

Decision

Dispute Codes: O

Introduction

This hearing dealt with an application by the landlord for a rent increase above the limit set by the Residential Tenancy Regulation ("Regulation"). Both parties attended the hearing, had opportunity to be heard, and gave affirmed testimony.

Issue to be decided

- Whether the landlord is entitled to the above pursuant to the relevant legislation

Background and Evidence

Pursuant to a written tenancy agreement signed by the parties on October 3, 2007, the month-to-month tenancy began on September 17, 2007. Monthly rent for the duration of tenancy has remained at \$450.00, and a security deposit of \$225.00 was collected.

In a letter to the tenant dated April 22, 2009, the landlord stated in part:

As you know, the [landlord] agreed to accept a low rent of \$450.00 as a temporary measure till the end of December 2007. We understand that you are prevented from returning to work. We do not blame you for that, but we ask you to assist us in finding a resolution.

Currently your suite costs \$944.46 per month and the [landlord] cannot continue to subsidize this suite in the amount of \$494.46 each month.

Subsequently, by letter to the tenant dated December 7, 2010, the landlord stated in part, as follows:

Since you moved in you have benefited from a special rate, compared to other tenants. The [landlord] agreed to that because of your low income, but since Nov. 2009 your income is greater than that of the other tenants; while their rent, on average, approaches 50% of their income, yours is only 24% of your income.

Pursuant to the Regulation, the allowable amount of rent increase that takes effect in 2011 is 2.3%. In this case, therefore, the allowable increase would be \$10.35 (\$450.00 x 2.3%), which would bring the subject monthly rent to \$460.35 (\$450.00 + \$10.35).

Grounds for an additional increase identified in the landlord's application are as follows:

After the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than rent payable for other rental units or sites similar to and in the same geographic area, as the rental unit or site.

The landlord applies for an additional rent increase which would bring monthly rent to \$850.00. Over many months the parties have attempted, but without success, to reach agreement around the amount and timing of a rent increase.

During the hearing, the parties discussed circumstances surrounding the dispute. While the tenant does not dispute that a rent increase may be appropriate, at issue is the amount of increase she claims she can afford. The landlord takes the position that the tenant's level of income, whatever it is, is incidental to the quantum of fair market rent.

The landlord describes the complex within which the unit is located as a "26 unit apartment building." Further, the landlord's application sets out details as follows:

21 units are self-owned under Life-Leases and 5 units are rented to persons of limited income. The building is 16 years old, has many amenities, including a live-in manager and is well maintained. The suites are spacious and modern. This is not typical rental accommodation.

[The tenant's unit is] a spacious, two bedroom unit, with 5 appliances including washer and dryer. The average monthly cost for this unit to the [landlord] over the past 3 years is \$921.91. Even at \$850.00, the [landlord] subsidizes its rental suites. The monthly rent includes heat, hot water, TV cable, a parking spot in a secured parkade, a storage locker, the services of the live-in building manager, and the use of the guest suite, communal kitchen, dining room and outdoor patios.

Included in the landlord's evidence are copies of 11 advertisements from two lower mainland newspapers published in October 2010, for rental units which the landlord considers compare to the subject unit, and are located in the same geographic area.

Analysis

Section 23 of the Regulation addresses **Additional rent increase**, and provides in part:

23(1) A landlord may apply under section 43(3) of the Act *[additional rent increase]* if one or more of the following apply:

- (a) 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 area as, the rental unit;

Section 43 of the Act speaks to **Amount of rent increase**, and provides in part:

43(1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the 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 referred to in subsection (1)(a) by making an application for dispute resolution.

Residential Tenancy Policy Guideline # 37 speaks to "Rent Increases" and under the heading – **Significantly lower rent**, provides in part, as follows:

The amount of a rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessarily with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, a dispute resolution officer can approve an additional rent increase that brings the subject unit into that range. For example, a dispute resolution officer may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

Rent for units shown in advertisements provided in the landlord's evidence range from \$1,000.00 to \$1,900.00 per month. However, I note that the unit advertised for \$1,900.00 is a 3 bedroom unit, and a 2 bedroom unit for \$1,700.00 is described as "brand new." Removing the aforementioned 2 rentals from consideration, the remaining 9 advertisements for 2 bedroom units reflect a monthly range in rent from \$1,000.00 to \$1,600.00, with the average calculated as \$1,258.33 ($\$11,325.00 \div 9$). There is no indication in the advertisements that rent includes the utilities which are included in the

subject tenant's rent. With relatively minor exceptions, in general, the amenities included in the rent for the advertised units otherwise appear to be comparable. After the proposed rent increase, monthly rent for the subject unit still falls approximately \$400.00 below the average for comparable units, and approximately \$70.00 below what the landlord claims is its "average monthly cost for this unit" over the past 3 years.

Section 23(4) of the Regulation provides, in part:

23(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, or...

After careful consideration of the documentary evidence and testimony, I find on a balance of probabilities that the landlord has met the burden of proving that, after a rent increase permitted by the Regulation, the rent for the subject rental unit is significantly lower than rent payable for other rental units similar to and in the same geographic area as the subject rental unit. Accordingly, the landlord's application is hereby allowed. The total rent increase introduced in 2011 must not exceed \$400.00, which will bring the current monthly rent of \$450.00 to \$850.00 ($\$450.00 + \$400.00 = \$850.00$).

A rent increase cannot be introduced in advance of the required 3 months' notice and, thereafter, the new rent remains fixed for the next 12 months. In this regard, section 42 of the Act speaks to **Timing and notice of rent increases**, as follows:

42(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent increase has previously been increased, the effective date of the last rent increase made in accordance with the Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (10 and (2), the notice takes effect on the earliest date that does comply.

The "approved form" is RTB – 7 which is produced by the Residential Tenancy Branch.

In view of the arguably uncertain amount of the tenant's future monthly income, and the related potential for hardship, I find it appropriate to phase in the rent increase over 6 months and, therefore, I hereby order as follows:

Phase 1:

The current rent is \$450.00 per month. The landlord must serve the tenant a first notice of rent increase in the prescribed form which increases the rent by \$300.00 from \$450.00 to \$750.00 per month, and will take effect 3 full months after the notice is served.

Phase 2:

After the above rent increase has taken effect, the landlord must serve the tenant a second notice of rent increase in the prescribed form which increases the rent by \$100.00 from \$750.00 to \$850.00 per month, and will take effect no earlier than 6 months after the first notice has taken effect, and no earlier than 3 full months after the landlord serves the second notice.

Conclusion

The landlord's application is hereby allowed, as set out in detail above.

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*.

DATE: March 8, 2011

Residential Tenancy Branch