



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: O, RI

Introduction

This hearing dealt with an application by the landlord for a rent increase above the limit set by the Residential Tenancy Regulation (the “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

The tenancy began on or about September 25, 2005, and since that time the parties have regularly renewed the formal written tenancy agreement in place between them. A security deposit of \$850.00 was collected at the outset of tenancy and monthly rent is currently \$1,870.00. Rent was reduced to \$1,200.00 for the 3 month period of May, June and July 2010, while repairs and renovations were undertaken after flooding.

Pursuant to the Regulation, the allowable amount of rent increase that takes effect in 2011 is 2.3%. In this case, the allowable rent increase would be \$43.01 ($\$1,870.00 \times 2.3\%$), which would bring the subject monthly rent to \$1,913.01 ($\$1,870.00 + \43.01).

In her application the landlord seeks a rent increase in the total amount of \$430.00, which would bring the subject monthly rent to \$2,300.00 ($\$1,870.00 + \430.00).

Grounds for an additional rent increase identified in the application are as follows:

- A) After the rent increase permitted by the Regulation, the rent for the rental unit is significantly lower than the rent payable for other rental units similar to and in the same geographic area, as the rental unit.
- B) The landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that:
 - could not have been foreseen under reasonable circumstances, and
 - will not recur within a time period that is reasonable for the repair or renovation.

- C) The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property.

During the hearing, the parties discussed circumstances surrounding the landlord's application. While the tenant does not dispute that a rent increase beyond the amount permitted under the Regulation may be justified, at issue is the amount of increase that seems both fair and affordable.

Analysis

Part 3 of the Act addresses **What Rent Increases Are Allowed**, and comprises the following sections:

Section 40: **Meaning of “rent increase”**

Section 41: **Rent increases**

Section 42: **Timing and notice of rent increases**

Section 43: **Amount of rent increase**

Part 4 of the Regulation addresses **Rent Increases**, and comprises the following sections:

Section 22: **Annual rent increase**

Section 23: **Additional rent increase**

Residential Tenancy Policy Guideline # 37 addresses “Rent Increases.”

Section 43 of the Act 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.

Section 23(1) of the Regulation 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;
- (b) the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that
 - (i) could not have been foreseen under reasonable circumstances, and
 - (ii) will not recur within a time period that is reasonable for the repair or renovation;
- (c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

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...

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- **that monthly rent will increase by \$130.00 from what is presently \$1,870.00 to \$2,000.00.**

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**. [emphasis added]

(4) If a landlord's notice of a rent increase does not comply with subsections (1) 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.

Conclusion

Pursuant to the agreement reached between the parties, as above, the landlord's application is hereby allowed in part.

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: April 26, 2011

Residential Tenancy Branch