

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's Application for Additional Rent Increase.

The hearing was conducted via teleconference and was attended by the landlord and the tenant

The hearing had originally been convened on April 30, 2010 but was adjourned as a result of service issues. The hearing was reconvened for May 19, 2010.

The tenant confirmed that he received the landlord's evidence but received it on May 12, 2010. Residential Tenancy Branch Rules of Procedure Rule 3.5 require that evidence be served at least 5 days before the hearing, in order to meet this requirement the landlord would have had to serve the tenant with the evidence no later than May 11, 2010.

The tenant testified that because he did not receive evidence in time, he did not serve his evidence on the landlord, although he did submit his evidence to the Residential Tenancy Branch. The tenant further stated that he would not have provided any additional information other than what he did submit.

The original application for an additional rent increase was filed on December 5, 2009. The application clearly outlines the reasons that the landlord applied for the increase because the rent for this rental unit was significantly lower than rent for similar rental units in the same geographic area.

I find that upon receipt of the Notice of Hearing Package for the original hearing, which included the landlord's application and in light of the adjournment of the original hearing combined with the testimony of the tenant that he would not have submitted any additional evidence the tenant was not prejudiced by the landlord's late service.

Despite the tenant's failure to serve the landlord with his evidence, the landlord agreed to conduct the hearing without a further adjournment. The tenant's evidence consisted of advertisements for rental units in the area and the tenant read them into evidence.

While the tenant's failure to serve the landlord his evidence did prejudice the landlord, I have ordered the tenant to serve the landlord with his evidence and have provided the landlord with an opportunity to submit written submissions in response. As well, I have ordered that the tenant may also submit any further written submission in response to the landlord's documentary evidence that he felt may be warranted. I ordered these submissions must be received by the Residential Tenancy Branch no later than 1:00 p.m. on Wednesday, May 26, 2010.

The tenant provided a written submission by the above noted deadline. In his submission the tenant provided comment on the landlord's testimony as well as his documentary evidence, he also obtained information from a tenant in one of the rental units the landlord had cited in his evidence.

If I were to consider the written submission from the tenant it would exclude consideration for comments made by the tenant against the landlord's testimony as it would be unfair to the landlord who had no opportunity to respond to the tenant's comments.

I also find the tenant could have obtained the information he used for his submission in the 4 business days (7 calendar days) that he had the evidence prior to the hearing and did not require any additional time to respond to the landlord's submission. By including this information now, the landlord is again disadvantaged by not having an opportunity to respond to the new information.

For these reasons, I have not considered the written submission of the tenant dated May 26, 2010 to reach my decision on this application. The landlord submitted his written responses to the tenant's evidence on Thursday May 27 at 1:11 p.m. As this submission was later than the deadline I had ordered, I have not considered the landlord's submission in my decision.

Issues(s) to be Decided

The issue to be decided is whether the landlord is entitled to a rent increase in addition to the 2010 allowable increase of 3.2% for this rental unit for a total rent increase of 16.6%, pursuant to Section 43 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on November 1, 1998 as a month to month tenancy for a current monthly rent of \$1,190.00 due on the 1st of the month, with a security deposit of \$462.50 paid on October 12, 1998.

The landlord has submitted the following documents in support of his application to increase the rent for this rental unit by \$205.00 for a 1 bedroom main floor rental unit of 950 square feet currently rented at 1,190.00 per month:

- A summary of comparable units within the residential property and within the local areas, including a history of rent increases for this rental unit, dated December 8, 2009;
- A copy of pages 1 and 2 of a tenancy agreement for a tenancy beginning January 1, 2010 for the main floor rental unit in the neighbouring residential property with a monthly rent of \$1,395.00;

- A copy of pages 1 and 2 of a tenancy agreement for a tenancy beginning on May 1, 2009 for the ground level rental unit on this residential property with a monthly rent of \$1,350.00;
- A copy of pages 1 and 2 of a tenancy agreement for a tenancy beginning on January 1, 2006 for another rental unit on this residential property with a monthly rent of \$1,400.00;
- A copy of pages 1 and 2 of a tenancy agreement for a tenancy beginning on August 1, 2008 for another rental unit in the area with a monthly rent of \$1,560.00; and
- An additional summary dated May 6, 2010 supporting the landlord's application including photographs from this rental unit and from a rental unit in the residential property next door to this rental unit.

The tenant has submitted the following documents into evidence:

- A copy of a hand written notice of rent increase dated December 28, 2008 for a rent increase beginning April 1, 2009;
- 13 photographs of the interior of the rental unit;
- A listing of Frequently Asked Questions for Real Estate Licensees; and
- Postings from Craigslist for 6 rental units in the local area ranging in price from \$1,150.00 to \$1,700.00.

The parties confirmed that there had been no rent increases in the early years of the tenancy but that there had been annual increases over the last 3 years. The parties agree that there have been no changes or upgrading to the interior of the rental unit or the deck associated with it since the tenant moved in.

Both parties also confirmed that there have been no disputes or notices to end tenancy issued by either party in the last 6 months of the tenancy.

The landlord provided testimony regarding descriptions of comparable rental units that the landlord managed. Primarily the comparable units included other units in this residential property; at the residential property next door to the dispute address and to another rental unit in the same geographic area.

The landlord focused primarily on the main floor rental unit next door that most closely resembled the dispute address. The landlord noting that they were of comparable size and that the dispute address had more recent upgrades such as kitchen cabinetry and bathroom fixtures. The rent for the unit next door is \$1,420.00 per month.

Analysis

Section 43 of the Act allows a landlord to impose a rent increase up to the amount calculated in accordance with the Regulation or ordered by the director on an application under circumstances outlined in the Regulation.

The landlord has requested a rent increase under Section 23 (1)(a) of the Regulation that states:

“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 areas as, the rental unit.”

Residential Tenancy Policy Guideline 37 places the burden of proof on the landlord to show that the rent for this rental unit is significantly lower than the current rent payable for similar units in the same *geographic* area.

The Guideline goes on to say it is not sufficient that the landlord claim a rental unit 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, the guideline does allow for a landlord who has kept rent low for a long term tenant to bring rent in line with other similar rental units in the building.

In his submission the landlord has provided one immediate comparison that of a 1 bedroom main floor rental unit next door that he also manages. In this submission the landlord describes the comparison unit as being older and having older fixtures and flooring at a rent of \$1,420.00 per month.

In his written submission he also provided a comparison with another rental unit he manages at a different location where rent is \$1,595.00 per month for a 1 bedroom and den on a main floor. All other comparisons were for rental units the landlord manages in any one of these three locations but none are of the same size or location in the building (i.e. ground or top floors).

While I accept that the rent on this rental unit is out of line with the other units that this landlord manages and the tenancy did go through a significant period of time without a rent increase, I am not satisfied that the landlord has provided sufficient comparisons for the geographic area that would justify a rent increase of this magnitude.

While the landlord may have been successful in obtaining higher rents for his other units, he has not provided any evidence from other rentals in the area that confirm what local rents are, outside of his management.

Conclusion

Based on my findings above, I dismiss the landlord's application for an additional rent increase for this address. This decision does not impact the landlord's ability to impose a rent increase in compliance with Sections 42 and 43 of the *Act* that is calculated in accordance with the regulations or by mutual agreement by the tenant in writing.

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: May 19, 2010.

Dispute Resolution Officer