



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 Order to allow an additional rent increase.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Procedural Issues

Each Witness was given the opportunity to present their testimony at the outset of the hearing. Witness 1, who was on an extension phone with the Tenant, presented her testimony. Upon completion of her testimony I requested Witness 1 to hang up her extension phone. She acknowledged my request.

Witness 2 was muted during Witness 1's testimony and then added back into the hearing after Witness 1 was dismissed. Witness 2 presented her testimony and then disconnected from the hearing.

During the Landlord's testimony I became aware that Witness 1 did not follow my instructions to disconnect from the hearing when I heard her whisper derogatory comments towards the Landlord. I instructed Witness 1 to disconnect immediately and I informed the Tenant that if I heard any other derogatory comments against the Landlord I would disconnect him from the hearing and I would continue in his absence. I then heard Witness 1 call the Landlord a liar again, in the background. The Tenant was advised that no further outbursts would be tolerated. I note that the Tenant managed himself appropriately throughout the remainder of the hearing.

Issue(s) to be Decided

1. Should the Landlord's application be granted to allow an additional rent increase?

Background and Evidence

The Landlord advised that his elderly father (82 years old) owns the rental property and that during the past couple of years he and his brother have begun to manage the property on behalf of his aging father.

The parties agreed that the tenancy began sometime in 2002 or 2003 and that rent, which began at \$800.00 per month, was reverted back to \$800.00 after the Tenant was successful in fighting improper rent increases. The rental property consists of a detached 2 bedroom, one level, home that is approximately 800 sq ft and was built in approximately 1950. The house is situated on a municipal lot that is 46.5 ft x 140 ft, with a detached garage and no fence. The \$800.00 monthly rent includes exclusive use of the house and property, plus a fridge, stove, washer and dryer. The Tenant is responsible to pay all utilities. The house has not been updated since the Tenant has occupied the rental property.

The Landlord submitted into evidence his written statement and a print out of advertisements he had pulled off the internet. He acknowledged that it was difficult to find comparables, as most units in the area are shared property, such as basement suites, duplexes, or apartments. He did however find one property for rent in the same area, about 5 minutes away which was very close to the type of rental house and property the Tenant currently resides at. He pointed out the following with regards to this sample property on 18th Avenue:

SIMILARITIES	DIFFERENCES SAMPLE HAS
Size – 824 Sq ft	\$1500.00 per month (\$700 higher)
1 level	Recently updated
2 bedroom	Fenced back yard
Hardwood floors and tile	Dishwasher
Similar age and decor of the same era	
Same neighbourhood – 5 min drive away	
Same amenities – sky train, bus, park,	

When considering that the above unit has been updated he noted that the Tenant's unit would command about \$400.00 to \$500.00 less per month. That is why the Landlord is seeking to increase the rent to \$1,100.00 per month, and not \$1,500.00. The Landlord stated that they also need to accommodate rising costs such as property taxes.

The Landlord spoke about another one of his samples which was a 2 bedroom, above ground suite which had the landlords living on an upper level. This was a 2 bedroom 1,000 sq ft unit in the same neighbourhood for \$1,400.00 per month. The Landlord submitted that a shared unit with the landlord living on site should have a lower market value rent than a rental unit such as the Tenant's unit which has exclusive possession of the entire house and property.

Both Witnesses provided similar testimony arguing that the Tenants rent should not be increased because the house is:

cold, drafty, unkempt, has no insulation in the walls, has single pain windows which the Tenant has to put plastic on, has an old and poorly maintained furnace which has to be manually started each day, cannot be inhabited and should be condemned.

The Tenant confirmed that he did not submit documentary evidence and that his evidence will be provided by his oral testimony. Throughout his testimony the Tenant continued to try to argue matters pertaining to a fence which were determined in the previous hearing. The Tenant stated that he spoke to neighbours who informed him that the property taxes have not gone up much in the past ten years. Then he spoke about the samples provided in the Landlord's evidence and stated these could not be used as comparables because his house has not been updated and it is not well kept.

The Tenant confirmed that the roof was replaced at the start of his tenancy, or just before hand, and that he has been required to perform numerous repairs and maintenance to the property because the Landlord refuses to spend money on the house. He stated the furnace is over 40 years old and needs service and repair. The Tenant advised that he cannot deal with conflict and that he shuts down when faced with such issues that need to be dealt with so he takes on the repairs himself. The Tenant confirmed that he has not requested repairs in writing and that over the years he has taken it upon himself to provide free labor to get things repaired, such as the electricity.

The Tenant noted the following similarities and differences relating to the comparable rental unit on 18th Avenue:

SIMILARITIES TO SAMPLE ON 18TH	DIFFERENCES SAMPLE HAS
Single 2 bedroom bungalow	Fireplace
Similar size and yard	Fenced back yard (front yard?)
Detached garage	Updated new kitchen with dishwasher
Fridge, stove, washer, dryer	Insulated walls
Similar location	Double pained windows
Utilities not included	Managed by property management

The Tenant stated that he called the advertisements that were provided in the Landlord's evidence and based on his conversations these properties should not be considered similar to his because they are all well maintained, updated, and have property managers who look after the building.

In closing the Landlord stated they do not like to create conflict with the Tenant either and that they attend to requested repairs quickly. He confirmed telling the Tenant they would not be spending a huge amount of money to replace windows or rip out walls to re-insulate the house as that would be unreasonable. He stated that he has never received formal requests for repairs. He noted that when considering the current condition of the rental property \$800.00 is still far below the market value rent. He argued that the house was well kept at the time the Tenant began his tenancy and recognizes that it would have deteriorated over this ten year tenancy; however it is still in good repair.

Analysis

After carefully considering the aforementioned and the documentary evidence submitted by the Landlord I make the following findings based on a balance of probabilities:

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 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.

Projected rent - In this case the current monthly rent is \$800.00 and after applying the 2013 rent increase of 3.8% allowed under the Regulation the Tenants' monthly rent will be **\$830.40**.

Exceptional circumstances - 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.

Upon review of the evidence I find it supports that in this case rent was kept artificially low for the ten year tenancy in part, due to the Landlord's age. The Landlord was approximately 72 years of age when he entered into the tenancy and both his Agent and the Tenant confirmed that neither party engaged in or managed conflict well. Furthermore, when the Landlord's sons began to assist in managing the property they increased the Tenant's rent to bring it up to market value; however, the two rent increases were in contravention of the Act. The Tenant was successful in disputing the two rent increases which resulted in his rent reverting to the original \$800.00 per month.

After consideration of the aforementioned, I find there are exceptional circumstances in this case which have kept the Tenant's rent below market value.

Similar units – In determining market value rent section 23 (1) of the Regulation stipulates that I must consider if the Tenant's projected 2013 rent is significantly lower than the rent payable for other rental units that are **similar** to the Tenants' unit [emphasis added].

Funk & Wagnalls Standard College Dictionary (1974) defines "similar" as:

1. *Bearing resemblance to one another or to something else; like, **but not completely identical** [emphasis added];*
2. *Of like characteristic, nature, or degree; of the same scope, order or purpose.*

Funk & Wagnalls Standard College Dictionary (1974) defines "identical" as:

1. *One and the same; the very same*
2. *Alike or equal in every respect*

Black's Law Dictionary Seventh Edition (1999) defines "comparable" as:

A piece of property used as a comparison to determine the value of a similar piece of property.

As noted above, *Residential Tenancy Policy Guideline # 37* indicates that when determining what is a similar unit I must consider units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

I find that in order to determine market value rent of the Tenant's unit I must consider rents currently being charged for other units in the same geographic area while comparing the other unit's size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community and considering all similarities and differences.

In cases where the units are similar in some areas and not others consideration will be given based on the following reasonable person test and balance of probabilities: (a) if two units were similar in all areas except for size, it would be reasonable to conclude that on a balance of probabilities the larger unit would command a higher market rent than the smaller unit (b) similarly, if rent for one unit included parking and a fenced private yard it would demand a higher market value rent than another unit that did not include parking or a yard and (c) a unit that has undergone cosmetic renovations or updates would command a higher market rent than a unit that has had no updating or renovations.

Same geographic area – In determining the market value rent I have considered the sampling of units provided by the Landlord and accept the undisputed submission that they were all within the same geographic area as the Tenant's unit.

Calculation of Market Value Rent

Upon review of the evidence which included that the Tenant has occupied this property for more than ten years and he has never sought a remedy to the alleged outstanding repairs; I find the submissions provided by him and his two witnesses, (his mother and sister), which indicate the rental unit is uninhabitable and severely unkempt, to be improbable. The Tenant is at liberty to bring forth his own application if the unit requires repairs or maintenance which the Landlord has failed to complete, after being notified in writing.

After consideration of the above definitions, the arguments put forth by each party, and a review of the evidence submitted as samples to be compared with the Tenant's unit, I found sample rents to range from \$1,400.00 to \$2,250.00.

When considering similarities and differences of sample units, I find that the following unit is significantly similar to the Tenant's unit, with noted differences to be considered when determining the Tenant's market value rent.

Significantly similar - The sample Unit on 18th avenue is being rented for \$1,500.00 per month. It is almost the same size, 824 sq feet, is a 2 bedroom house, is of the same age and era, same geographic locations, is a similar lot size, and the tenants are required to pay utilities. The differences relate to cosmetic face lifts or updating of the kitchen, addition of a dishwasher, bathroom, paint, and flooring, a fireplace, and a fenced yard. Notwithstanding the Tenant's submission that this unit had new insulation

and double paneled windows, I find that the photo provided in the advertisement displays what appear to be newer windows; however, there is insufficient evidence to prove that the insulation was changed.

I accept the Landlord's submission that the significantly similar unit would demand a higher market value rent than the Tenant's unit, of approximately \$400.00 or \$500.00 per month, after considering the updating the sample unit has undergone.

Similar units - Notwithstanding the Tenants' arguments that the other sample at E18th Avenue, renting at \$1,400.00 per month, is not similar enough because it is a two bedroom main floor unit with the upper floor being occupied by the landlords; I find the statutory requirement allows me to consider similarities of this type of unit as long as I take into consideration the differences between a basement suite and the entire house when looking at the market rent in comparison to the Tenants' current rent. The significant difference in this sample is that it is approximately 200 sq feet larger than the Tenant's unit and the landlord(s) lives in the upper unit so there is not exclusive possession of the entire property.

When considering the similar unit, I accept the Landlord's submission that a basement suite or main floor suite with the landlords living in the upper floor would command a lower rent than a rental unit providing exclusive possession of the entire house and property in the same geographic area.

To determine the market value rent of the Tenant's unit I calculated the median rate between (A) significantly similar units \$1,500.00 and (b) similar units \$1,400.00, which is **\$1,450.00**.

Then I considered that units which had undergone recent cosmetic renovations and possible upgrades to windows would command a higher rent of approximately \$400.00 - \$500.00 per month. The median rate for improvements would be **\$450.00**.

As per the aforementioned, I find the 2013 market value rent of the Tenant's rental unit to be **\$1,000.00** (\$1,450.00 – 450.00), pursuant to the statutory requirements set out by the Regulation.

Furthermore, I considered that if the Tenant's rent had undergone an annual rent increase in the legislated amount, from 2003 to 2013, his monthly rent would be just over \$1,000.00.

Based on the foregoing considerations I find the Landlord has been successful with their application for an additional rent increase.

Conclusion

The Landlord is hereby granted an ORDER allowing an additional rent increase raising the Tenant's 2013 rent from the legislated increased amount of \$830.40 to **\$1,000.00**.

The Landlord is required to serve the Tenant with three months notice of rent increase, on **the prescribed form**, indicating the amounts as listed above if they wish to proceed with implementing this Order.

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 12, 2012.

Residential Tenancy Branch