



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI, O

Introduction

This hearing dealt with an application by the landlord under section 43(3) of the Act, seeking an order approving a rent increase greater than the amount calculated under section 22 of Residential Tenancy Regulation.

Despite being served by registered mail, as confirmed by a copy of the Canada Post tracking receipt confirming mail sent on November 20, 2012, the tenant failed to attend the hearing.

At the start of the hearing I introduced myself to both of the participants who attended on behalf of the landlord. The hearing process was explained.

Both the landlord and the tenant each had an opportunity to submit documentary evidence prior to this hearing. Evidence had been received only from the landlord. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to an additional rent increase above that permitted by the Residential Tenancy Regulation?

Background and Evidence

The tenancy in question began approximately 5 years ago. The landlord testified that the tenant had previously functioned as a caretaker in exchange for rent. Although the landlord stated that the rent at the start of the tenancy was valued at \$1,200.00, a previous dispute resolution decision found that the rent for the unit was set at \$1,000.00 at the start of the tenancy. It was established that that this rental rate had remained unchanged to the date of that previous hearing held in August 2012.

The landlord testified that the rental rate was never increased during the tenancy because no rent was ever physically collected from the tenant during his role as caretaker. According to the landlord, the tenant received a complete credit for all of his rent as payment for the care-taker position. The landlord testified that the tenant now no longer functions as caretaker as this job has been given to another individual. The new care-taker for the building was present at the hearing.

On the “*Application for Additional Rent Increase*” form, submitted by the landlord, the landlord indicated that the maximum increase allowable under the Residential Tenancy Regulation would be 4.3% for 2012 and, based on this, the allowable increase would be restricted to \$43.00. However, I find that the maximum rent increase allowed under the Regulation for 2013 is set at 3.8% for 2013. I find that any proposed rent increase would not take effect until 2013 and therefore the permitted increase would be limited to \$38.00.

The landlord seeks an additional rent increase under section 23(1)(a) of the Regulation. Specifically, the landlord claims that after the \$38.00 rent increase allowed under section 22, the rent will remain significantly lower than the rents for other similar units in the same residential property and neighbouring residential areas. The landlord is seeking to raise the rent to \$1,400.00 or by 40%. This is an additional 36.2% beyond the allowable amount for 2013.

The landlord provided supporting documentation showing the rents for two adjacent units in the same complex, located on the same side and same floor of the building as the tenant's rental unit. The landlord provided information to show that these units have similar square footage and layout as the subject rental unit. The landlord also provided information about one other comparable in the complex located on the third floor.

The landlord's undisputed evidence confirmed that the 2 other units on the same floor were each rented for \$1,400.00 per month. A copy of the building floor-plan was submitted showing locations of units #104 and #108 immediately adjacent to the subject unit. Also in evidence were copies of tenancy agreements signed in May 2011 and October 2011 that show that the rent being charged for these two units is \$1,400.00 per month.

The landlord testified that no in-suite washers or dryers were permitted and the two adjacent rental units only had use of the common area washers and dryers. The landlord pointed out that the tenant's rental unit had been enhanced by virtue of the fact that he had installed his own in-suite washer and dryer in his unit.

In regard to the third comparable, the landlord also provided a floor plan of the third floor of the building highlighting a suite located above and to one side of the subject rental unit. The document included a handwritten notation stating:

“APARTMENT SUITE #304 RECENTLY RENTED FOR \$1400 PM SAME BUILDING AND SIMILAR DETAILS 2 BR, LIVING, DINING, KITCHEN, DEN, FR, STOVE, D/W, , HOT WATER INCLUDED, ON PARKING N/C. ALSO TWO MORE FAMILY WAITING IN LINE FOR RENT.” (Reproduced as written)

Other than the three specific comparable suites provided, no specific information about what rents were being charged for the remaining suites in this complex had been included in the documentary evidence.

The landlord gave verbal testimony stating that that every other rental unit in the complex is presently rented at a higher rate than the subject rental unit. The landlord's written testimony indicates:

"I do have similar suites available for rent on different floors within the same building that I have no trouble renting for \$1,400 per month."

The landlord did not provide additional documentary evidence, such as a list of all rents being charged for similar units in the building or copies of other tenancy agreements, to verify what actual rental rates were being charged for any of the other units in this four-story complex.

With respect to nearby rental units in the same geographic area, having similar features and square footage, the landlord had provided copies of advertisements and listed some details describing the rental suites.

Analysis

The Residential Tenancy Act allows a landlord to apply for dispute resolution for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase only in "extraordinary" situations. The Residential Tenancy Regulation sets out the limited grounds for such an application.

I find that the examination and assessment of an application for Additional Rent Increase must be based on a reasonable interpretation of the application and supporting material. I find that the landlord has the burden to prove that the rent for the subject rental unit is significantly lower than the current rent payable for similar units taking into consideration the criteria that additional rent increases under this section are to be granted only in exceptional circumstances.

I find that an additional rent increase may be supported by the fact that, after the allowable Annual Rent Increase is calculated under the regulation, the rent for the rental unit is still significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit.

I find that the tenant had an opportunity to appear at the hearing of the application, question the landlord's evidence and submit their own evidence. Had the tenant chosen to do so, the tenant's evidence would have been considered in making a decision.

However, the most important and relevant data in making a determination under this section of the Act relates to the rental rates being charged for comparable suites. I find that this is a key consideration and the tenant would not necessarily be in a position to access such records nor present data about what rents are being charged for other comparable suites occupied by others. In any case, the tenant did not appear nor submit evidence.

In considering an Application for Additional Rent Increase, the arbitrator must consider what rent is payable for similar rental units in the property immediately before the proposed increase is to come into effect.

In this instance, I find that the landlord only saw fit to provide specific details about three other units located in this large complex. Although the landlord stated that the reason for restricting the number of examples was because he wanted to only focus on comparable middle suites located on the same side of the building close to the unit, I find that the landlord could have furnished more information about additional suites in the complex that were similar to the subject suite.

I find that, while detailed data was provided for the adjacent suites 104 and 108 and another single suite located two floors above, (#304), there was no data furnished for any of the other suites in the same proximity nor numerous rental units in this same complex which are presumably located nearby and are likely to be somewhat similar. It is possible that these suites are not exactly the same layout, but I find it likely that some of them would have equivalent floor space and features comparable to the subject suite.

When giving examples, I find it critical that the landlord provide a balanced spectrum of comparable suites and not just include recently rented suites. I find that it is not sufficient for a landlord to claim that a rental unit has a significantly lower rent because of the landlord's recent success at renting out similar units in the residential property at a higher rate.

In addition, I find that to make a case that the subject rent is significantly lower than other comparable suites, it is not sufficient to merely highlight those with the highest rental rates as examples. 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 bring it in line with the highest rent charged for such a unit.

I find that, excluding examples of existing tenancies with a lower monthly rate would also not be appropriate, but there is no way to know if this occurred because there is data missing regarding the other rental units in this complex.

With respect to the information collected about other off-site suites in the nearby geographic area, I find that the information was based primarily on descriptions contained in written advertisements, I do not find that this is sufficiently detailed or complete information that would permit a valid comparison.

Notwithstanding the above, in situations where the landlord has kept the rent low in an individual apartment for a long term renter (i.e., over several years), I find that this factor would be a valid consideration in supporting the landlord's position that an Additional Rent Increase is warranted. I find that this applies to the subject property in the case before me.

That being said, the key objective must be to bring the rent in line with other, similar apartments within the building or in the same geographic area.

According to the Residential Tenancy Guidelines, where there are a number of comparable units with a varying range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range and an arbitrator may approve an additional rent increase that based on an average rate for the similar rental units in the complex or area.

In this regard, I find that the landlord's comparables in the complex apparently only included rental suites that appear to be in the top range of rents being charged. This may or may not be the case, however I find that there is no way to verify what the precise range and the number of units with higher, or possibly lower, rental rates as that being charged for the subject suite. This is because the landlord only supplied limited data, restricted the supporting examples to three units and neglected to provide sufficient details about the actual rent currently being charged for all of the comparable units in this complex.

In light of the above, I find that the landlord has not sufficiently proven that a rental increase of \$400.00 is supported in this case. However, in consideration of the fact that the rent for this suite has remained the static for a number of years, I accept that an additional increase beyond the 3.8% under the Regulation is justified and should be allowed. I therefore find that the landlord is entitled to issue the tenant with a Notice of Rent Increase to raise the tenant's rent in the amount of \$125.00, per month, which is an increase that exceeds the amount that would otherwise be permitted under the Regulation.

Conclusion

The landlord is partially successful in the application and is granted an order permitting the landlord to issue a Notice of Rent Increase of \$125.00 per month.

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: January 11, 2013.

Residential Tenancy Branch