



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O ARI

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order to allow an additional rent increase.

Service of the hearing documents, by the Landlord's wife to the Tenant, was done in accordance with section 89 of the Act, served personally at the rental unit on approximately October 14, 2011.

The Landlord and his wife appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord met the test to prove the current rent is lower than comparable units or sites?
2. Has the Landlord met the burden of proof that significant repairs or renovations have been completed to the rental unit?

Background and Evidence

The Landlord affirmed that this tenancy began during the time he was outside of the country. During his absence the Landlord had property management companies looking after his rental units. The Landlord believes this tenancy agreement was verbal and began sometime around the fall of 2004 based on conversations he had with the Tenant. The current monthly rent is payable on the first of each month in the amount of \$639.00.

The rental unit is a 1 bedroom, 800 square foot apartment with storage, a separate kitchen, living room, and dining room. There are a total of six rental units with basically the same floor plan and square footage (some floor plans are reversed) in this building plus the Landlord's unit which occupies the top floor.

The Landlord advised that to the best of his knowledge the Tenant's rent began at \$525.00 in 2004, was raised to \$600.00 per month as of September 1, 2008, raised to \$625.00 as of June 1, 2009, and then raised to \$639.00 as of May 1, 2011. He advised that he did not request that his property managers impose regular rent increases.

The Landlord referred to his evidence which included, among other things, copies of two tenancy agreements that pertain to the units on either side of the Tenant's unit which began on July 15, 2011 and September 1, 2011, and lists of advertisements for rental units that are posted on the internet. The Landlord stated that he wished to use this evidence to support his claim that comparable units are renting for \$750.00 or more. He could not provide testimony or evidence as to the age, state of repairs, amenities provided, or location to public services relating to the computer advertised units as he did not have access to such information.

The Landlord did however provide testimony as to the condition of the units on either side of the Tenant's unit. The unit for which the tenancy began on July 15, 2011 had been renovated with painting, upgraded bathroom heater/fan, new carpet and new window screens just prior to the start of the tenancy. The other unit whose tenancy began on September 1, 2011 had similar work completed just prior to the start of the tenancy with new carpet installed three years ago. Each of these units are rented for \$750.00 per month.

When reviewing the Landlord's application relating to the significant repairs or renovations that have been completed to the subject rental unit the Landlord advised the information he had listed on his application about painting and carpet installation was outdated and he had erred in the year of 2004 of when that work was performed. He stated that he submitted evidence that the carpet in the subject unit had recently been replaced, however during the review of the evidence it was determined the Landlord had submitted information that did not pertain to the Tenant's carpet replacement.

Also, the Landlord confirmed the information provided in evidence about painting was a quote and was not acted upon. The Landlord hired a different company to complete the painting which was completed in the Tenant's unit recently. The Landlord was not able to provide the exact date the unit was painted but did confirm the unit was previously painted in 2004.

The Landlord stated that he recently replaced the Tenant's bathroom heater/fan which was original from 1973, replaced a broken thermostat that was original, and replaced the window blinds which were also originally from 1973. In addition, the Landlord

replaced the fridge and stove approximately 10 to 15 years ago. The Landlord confirmed he did not provide documentary evidence in support of the recent work that was performed in this unit.

Analysis

Section 43(3) of the *Act* states that in 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*.

Section 23 of the *Regulations* provides a landlord may apply under section 43(3) of the *Act* if one or more of the following apply:

(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;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

The Landlord has made application for an additional rent increase under sections 23 (1)

- (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; and
- (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;

Section 37 of the *Residential Tenancy Policy Guideline #37* states that additional rent increases under the section of “Significantly lower rent” will be granted only in **exceptional circumstances** and that 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 at a higher rate [emphasis added].

To determine the exceptional circumstances I must consider the relevant circumstances of the tenancy, the duration of the tenancy, and the frequency and amount of rent increases given during the tenancy. Accordingly I have considered the following evidence:

- The Landlord does not know the exact start date of this tenancy as he was out of the country for approximately ten years and had left the management of this building with different property managers; and
- The Landlord relies on the Tenant’s estimate that he has resided in this unit since the fall of 2004; and
- During the Landlord’s absence he did not request his property managers to issue regular rent increases; and
- Based on the Landlord’s records there may have been three rent increases during the past seven years raising the rent from \$525.00 to \$600.00 on September 1, 2008; raising from \$600.00 to \$625.00 on June 1, 2009; and raising from \$625.00 to \$639.00 on May 1, 2011.

I must also consider the following:

- The rent payable for similar units in the property immediately before the proposed increase is to come into effect. The Landlord submitted evidence of only two other units which have been re-rented within the last 3 ½ months, plus the subject unit, for this property that has a total of six rental units. There was no

evidence provided to indicate the rent currently being charged for the remaining three units.

- There is no evidence to support there has been a change in a service or facility provided to the Tenant in the preceding twelve months.
- The Landlord relied on a print out of units currently advertised on the internet in the same city as comparables to prove the rent is significantly lower. However, there was no evidence to show if these units are in the same geographic area of the city, no evidence to indicate the age or current state of the comparable rental units, nor is there evidence to indicate what amenities are provided for in the comparable units.

Based on the aforementioned I find there to be insufficient evidence to prove the presence of exceptional circumstances causing the Tenant's rent to be significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, this rental unit. Accordingly I find the Landlord's application must fail on this ground.

When making an application for reasons that the landlord has completed significant repairs or renovations to the residential property the Policy Guideline # 37 stipulates that a landlord must provide documentary evidence, such as invoices, of the costs of those repairs or renovations, and must also be prepared to show why those costs could not have been foreseen.

When considering the repairs the Landlord is relying on I have determined the following:

- The evidence provided in support of the Landlord's application does not prove the Landlord conducted repairs in the subject rental unit; and
- The Landlord relied on his testimony to prove that he recently paid to maintain the rental unit by painting the unit which had been previously painted in 2004, by having the carpets replaced, and by replacing the bathroom fan and window blinds that were original from the 1970's.

Based on the aforementioned I find there to be insufficient evidence to support these expenditures could not have been foreseen under reasonable circumstances, and that they will not recur within a time period that is reasonable for the repair or renovation. Rather, I have determined these items to be considered regular maintenance, given the age of the building and the normal useful life of items such as carpet and interior paint, and therefore they can be considered foreseeable. Accordingly I find the Landlord's application must fail on this second ground for an additional rent increase.

Conclusion

I HEREBY DISMISS the Landlord's application for an Additional Rent Increase.

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: November 18, 2011.

Residential Tenancy Branch