



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, ARI

Introduction

This hearing dealt with the landlord's application for an additional rent increase under section 43(3) of the *Residential Tenancy Act* (the *Act*) for rental suites 1, 3, 6 and 8 in the above-noted property.

At the commencement of the hearing, the landlord's agent (the landlord) testified that the landlord had been successful in obtaining an agreement with the tenant in Suite 1 in this property. He withdrew the landlord's application for an additional rent increase for Suite 1.

Representatives of tenants for Suites 3, 6 and 8 and the landlord attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent the tenants copies of the landlord's application for dispute resolution on March 31, 2011 by registered mail. The tenants in attendance all confirmed having received the landlord's application and notice of the hearing. I am satisfied that the landlord served these documents to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Has the landlord's late provision of his evidence package prejudiced the tenants' ability to respond to the case against them or breached the principles of natural justice? If not, is the landlord entitled to an additional rent increase for Suites 3, 6 and/or 8?

Background and Evidence

The landlord testified that the Suite 3 tenancy commenced on September 1, 2006. The current monthly rent in Suite 3 is \$1,097.00. The landlord applied for an additional rent increase to a monthly rent of \$1,575.00.

The landlord testified that the tenants in Suite 6 have been in that suite since 2000. Monthly rent is presently \$1,118.00. The landlord applied for an additional rent increase for this suite to a monthly rent of \$1,600.00.

The landlord testified that the Suite 8 tenancy commenced on January 1, 2002. The current monthly rent is set at \$1,103.00. The landlord applied for an additional rent increase to \$1,675.00 for this rental suite.

Analysis

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) reads in part as follows:

3.5(a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure...

In this case, each of the three tenants who attended the hearing submitted written evidence packages within the time frame established under Rule 3.5. The landlord, who applied for dispute resolution on March 28, 2011, did not send any written evidence until April 21, 2011, when he sent each of the tenants and the Residential Tenancy Branch (RTB) his evidence by registered mail. Section 90(a) of the *Act* establishes that documents sent by registered mail are deemed received on the 5th day after mailing. The landlord's documents were deemed received on April 26, 2011, the actual day that the RTB and the tenants in Suite 8 received this evidence. The tenant in Suite 3 testified that he received the landlord's evidence on the evening of April 27, 2011, less than 48 hours before this hearing. The tenant in Suite 6 testified that she has still not received the landlord's evidence, although she checked as recently as the night before this hearing because she wanted an opportunity to consider the landlord's evidence to prepare for this hearing.

Rule of Procedure 11.5 outlines the process for consideration of evidence not provided to the other party or the RTB in advance of the dispute resolution proceeding. Rule 11.5(a) establishes that a party at the dispute resolution proceeding "may request that the Dispute Resolution Officer accept any evidence that was not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding as required by the Rules of Procedure." However, Rule 11.5(b) permits a Dispute Resolution Officer to "refuse to accept the evidence if the Dispute Resolution Officer determines that there has been a wilful or recurring failure to comply with the *Act* or the Rules of Procedure, or, if for some other reason, the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice."

When asked for an explanation regarding the reasons for the late submission of the landlord's evidence, the landlord said that the landlord had tried to negotiate agreements with the tenants before this hearing and that the landlord "had difficulty putting the evidence package together."

I can appreciate that assembling an application for an additional rent increase can be a time-consuming process. However, the landlord was in control of the timing of the his submission of the application for dispute resolution. From this perspective, the landlord had far more time to produce an evidence package than did the tenants. Nevertheless, each of the tenants who attended this hearing made special efforts to submit their evidence packages within the time frames established under the Rules of Procedure. The tenant in Suite 6 said that she had to take a day off of her work to ensure that she complied with the time limits for providing her written evidence. The tenant in Suite 8 said that he had to miss a family Easter dinner in order to get his evidence package completed and filed in time. All of the tenants said that they had not had a proper opportunity to review the detailed written evidence package provided by the landlord. As noted above, one of the tenants has still not received that evidence package, although it was deemed served on April 26, 2011.

I have no reason to believe nor did the tenants claim that the landlord wilfully failed to comply with the Rules of Procedure by submitting his evidence package so near the scheduled date for this hearing. However, I find that the tenants' rights to a fair hearing and to know the case against them would be seriously jeopardized and a breach of the principles of natural justice would occur if I were to accept the late written evidence submitted by the landlord for this hearing. Consequently, I ruled at the hearing that I would not accept the landlord's written evidence sent by registered mail on April 21, 2011 for the purposes of this hearing.

Residential Tenancy Policy Guideline 37 establishes policy for interpreting landlords' applications for additional rent increases under the *Act*. That Policy Guideline notes that "The policy intent is to allow the landlord to apply for arbitration only in 'extraordinary' situations." This Policy Guideline establishes that **"The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount"** (emphasis in original).

Other than the April 21, 2011 written evidence, the only written evidence provided by the landlord was his application for an additional rent increase which listed the suites affected by his application, the tenants who lived there and the rents charged and the additional rents he was seeking. Without any written evidence from the landlord until a

few days before this hearing, I find that the tenants were at a distinct disadvantage in trying to respond to the landlord's application for a significant increase in their rent. Although I gave the landlord opportunities to provide oral evidence in support of his application, he did not choose to enter substantive oral evidence, perhaps in recognition of the fact that his detailed written evidence package was not submitted in time to be considered for his application.

Under, the circumstances, the landlord has not met the burden of proof for obtaining an additional rent increase for the tenancies in Suites 3, 6 and 8. As such, I dismiss the landlord's application for an additional rent increase for the tenancies in Suites 3, 6 and 8 in this property.

Conclusion

I dismiss the landlord's application for an additional rent increase for Suites 3, 6 and 8 in the above-noted property. As noted above, the landlord's application for an additional rent increase for Suite 1 was withdrawn at the hearing.

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*.