



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 by the landlord for a rent increase above the limit set by the Residential Tenancy Regulation.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Issue to be Decided

After a rent increase permitted by the Regulation, is the rent for this rental unit significantly lower than rent payable for other rental units similar to and in the same geographic area as the rental unit?

Background and Evidence

The tenancy commenced on October 1, 1991; rent is currently \$1,350.00 per month.

The parties agreed that between 1991 and 2005, the rent was increased by \$124.00. Further rent increases were given between May 1, 2006 and February 1, 2010, bringing the rent to the current level. A rent increase given effective February 1, 2011, was withdrawn by the landlord.

The landlord has applied to increase the rent by the maximum allowable in 2010, 4.3% (\$58.05); plus an additional 77% increase, for a total increase of 81.3%. This equates to an increase in the sum of \$1,097.55; the landlord's application requests a total increase of \$1,097.00.

Current Rent	1350.00
Additional increase requested (77%)	1039.50
TOTAL Rent after increases	1097.55

The rental unit has the following characteristics:

- Spanish style home built in 1975;
- 2,309 sq. feet;
- 4 bedrooms, 2.5 bathrooms;
- double car garage;
- used fridge and stove;
- tenant pays utility costs;
- tenant provides her own clothes washer and dryer;
- fireplace;
- looks out to a school in the fenced backyard and to ball diamonds across the road;
- balcony and a shed; and
- original, single pane, aluminum windows.

The flooring such as tile and carpet is original; no updates have been completed to the unit. Recently the interior and exterior was painted, as the result of an Order issued on November 2, 2010.

During the hearing both parties acknowledged the previous decision and the tenant asked that I reference that decision. The tenant provided photographs of the home, some of which demonstrated its age and character: areas of what appear to be mould growth in the garage; peeling wallpaper; exterior stucco cracks; exterior gutters that appear marked with mould; condensation on a window and mould next to the adjoining wall; and pictures of the attic that show tar paper torn from the underside of the original clay tile roofing material.

The landlord agreed that there is some mould around a patio door; but stated that the tenant needs to open a door, to allow moisture to escape. The landlord testified that the rental unit is in very good condition.

The landlord provided copies of advertisements listed with a popular on-line site for 4 comparable units. The landlord testified that it was difficult to locate truly comparable units within a 1 kilometre range of the rental unit. The landlord was able to view 3 of the 4 comparable examples; no information was available confirming the rent actually achieved for 3 of the 4 units.

Unit #1 – T. Drive - \$2,150.00 per month

- 2.8 km from rental;
- 2,150 sq. feet;
- 4 bedrooms, 2.5 bathrooms;
- Single carport;
- New appliances;
- Washer and dryer included;
- No information on utility costs;
- Fenced backyard, looking out to other homes; and
- Some updated lighting fixtures plus a fireplace.

Unit #2 – F. - \$2,195.00 per month (ad includes 2 prices - \$2,295.00)

- 3.9 km from rental;
- 2,000 sq. feet; renovated;
- 4 bedrooms, number of baths unknown;
- Single garage;
- New appliances;
- New flooring, modern kitchen;
- Washer and dryer included;
- utility costs not included;
- Fenced backyard, and
- 1 block from dyke

#3 – T. Drive - \$1,900.00 per month

- 2.8 km from rental unit;
- 2,000 sq feet of a top floor of a home;
- 4 bedroom, 2 bathrooms;
- New cherry flooring in main rooms;
- Owner lives upstairs, garage used by owner;
- Tenant in a lower suite;
- Washer and dryer available;
- Private, fenced backyard;
- Fireplace; balcony; and
- Utilities included.

#4 – S. Drive - \$2,350.00 per month – not viewed, rented for asking

- 1,9 km from rental unit;
- 2,200 sq. feet;
- 4 bedrooms, 2.5 bedrooms;
- Laminate flooring throughout, except bedroom;
- New kitchen appliances
- Skylights;
- Fenced backyard;
- No information on washer, dryer, utilities; and
- Across from park and playground.

The age of the comparable units was not known.

The landlord provided a calculation of the average square foot cost of the comparable rentals at \$1.06. If the tenant rented her home at the same square foot rate, the rent would be \$2,447.00.

The landlord stated that units were advertised as having hardwood flooring when in fact the floors were laminate.

Analysis

In consideration of this application for additional rent increase I have taken into account Residential Tenancy Branch policy which suggests consideration of the following factors:

- Evidence of the state of rental units and amenities in comparable units
- The difference between the current rent payable for similar units in the same geographic area;
- Assessment of the comparable units in relation to size, age, construction, interior and exterior ambiance and sense of community; and
- Whether the comparable units have similar physical and intrinsic characteristics;
- Proximity to prominent landscape features such as parks, shopping and bodies of water.

The burden of proving the need for an additional rent increase falls to the landlord. Additional rent increases are granted only in exceptional circumstances. If a landlord has kept the rent low for a long term renter, an Additional Rent Increase could be used to bring the rent into line with other, similar units in geographic proximity. To determine

whether the circumstances are exceptional, policy suggests I 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.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and any additional separate charges for services or facilities (e.g.: parking, laundry) that are included in the rent of the comparable rental units in other properties.

Specific and detailed information, such as rents for all the comparable units and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord. 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.

I have considered the comparison of cost per square feet; this is one component that is suggested as relevant in a case requesting additional rent increase; however, square foot calculations do not take into account all other attributes of a rental property. For example; a well-maintained and updated small unit might well receive a higher rent than a large, poorly maintained, older home.

This is a 20 year tenancy during which time rent has increased from \$1,150.00 to \$1,350.00. In the past 6 years rent increases in the sum of \$76.00 have been given, by way of 3 increases given in each of 2006, 2007 and 2010. The landlord chose to cancel a rent increase that was to be effective in February 2011. No reason was given as to why this increase was not pursued by the landlord.

A decision issued in November 2010 resulted in an Order that the landlord paint the interior and exterior of the home and that the landlord complete some specific maintenance to the home and property. The maintenance Ordered did not constitute upgrades to the rental unit; only required maintenance that should be carried out by a landlord.

I find that the 4 comparable units presented by the landlord all appeared to be in superior condition, relative to the rental unit. Three of the 4 units had new appliances; the 1 unit that did rent was in an area near a body of water and walking trails, 2.8 kilometres away from the rental; 3 of the 4 included a washing machine and dryer and one unit included utility costs.

Comparable unit #3 was advertised at \$1,900.00 per month for a 2,000 square foot unit on the top floor of a house. This unit had new cherry floors, a washer, dryer, private fenced yard, fireplace and balcony. While 2 other units were part of the home; the requested rent was \$550.00 more than rent paid by the tenant. This could account for the amenities provided, combined with the age and character of the home. While this unit was the least costly of the comparable properties, I find the property was clearly updated and in superior condition to the rental unit.

The only unit use as a comparable did rent; it was smaller, had laminate flooring, new appliances, and skylights and was across from a park and playground. To compare a unit of this type, with an older home that has been given what appear to have been minimally required maintenance and no apparent updates, fails to support the request for an additional rent increase based on my assessment of comparable rental units submitted by the landlord. It may be that the rental unit is falling behind in value due to the presence of original flooring, the lack of a washing machine and dryer, older appliances and some deficiencies such as the state of the exterior stucco, the presence of mould and original windows that gather condensation.

There was no information on the rents that may have been achieved in 3 of the 4 comparables and no CMHC statistics were provided to assist in comparison of actual rental rates in the same geographic area.

Therefore, in the absence of evidence of units that are the same age, character and in similar condition to the rental unit, I find that the request for an additional rent increase is dismissed. The landlord is at liberty to issue a Notice of Rent Increase, in the approved form.

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: December 22, 2011.

Residential Tenancy Branch