



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI, O

Introduction

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

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order to allow an additional rent increase above the legislated annual amount?

Background and Evidence

The parties agreed that the Tenant began occupying unit # 303 in this building back in 1992 and on July 31, 2003 she moved into unit #101, the only two bedroom unit in this building. Rent is currently payable on the first of each month in the amount of \$704.00 and in 1992 the Tenant paid \$100.00 as the security deposit.

The Landlord affirmed the rental unit is located in a ten unit building with nine 1 bedroom units and one 2 bedroom unit. The building is 51 years old and has been owned by the Landlord since 2008. They submit that the unit is 807 sq ft including the balcony and 784 sq ft without the balcony as supported by their evidence which included a footprint of the building they obtained from their municipality.

The Landlord asserted that the market rent for a two bedroom unit in this neighbourhood is \$1,000.00 as supported by the affidavit provided in their evidence. The affidavit was prepared by his legal counsel's articling student and includes the

student's summary of internet, telephone and e-mail inquiries. Attached to the affidavit is information pertaining to current rents composed by a Realtor of a building in the neighbour that is currently for sale, a listing of current rents charged in a neighbouring building which the Landlord owns, and a listing of current rents charged for the 10 units in the Tenant's building.

The Landlord submitted that the examples noted in the affidavit were of similar age and condition. He stated that he also owns another apartment building that is adjoined to the property that the Tenant's building is located and all of the two bedroom units in this building rent for more than \$1,000.00.

The Landlord argued that the Tenant's rent would only be \$734.13 after the allowable 4.3 % increase for 2012 which he believes to be significantly lower than the market value of \$1,000.00. He noted how the *Residential Tenancy Policy Guideline* defines significantly lower rent and argued that even though there is only one 2 bedroom unit in this building it is clear the market value for a 2 bedroom unit is at least \$1,000.00.

The Tenant submitted that as soon as the Landlord purchased the building he attempted to have her sign a new tenancy agreement for higher rent. She has continued to refuse his requests. They attended dispute resolution back on March 23, 2010 at which time the Landlord's application for an additional rent increase was dismissed.

The Tenant disputes this request for an additional rent increase and stated that she has had a rent increase every year except for 2010 and 2011. When she moved from the one bedroom unit to the two bedroom unit her rent was increased from \$493.00 to \$630.00. She has occupied this unit since 2003 and there have never been any upgrades or maintenance. She has endured three floods during this time and the Landlords have never repaired or replaced anything in her unit. She stated that her carpet has been stained from the beginning, there have never been any upgrades to her unit, and there are silver fish in the hallway of her building,

The Tenant disputed the Landlord's submission as to the square footage of her unit and submitted that when she measured her unit it was approximately 750 sq ft. She advised that there has never been anyone in her suite taking measurements, there has been no attempt or request for someone to enter her suite to take measurements, nor has anyone ever requested to inspect her unit to determine what maintenance or repairs are required. She argued that all ten units in this building are of similar size and that her unit has a smaller kitchen/dining room area and one additional wall to create the second bedroom.

The Tenant submitted that she had called a couple of buildings in her area that had signs posted stating they had units for rent. One unit was charging \$1,250.00 for a unit that was 750 square feet which had just been fully renovated and the other was charging \$1,150.00 for a 900 square foot unit that had also been completely renovated.

The Tenant argued that the examples provided by the Landlord could not be considered similar as the Landlord has no idea of the condition of her unit as he has never been inside her unit. She also argued that the Landlord's examples all appear to be recently renovated units and therefore would demand a higher rent. She notes that her unit has never had any upgrades and that she rented her unit, as is, therefore her rent should not be increased.

In closing the Landlord stated his evidence of the measurements of the Tenant's unit were hand written on the floor plan by a consultant and were based on information obtained from the municipal office. He confirmed he has never seen the inside of the Tenant's unit. The Landlord argued he has completed upgrades to this building such as changing the roof and electrical systems however no work has been performed in the Tenant's unit because she has never requested work to be completed.

Analysis

The Landlord has made application for an additional rent increase pursuant to Section 43(3) of the Act and section 23(1) of the regulation. Section 23 (1) (a) of the regulation provides that a landlord may apply under section 43 (3) of the Act *[additional rent increase]* if 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.

The burden of proof of the market value rent lies with the Landlord who has to meet the high statutory requirement of proving that rent being charge for similar units in the same geographic area are significantly higher than the Tenant's rent. Section 37 of the *Residential Tenancy Policy Guideline # 37* stipulates that:

- An application must be based on the projected rent after the allowable rent increase is added; and
- Additional rent increases under this section will be granted only in **exceptional circumstances**; and

- “Similar units” means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community; and
- The “same geographic area” means the area located within a reasonable kilometer radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject unit, such as proximity to a prominent landscape feature (e.g., park, shopping mall, water body) or other representative point within an area.

In this case the current monthly rent is \$704.00 and after the 2012 rent increase of 4.3% allowed under the Regulation is applied the monthly rent would be **\$734.27**.

When determining the existence of exceptional circumstances it is not sufficient for a landlord to base their claim that the rental unit(s) has a significantly lower rent that results simply from the landlord's recent success at renting out similar units at a higher rate. 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. It is not exceptional circumstances if a landlord fails to implement an allowable rent increase.

In this case the Tenant has been issued a rent increase each year from 2003 to 2009; however the current owner did not issue a rent increase for 2010 or 2011. As rent has been increased each year up until 2009, and no increases for 2010 and 2011 simply because the Landlord made no effort to increase the rent, I find no basis to indicate rent has been kept artificially low; nor is there evidence to prove that the circumstances in this case are exceptional.

For examples of similar units the Landlord relies on an affidavit, a statement from a real estate agent on his opinion of market rent, and on what the Landlord currently charges in another building. The Tenant disputes the Landlord's evidence arguing that the Landlord has not proven the size of her unit, or the condition of the inside of her unit because he has not been inside her unit

Notwithstanding the Landlord's submission of a copy of the footprint of the building that was constructed 51 years ago, I accept the Tenant's argument that the Landlord cannot provide examples of units that could be considered similar to her unit as there is no evidence as to the type of construction of the Landlord's examples, nor can he prove that the interior and exterior ambiance (including view), and sense of community are

similar because he has not been inside her unit and there are no photographs of the examples he provided.

Based on the aforementioned, I find there to be insufficient evidence to meet the high standard of proof required to prove the presence of exceptional circumstance or the market value rent of similar units that are located in the same geographic area. Accordingly, I find the Landlord's application must fail.

Conclusion

The Landlord has not met the burden of proof required for an additional rent increase. Therefore I DISMISS the Landlord's application, without leave to reapply.

The Landlord is at liberty to issue the required 3 month notice, on the prescribed form, if he wishes to increase the Tenant's rent in accordance with the legislated amount for 2012 at 4.3 %.

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: June 21, 2012.

Residential Tenancy Branch