

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with an application by the landlord for an additional rent increase. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

This hearing dealt with an application by the landlord for an order approving a rent increase greater than the amount calculated by section 22 of the Residential Tenancy Regulation. Both parties attended the hearing and had an opportunity to be heard.

The facts before me are as follows. This 42 unit apartment building is approximately 30 years old. The tenant in unit 201 has been a resident since 2001 and the tenant in 308 a resident since 2000. Both tenants pay rent of \$338.00 for a two bedroom apartment. Under the Residential Tenancy Regulation the landlord is entitled to a rent increase of 3.2% for 2011. As a result, under section 22, the landlord is entitled to increase the rent by \$10.81 to \$348.81.

The landlord seeks an additional rent increase under section 23(1) (a) of the Residential Tenancy Regulation. Specifically, the landlord alleges that after the rent increase allowed under section 22, the rent is significantly lower than rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit. In its Application the landlord is seeking \$312.00 in additional rent.

In support of its claim for additional rent the landlord has provided documentation showing rents for two bedroom units that are comparable in size to the tenants rental units. A number of the comparable units are in the same building and rent for the comparable units as of January 2011 is \$625.00 to \$650.00. The landlord stated that the comparable units had not been renovated however photographic evidence shows that the overall condition of these units is significantly better than that of the tenants units and there are no issues with the condition of the carpeting or window frames. The landlord stated that the tenants rent had not been increased on an annual basis due to the friendly relationships the tenants had with past building managers. The tenant of unit 308 clarified that she has also not had a rent increase under the current management in the past five years.

In response to the landlord's application, the tenants acknowledged that their rents are low compared with other comparably sized units. However, the tenants pointed out that their units have not been updated or renovated by the landlord in the ten years of their tenancy therefore are not comparable units. The drapes, carpets and linoleum in the tenants units are approximately ten years old and all show extensive age and wear. A number of the wood window frames in unit 201 appear to be rotten and in need of repair. The landlord contends that the condition of the tenants units are due to normal wear and tear and the landlord acknowledges that the tenants units have had no updating during these +/- ten year tenancies. The tenants both contend that there has been renovation work completed on the comparable units in the building that are being rented at the higher rate.

Both tenants stated that if their rents were brought up to the amount requested by the landlord that the tenants would expect that the carpeting and linoleum in their units is replaced and that all maintenance concerns in their units addressed.

### Law

Section 23(3) of the Residential Tenancy Regulations states that in deciding whether to approve an application for an additional rent increase I must consider numerous factors including a finding by the director that the landlord has contravened section 32 of the Act *[obligation to repair and maintain]*;

Section 23(4) of the Regulations provides, in part, as follows:

- (4) *In considering an application under subsection (1), the director may*
  - (a) *grant the application, in full or in part,*
  - (b) *refuse the application,*
  - (c) *order that the increase granted under subsection (1) be phased in over a period of time,...*
  - (f) *a relevant submission from an affected tenant;*

Residential tenancy Act Guidelines 37 Rent Increases speaks to **Significantly lower rent**: *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 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.*

*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. To determine whether the circumstances are exceptional, the dispute resolution officer will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.*

#### *Useful Life of Work Done or Thing Purchased*

DOORS AND WINDOWS	
5.	Window Framing
i. Wood	15
ii. Aluminium	20
FINISHES	
1. Carpets	10
3. Drapes, Venetian Blinds	10
4. Painting	
i. Exterior	8
ii. Interior	4

#### Analysis

While the landlord contends that the tenants units are comparable units, I find the overall condition of the tenants units significantly inferior to that of the comparable units.

I grant the landlord's application for additional rent *in part* in the amount of \$162.00 bringing the monthly rent up to \$500.00. I further order that this increase be phased in over a period of six months such that the rent is increased by \$27.00 per month over the next six months.

Pursuant to section 69 of the Act I order that the rent may be increased to \$500.00 in phases as set forth above. The landlord may give notice of rent increase for this amount.

At the hearing the landlord had requested an increase to the amount of rent increase claimed in its Application for Additional Rent Increase from \$338.00 to \$650.00. I dismiss this request on the basis that the landlord is limited by the amount additional rent requested in its Application.

Conclusion

Pursuant to section 69 of the Act I order that the rent may be increased to \$500.00 in phases as set forth above. The landlord may give notice of rent increase for this amount.

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: February 7, 2011

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Residential Tenancy Branch