



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER KIWANIS SENIOR CITIZEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AARI

Introduction

This hearing was scheduled for 1:30 p.m. on July 17, 2013 via teleconference call to deal with the landlord's Application for an additional rent increase as provided under section 43 of the Act. Two agents appeared on behalf of the landlord and four tenants of the residential property appeared at the hearing. All parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Issues

The landlord stated that a rental unit was erroneously omitted in completing the Application and requested the Application be amended to include unit #2. The tenant of unit #2 was present at the hearing and stated she had an opportunity to review the landlord's Application and supporting documents and wished to participate in the hearing. I deemed the tenant sufficiently served for purposes of the Act and have amended the Application accordingly. I ascertained the tenant's current rent, start of tenancy date or date of last rent increase, and confirmed the increase the landlord was seeking for this unit was 10.0% as with all other units identified on this Application.

The landlord testified that the tenants named in this Application were served with the hearing documents in one of two ways on June 15, 2013: personal service if the tenant answered the door; or, by sliding the hearing documents under the door of the rental unit if the tenant did not answer the door. Three of the four tenants present at the hearing confirmed receiving the hearing documents in person on or about June 15, 2013 and the fourth tenant confirmed he found the hearing documents under his door on or about June 15, 2013.

Section 89(1) provides that an Application for Additional Rent Increase must be given to the tenants named in the Application either in person or by registered mail or in another manner so ordered by the Director. Section 71(2)(c) of the Act, however, affords me the

authority to deem an Application or other document that was not served in a manner that complies with section 88 or 89 of the Act to be sufficiently served. As I was presented confirmation that sliding hearing documents under the rental unit door was effective I deemed the Applications that were slid under the rental unit doors to be sufficiently served upon those tenants. Therefore, I continued to hear from the parties with respect to the merits of this Application.

The tenants of two rental units did not appear at the hearing but provided written submissions indicating the landlord had issued Notices of Rent Increase on February 21, 2013 to increase the rent from \$404.00 per month to \$445.00 per month effective August 1, 2013. Although I was unable to confirm these tenants served their submission upon the landlord, during the hearing I confirmed that the landlord has already issued Notices of Rent Increase prior to obtaining authorization of the Director for an additional rent increase. I informed the parties that such Notices of Rent Increase were invalid and ineffective as the landlord had not obtained authorization for an additional rent increase when those Notices were issued in February 2013. As such, rent remains at its current rate until such time a Notice of Rent Increase issued on or after July 17, 2013 takes effect.

Issue(s) to be Decided

Has the landlord established a basis for increasing the rent by more than the annual allowable increase as permitted by the Residential Tenancy Regulations? If so, what is the percentage the landlord is authorized to increase the rent and when does such an increase take effect?

Background and Evidence

The Residential Tenancy Regulations limit the percentage the landlord may increase the rent on an annual basis. For rent increases that take effect in 2013 the regulations limit the rent increase to 3.8% of the current monthly rent (herein referred to as the annual allowable increase). The Act permits a landlord to apply to the Director to increase rent by more than that calculated using the annual allowable increase.

The landlord has applied to increase the rents for 36 units of this residential property by a total of 10.0% which is a 6.2% additional rent increase. The 36 units are comprised of 30 studio apartments and 6 one-bedroom units. Current rents payable for the studio apartments are \$404.00 per month (except for one unit with a monthly rent of \$390.00). Current rents for one-bedroom units are \$468.00 per month. The monthly rent includes heat, hot water and cable.

The landlord is a not-for-profit society that provides housing for seniors that are 60 years of age or older. Rents are not subsidized although tenants are at liberty to apply for assistance under the SAFER program if they are low-income.

Below, I have summarized the three grounds the landlord has filed this Application and the tenants' responses.

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

The landlord submitted that studio apartments in buildings of similar age and in the same geographic area rent for \$750.00 to \$775.00 per month, not including cable, and if cable were to be added the monthly equivalent would be approximately \$800.00. In filing this Application the landlord indicated that comparable rent for the studio apartments would be \$750.00 per month.

The landlord submitted that one-bedroom apartments of similar age and in the same geographic area are rent for \$950.00 to \$1,100.00 per month plus cable. In filing this Application the landlord indicated that comparable rent for the one-bedroom units is \$950.00 per month.

The landlord provided several print-outs of apartments for rent in the same geographic area.

All of the tenants present at the hearing acknowledged that their currently monthly rent is significantly below market value and, overall, that the management does a good job in maintaining the property. Although all of the tenants were in support of the landlord's Application to increase the rent by 10.0% for various reasons, two of the tenants, both of whom occupy studio apartments, submitted that the comparable rent for their units is closer to \$600.00 per month after traffic noise and internal noise is considered. These tenants did not provide any documentation to support their position although one of the tenants indicated he was a retired realtor. One of the other tenants submitted that citing \$600.00 per month as being market value for their extremely central and desirable location building was ludicrous. The landlord also responded by stating that the some of the comparable units were also on busy streets and maintained that the comparable values indicated in their Application were reasonable.

2. The landlord has completed significant repairs or renovations to the residential property in which the rental unit is located.

The landlord submitted that the hot and cold water supply lines are copper and being 43 years old are at the end of their useful life. Numerous leaks have occurred recently necessitating several patches and repairs. The landlord submitted that in one day alone there were 6 – 7 water pipe leaks in the old copper piping including a leak in the middle of the night which is very disruptive. The landlord is of the position that until the pipes are replaced new leaks in the piping will continue. The landlord has obtained an estimate to re-pipe the building at a cost of approximately \$400,000.00. This cost which will have to be financed using a financial institution which will result in interest costs and impact cash flow with the loan repayments. The landlord provided a copy of the estimate to re-pipe the building.

The landlord also testified that since October 2012 the landlord has spent over \$36,000.00 in maintenance including several water leak repairs.

The tenants indicated that they have either experienced or are aware of leaking water pipes. The tenants accepted that re-piping the building is a major project that is likely imminent.

3. The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property.

The landlord provided copies of audited financial statements showing that for two of their most recent year-ends the landlord has been operating at a loss for this residential property. The landlord pointed to one expense in particular that has increased significantly from one year to the next, which are their insurance premiums. The landlord attributed the increase in premiums to various factors including: higher risk due to age of the building and water leaks and the appraisal of the building.

The tenants did not refute the landlord's submissions. Some of the tenants acknowledged that operating costs have increased and rents are not covering those increases.

After hearing from all of the parties present at the hearing and upon consideration of everything presented to me, during the hearing I orally granted the landlord's request to increase the current monthly rents by 10.0%. I ordered the landlord to issue Notices of Rent Increase in order to increase the rent for all of the units listed in this Application by

the same percentage of no more than 10.0% and that the Notices of Rent Increase must take effect at least three months after issuance. To illustrate: the landlord may issue a Notice of Rent Increase at any time on or after July 17, 2013 to increase the rents for all of the units listed on this Application by 10.0% and if the Notice is served in July 2013 the new rent would take effect November 1, 2013. The reasons for my decision to grant the landlord's request for an addition rent increase follow in the section below.

Analysis

Residential Tenancy Policy Guideline 37 provides policy statements concerning rent increases developed in the context of statutory interpretation and common law. The policy guideline provides, in part, that:

An arbitrator's examination and assessment of an AARI [Application for Additional Rent Increase] will be based significantly on the arbitrator's reasonable interpretation of:

- ☐ the application and supporting material;
- ☐ evidence provided that substantiates the necessity for the proposed rent increase;
- ☐ the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation; and
- ☐ the tenant's relevant submission.

The Regulations also require that I consider the following factors, where relevant and applicable to the reason for seeking the additional rent increase:

- ☐ the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;
- ☐ the rent history for the affected unit for the preceding 3 years;
- ☐ any change in a service or facility provided in the preceding 12 months;
- ☐ any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;
- ☐ a relevant submission from an affected tenant;
- ☐ a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation;
- ☐ whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;

- ☐ whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;
- ☐ whether an arbitrator has set aside a notice to end a tenancy within the preceding 6 months; and
- ☐ whether an arbitrator has found, in a previous application for an additional rent increase, that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.

Upon consideration of all of the above, where applicable, I provide the following findings and reasons with respect to the landlord's Application for an additional rent increase.

The Regulations provide that rent may be increased by an additional amount where the rents are significantly below market value even after the annual allowable rent increase is applied. Market value is based upon comparisons to similar units in the same geographic area.

As the landlord submitted that all of the units used as comparables are in the same geographic area and include a range of properties including properties of the same age and issues as the subject property, in the absence of verifiable evidence to the contrary from the tenants, I accept that the landlord determined the market values based upon on similar units located in the same geographic area.

Below, I have calculated the monthly rents with the permissible annual rent increase to market values as submitted by the landlord and tenants.

Unit type	Current Rent	Rent with permissible annual increase (3.8%)	Market value per landlord and tenants	Market value as submitted by two tenants appearing at hearing
Studio	\$390.00	\$404.82	\$750.00	\$600.00
Studio	\$404.00	\$419.35	\$750.00	\$600.00
One-bedroom	\$468.00	\$485.78	\$950.00	Not provided

The above chart shows that if the landlord were limited to the 3.8% annual increase the monthly rents for studio apartments would increase to a maximum of \$404.82 and \$419.35 per month. When compared to market rents of \$750.00 or even \$600.00 as

submitted by two of the tenants at the hearing, I find the maximum rents of \$404.82 and \$419.35 for studio apartments remain significantly below market value.

With respect to the market value of one-bedroom units I was provided undisputed evidence by the landlord and no indication from the tenants that the landlord's determination of market value for the one-bedroom apartments was unreasonable. Therefore, I accept that the market value for the one-bedroom apartments is \$950.00 per month and that even after increasing the rent to a \$485.78, as indicated in the chart above, the rent would remain significantly below market value.

In light of the above, I find the landlord has established that the rents are significantly below market value even after applying the annual allowable rent increase of 3.8%. I also find that even after applying the requested 10.0% increase the rents do not exceed market value.

I accept the landlord's undisputed submissions that the additional rent increase is required to offset rising operating costs and anticipated interest costs for financing a re-piping project in the near future.

In light of the above, I grant the landlord's request to increase the rents by a total of 10.0%.

As I have granted the landlord's request based upon the first ground indicated in the Application I find it unnecessary to further analyze the landlord's request for an additional rent increase on the other two grounds contained in the application.

It is important to note that the landlord is limited to increasing the current monthly rent by no more than 10.0% and in calculating the new rent the landlord must not round up to the nearest dollar as done in the Application. For example: if the current monthly rent is \$404.00 the new rent may not be any greater than \$444.40 [$\$404.00 + \$40.40 = \444.40]. The rent increases must be accomplished by issuing a Notice of Rent Increase with an effective date of at least three months after service upon the tenants.

As indicated previously in this decision, Notices of Rent Increase issued in February 2013 for an amount greater than the annual allowable rent increase are invalid and of no effect. The tenants that were served such an invalid Notice of Rent Increase shall continue to pay their current rent until such time the landlord issues a Notice of Rent Increase that complies with this decision.

Conclusion

The landlord's request to increase the current monthly rent by a total of 10.0% has been granted. The landlord may issue Notices of Rent Increase to those tenants identified in this Application increasing the rent up to 10.0% to be effective three full months after receiving the Notice.

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: July 18, 2013

Residential Tenancy Branch

