirmed that he did not submit documentary evidence in support of his application for an additional rent increase and he is relying on his verbal testimony to support his application.

The Landlord's property management company took over management of this rental building on December 1, 2008. The building consists of fifteen (15) one bedroom rental units and one (1) bachelor suite. The Landlord advised that twelve of the sixteen suites in this building have been re-rented, at a higher rent, since taking over the management

and the remaining four units, listed in the Landlord's application, have been occupied since before the Landlord's association with this building.

The person who attended the conference call hearing as Tenant (2) testified that she was assigned Tenant (2)'s lease since August 2008.

Tenant (1) attended the hearing and advised that his name was spelled incorrectly on the Landlord's application for additional rent increase.

The Landlord testified and confirmed that Tenant (2) has been the Tenant since they have taken over management of the building however the person listed in his application is the name that the tenancy agreement is issued in. The Landlord also confirmed that Tenant (4) moved out of the rental unit prior to today's hearing and the Landlord has re-rent this unit for a higher rent.

The Landlord advised the following information in relation to each Tenant's tenancy agreement:

- a) Tenant (1) has occupied the one bedroom rental unit since April 1, 2005 and based on the Landlord's records had a rent increase on February 1, 2009 from \$600.00 to \$615.00 per month. The Landlord stated that he did not have prior records.
- b) Tenant (2) has occupied the one bedroom rental unit since August 2008 however the original lease holder occupied the rental unit since July 1, 2005 and had a rent increase on February 1, 2009 from \$600.00 to \$615.00 per month.
- c) Tenant (3) has occupied the one bedroom rental unit since August 1, 2005 and the Landlord's records indicate the previous manager issued a rent increase on February 1, 2008 from \$603.00 to \$626.00 per month.

The Landlord testified that these three Tenants are all good tenants and none of them have been issued a notice to end tenancy. The Landlord argued that at the time they took over management of this building they were given some maintenance records however "there is no doubt that this building was previously neglected".

The Landlord confirmed that there have been no upgrades or maintenance work done in any of the four rental units affected by this application however the Landlord has spent over \$18,000.00 to repair exterior balconies and painting and upgrading the interior common areas.

The Landlord quoted from an appraisal that he stated was commissioned by a landlord from one of the other buildings he manages whereby this report states that Canadian Mortgage and Housing Corporation quotes the average cost of a one bedroom suite in this city area is \$764.00 per month. The Landlord confirmed that he did not submit this report into evidence.

The Landlord stated that the specific comparables he refers to are all located in the same rental building that these Tenants reside and that he has re-rented thirteen of these units for prices between \$740 and \$800 per month.

The Landlord confirmed that there have been no changes in the facilities or services provided to these Tenants; there have been no upgrades or maintenance to these three units although the Landlord confirms that these units need some work, and of the remaining thirteen units six have been upgraded since December 1, 2008. The Landlord argued that “it is a catch 22” because these are good Tenants and the “only basis to request this increase is their rent is too low to operate a one bedroom unit.” The Landlord then stated that it costs them \$533.04 per month to operate a one bedroom rental unit in this building.

Tenant (3) testified that the Landlord is just beginning to do work that would be considered regular maintenance. The Tenant argued that the building was not previously maintained and the Landlord has only recently begun to do the work and that there are still holes in walls in the common area. The Tenant argued that the Landlord’s request is against the political climate to provide affordable housing and that there are no comparable units in their neighbourhood as most units are owned or leased.

Tenant (3) then argued that the Landlord knew what the rents were at the time they took over management of the building and that they have consistently increased the rents each time they have re-rented another unit.

Tenant (2) testified that she agreed with Tenant (3)’s testimony and added that there has been very little maintenance to her rental unit and what maintenance there has been has been very slow to come. Tenant (2) stated that he was not aware of any comparable units in the area as most places around them are owned condos.

Tenant (1) testified that he has had regular rent increases since occupying the unit and his rent has increased from \$500.00 per month to \$615.00. Tenant (1) argued that he has suffered repeated flood damage and that the drywall in his unit is so mouldy that the maintenance person poked a hole in the wall with his finger. Tenant (1) confirmed that while he has requested repairs verbally he has not put his requests in writing to the Landlord. Tenant (1) stated that he could not provide comparables in his area as there are mostly condos around them.

Analysis

The Landlord has applied for the additional rent increase on the basis that the current rent is lower than comparable units or sites. The Landlord did not provide documentary evidence of comparable units in the area and requested that my decision rely on the

Landlord's testimony that the rents currently charged in the other thirteen units in this rental building range from \$740.00 to \$800.00.

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.

The *Residential Tenancy Policy Guideline #37* provides 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. The burden of proof lies with the Landlord who must provide evidence showing that the state of the existing rental units and amenities of the existing units and how they relate to the units used for comparison which have higher rents.

To determine the exceptional circumstances I must consider the relevant circumstances of the tenancy, the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the specific detailed information, provided by the Landlord, of the comparable units of similar residential properties in the immediate geographical area. It is not sufficient for the Landlord to solely or primarily reference Canada Mortgage and Housing Corporation statistics on rents as proof that the Landlord's rent is significantly lower.

The Landlord testified that he inherited these Tenants and their tenancy agreements when he began managing this building on December 1, 2008. I note that Tenant (1) began his tenancy on April 1, 2005, Tenant (2)'s tenancy began on July 1, 2005 and was assigned to the current tenant in August 2008, and Tenant (3) began her tenancy on August 1, 2005. The testimony supports that the Tenants have had a rent increase for most of the years of their tenancy agreements. The current Landlord issued Tenant (1) and Tenant (2) a rent increase in February 2009 to raise each of their rents from \$600.00 to \$615.00, however the Landlord did not increase Tenant (3)'s rent in 2009 and she currently pays \$626.00 per month.

The Landlord contends that he is losing money on these rental units as a result of charging lower than market value rent for these three units and argues that he has had to spend a large sum of money to complete maintenance such as painting the interior common areas and repairs to exterior balconies. The Landlord argued that it currently costs him \$533.04 per month to operate a one bedroom rental unit. I note that the

amount quoted is \$81.96 to \$92.96 lower than the current rent being charged to these Tenants.

I find that based on the testimony before me the Landlord knew, or ought to have known, the condition of the rental unit and the current rents at the time he agreed to take over management of the building. I also note that the landlord has not applied for an additional rent increase under the grounds of significant repairs or renovations or an extraordinary increase in operating costs.

Based on the aforementioned I find that the Landlord has failed to prove that in his situation there are **exceptional circumstances** attributing to the Tenants' rents being significantly lower. Therefore I dismiss the Landlord's application.

I also note that the Landlord spelled Tenant (1)'s surname incorrectly on his application and Tenant (2), who appeared at the hearing, is not named in this application. I note that both issues are grounds for dismissal against these two Tenants.

The Landlord did not dispute who Tenant (2) is and confirmed that she has been a tenant since August 2008, therefore the Landlord's records should be amended to reflect that Tenant (2) is the Tenant and the Landlord should ensure that all documents are issued and served listing Tenant (2)'s name and not the name of the previous tenant.

In regards to the Tenants' testimony relating to the lack of maintenance of their rental units, I am not able to make findings regarding these claims during these proceedings as this hearing was convened solely to deal with the Landlord's application. That being said, I must point out that if required, the Tenants are at liberty to make a separate application for dispute resolution.

Conclusion

I HEREBY DISMISS the Landlord's application for an additional rent increase, without leave to reapply, and the Landlord is therefore restricted to implementing the 3.2% allowable rent increase for 2010, 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: March 03, 2010.

Dispute Resolution Officer