

## **DECISION**

**Dispute Codes:** O (Additional rent increase)

### **Introduction**

This application was brought by the landlord seeking authorization to implement an additional rent increase as permitted under section 43(3) of the *Act* in addition to the annual allowable increase of 3.2 percent.

Section 43(3) of the *Act* permits a landlord to apply for a rent increase beyond the regulated maximum (currently 3.2%) under circumstances specified at Regulation 23. In this instance the landlord's application is based on Regulation 23(1)(a) which provides for such an application where, even after the maximum allowable increase, rent is significantly lower than those of comparable units in the same geographic area.

### **Issue(s) to be Decided**

Has the landlord proven that rent is significantly lower than those of comparable units in the same geographic area? If so, are the increases sought by the landlord of an order that would bring rents within a reasonable range of similar units?

### **Background and Evidence**

## **Landlord's Evidence**

The rental building is a three-storey, six-plex located on 3.75 acres. Each unit has two balconies and heat and water are included in the rent.

The respondent tenant has resided in the building since July 1, 2007 and her current rent is \$539 per month.

During the hearing, the landlord gave evidence that except for the respondent tenant and another tenant with reduced rent for managerial and maintenance duties, three other tenants pay rent of \$650 per month and the most recent new tenant pays \$675.

The last increase came into effect on April 1, 2009. By a notice of rent increase dated January 1, 2010 and received on January 6, 2010, the landlord advised the tenant that rent would be increased 3.4 percent to \$558.94. The tenant noted that notice erred in the current allowable increase which is 3.2 per cent, that the rent would go to \$556.24, and that the effective date should have been May 1, 2010 to provide the full three months notice required under the regulations.

The tenant noted a similar error in the previous year's notice, also dated January 1<sup>st</sup> for April 1, 2009 implementation and which claimed an increase of \$25 per month when the allowable increase in that year would have been \$19.24. She had complied with the effective date although she knew the notice was short of the required full three months.

The landlord subsequently made application for the additional increase to align the rent with other units in the building and to bring the rent closer to local market values. The landlord stated that the differential in the respondent's rent and that of the other units in the rental building arose as the others had been adjusted when the units had turned over.

In support of his claim that the rent is substantially below market value, the landlord submitted seven advertisements for comparable units from the local newspaper ranging from \$625 per month to \$775 per month. All but the lowest and one at \$685 were offered at \$700 or more per month.

The tenant submitted into evidence five advertisements offering two bedroom rental units at monthly rates ranging from \$500 to \$580 per month. The landlord challenged the comparability of the tenant's examples on the grounds that those he could identify were in substantially less desirable areas and did not offer utilities included. He noted that the rental building was the only such multi-unit on acreage in the area.

The tenant cited some deficiencies in her rental unit including a missing cover from the thermostat, a non-working stove exhaust fan and a small burn in the carpet. The landlord stated that he was not aware of the first two items until he received the tenant's evidence, and that he was quite prepared to make the repairs and would have done so sooner if the tenant had advise him of the need. He said carpet burn was very small and he believed it had been done during the tenancy.

The rental building is on the near outskirts of the city and the tenant stated that the nearest bus stop is .75 k and the nearest grocery store is 5 k away, although the landlord questioned the latter. The tenant also noted that she is on a disability pension and that the requested increase would impose a hardship, a factor that is not addressed in the legislation.

The landlord stated that increased costs have been a significant factor in rent increases, but states that, even at the requested increase to \$650 per month, the rent is still significantly below comparable units in the area.

The tenant stated that she often found the rental unit too warm, in the range of 73 degrees. The landlord stated that the building is heating by circulating hot water and that he would explore the problem when repairing the thermostat.

Both parties submitted photographic evidence, the landlord's in illustration of the desirability of the location and rental unit, and the tenant's in illustration of the deficiencies.

### **Analysis**

*Regulation 23(3)* prescribes that factors that must be taken into account when evaluating an application on the grounds that, after the annual rent increase the rent for the rental unit is significantly lower than other similar rental units in the same geographic area.

I find the following to be applicable:

- (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;
- (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;
- (d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;
- (e) the relationship between the change described in paragraph (d) and the rent increase applied for;
- (f) a relevant submission from an affected tenant;

In a circumstance in which a landlord relies on recent rent rates obtained in the rental building in question, Residential Policy Guideline 37 advises:

“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. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building.”

This guideline further instructs that I take into account relevant circumstances of the tenancy including duration of the tenancy, frequency and amount of rent increases, and the length of time over which the significantly lower rent was paid.

I find that the landlord has established that the rent of the affected unit is significantly lower than comparable units in the geographic area, and that an additional rent increase to \$650 per month is justified under the circumstances.

However, as permitted by *Regulation 23(4)*, I find that this increase should be phased in over time. Therefore, I hereby authorize and order that the landlord may now serve a three month notice of rent increase, and if notice is served in March 2010, to be implemented as follows:

Beginning June 1, 2010, rent may be increased to \$600 per month;

Beginning December 1, 2010 rent may be increased to \$650 per month.

The current annual allowable increase is factored into this decision. December 1, 2010 becomes the anniversary date for future annual allowable increases.

The increases are contingent upon the landlord completing the promised repairs to the kitchen exhaust fan and the thermostat.

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December March 10, 2010