



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: RI

Introduction

This Hearing dealt with the Landlord's application for a rent increase, pursuant to the provisions of Section 43(3) of the *Residential Tenancy Act* (the "Act")

The Landlord gave affirmed evidence at the Hearing.

The Landlord testified that she served the Tenants with the Notice of Hearing documents by registered mail on February 24, 2012, but the Tenants declined to accept delivery of the documents. The Landlord provided a copy of an e-mail from the Tenants dated February 28, 2012, acknowledging that they had been notified of registered documents available for pick up at the local post office, but that they "never accept registered mail". The Landlord also provided copies of the registered mail receipt and tracking number for the Tenant KL in evidence.

Based on the affirmed testimony and documentary evidence of the Landlord, I find that the Tenant KL was duly served with the Notice of Hearing documents, pursuant to the provisions of Section 89(1)(c) of the Act. Failure to accept delivery of documents sent by registered mail does not negate the service provisions of Section 89(1)(c) of the Act.

The Landlord did not provide sufficient evidence that the Tenant ML was served with the Notice of Hearing documents. Co-Tenants are jointly and severally responsible for debts under a tenancy agreement, and therefore the Hearing proceeded against the Tenant KL only, in his absence.

Issue(s) to be Decided

Is the Landlord entitled to an additional rent increase pursuant to the provisions of Section 43(3) of the Act?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on March 1, 2011. The Landlord testified that the previous occupant paid \$550.00 a month.

The Landlord testified that she misspoke when she told the Tenants that rent was only \$450.00 per month, but since she had verbally agreed to rent the rental unit at that price

she prepared the tenancy agreement accordingly. The Tenants currently pay \$450.00 a month, which includes water and heat, due on the first day of each month.

The Landlord is applying to increase the monthly rent to \$550.00, which is approximately 22% more than the Tenants are currently paying.

The Landlord testified that there are few comparisons available because the rental unit is a two bedroom apartment located in a small community of approximately 2,200 people.

The Landlord stated that she asked about rent for other 2 bedroom apartments in the same building and was provided with the following information:

- From a local realtor: "\$550.00 a month is still pretty reasonable for our current market conditions."
- From a management company who rents out apartments at the rental property: "We have been renting 2 bedroom apartments \$550.00 - \$600.00 depending on how updated the unit is."

The Landlord provided copies of the two e-mails in evidence.

The Landlord testified that on March 1, 2011, she provided the Tenants a Notice of Rent Increase effective June 1, 2012, for a rent increase of \$100.00 per month. She stated she told the Tenants that it was more than allowed under the provisions of the Act, but that they could agree to it. She advised them that if they did not agree, she would file an application for an additional rent increase. The Landlord testified that the Tenants declined to agree with the \$100.00 rent increase and suggested that they would pay an additional \$20.00 per month.

The Landlord stated that the Tenants own a one bedroom apartment in the same building, which they currently rent out. She submitted that therefore the Tenants know that the rent they pay is considerably lower than market rent.

Analysis

Section 43 of the Act states:

- 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.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Section 23(1) of the Regulation states:

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;

(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 filed her application under Section 23(1)(a).

This application was undisputed by the Tenants. The maximum allowable rent increase permitted by the Regulation for the rental unit this year is 4.3% or \$19.35. Based on the

undisputed testimony of the Landlord, I find that after allowing for the increase (\$450.00 + \$19.35 = \$469.35), the rent paid would be significantly lower than that of similar properties in the same geographic area. The Regulations require a landlord to provide comparables, but do not require that landlord to complete a statistical survey or comprehensive market research. I find that the Landlord is entitled to a rent increase above that provided for in the Regulations. The rent will continue to be applicable to all services and facilities that were included in the original terms of the tenancy agreement, including any utilities that have been included in the rent.

The Landlord's application is granted. The Landlord must serve the Tenants with a new Notice of Rent Increase in the prescribed form together with a copy of this Decision. The Notice will increase the rent to \$550.00 per month and will take effect 3 full months after the Notice is served upon the Tenants. For the sake of clarification, if the Notice is served in the month of May, 2012, the rent increase will take effect September 1, 2012.

Conclusion

The Landlord's application is granted. The Landlord must serve the Tenants with a new Notice of Rent Increase in the prescribed form together with a copy of this Decision. The Notice will increase the rent to \$550.00 per month and will take effect 3 full months after the Notice is served upon the Tenants.

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: May 07, 2012.

Residential Tenancy Branch