



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O ARI

Introduction

The landlord applies for an additional rent increase (above the limit set by the Residential Tenancy Regulation), for the subject rental unit.

Issue(s) to be Decided

After a rent increase permitted by the Regulation, is the rent for this rental unit significantly lower than rent payable for other rental units similar to and in the same geographic area as the rental unit, warranting an additional rent increase?

Background and Evidence:

This tenancy began over 24 years ago, on April 1, 1989. The monthly rent when the tenancy began was \$1,250.00. For about 10 years there were no rental increases, but since then the rent has increased, and is currently \$1,640.00 per month. On September 20, 2013, the landlord made application for an Additional Rent Increase, seeking to increase the monthly rent by 6.1%, (\$100.00 per month) to a total of \$1,740.00, on the basis that the current rent is lower than comparable units. The home is a two level house, with 5 bedrooms, located in North Vancouver. For comparison purposes, the landlord provides advertisements for 2 different rental units in North Vancouver.

The first is located off Lonsdale Avenue on W 19th. It is described as a 2 bedroom plus den, detached single family house. It is newly renovated with designer colours throughout. It features a new kitchen, new flooring, new bathroom updates, a large BBQ deck, has a gorgeous view of grouse mountain, and is located beside a quiet creek in a park-like setting. The advertised rent is \$1,950.00.

The second comparable unit is also located in North Vancouver. It is described as having 3 bedrooms on the main floor. It is very clean and spacious, and renovated. The upper tenant would share the home with a lower tenant, and would share the hydro and gas utilities. The advertised rent is \$2,000.00.

The tenant testified that his home is not in a park like setting, but is located on a busy, noisy street. There is constant garbage he cleans up outside, which attributes to the location of a nearby store. The tenant testified that the latest Statistics Canada figures indicate that average monthly rent in North Vancouver city is \$1,288.00, and in District

of North Vancouver is \$1,563.00. The subject home is near the limit of North Vancouver city.

The landlord provided detail about monies invested over the past several years in the home, for an improved balcony, dishwasher, roof, paint, carpets, water heater and stove. These total \$22,630.00. The tenant testified that some of these repairs were long overdue. The carpets and painting for example, had not been done for over 20 years. The tenant did the shopping around for the landlord for the roof repair and the carpets, and saved the landlord considerable money. The tenant notes that the monies spent by the landlord on his home have been for necessities, and that he has also spent significant time and energy to improve the home, such as finding and sealing off the area from where rats were entering the home, and replacing old sinks with better sinks.

Analysis:

Section 43 of the Residential Tenancy Act governs the amount of rental increases. A landlord may impose a rent increase only up to the amount calculated in accordance with the regulations (which is currently 2.2%, or \$36.00) unless a higher amount was agreed to in writing by the tenant (not applicable in this case), or unless the landlord applies for and receives approval for a higher increase (as is applied for in this case).

Section 23(3) of the Residential Tenancy Regulation requires that I consider a number of factors, in whether to approve this application for a rental increase. I have considered all of the identified factors, and since this claim is not made regarding the issue of repairs or renovations made by the landlord, the relevant factors applicable are:

- a. The rent payable for similar units in the residential property immediately before the proposed increase is intended to come into effect;
- b. The rent history in the preceding 3 years;
- c. A relevant submission from an affected tenant.

In assessing rents payable for similar units, I note that the rents alleged by the landlord as comparable are both rents being sought in advertisements, and are not actual rents paid by existing tenants. This raises the possibility that the rents in question may be higher than actual market rents for these units, given that the units are vacant. It is possible that this factor could serve to reduce the comparable rents by some degree.

The landlord submits that the most comparable units is the one located on W. 19th, which seeks rent of \$1,950.00. In the absence of photographs of the different units, it is very difficult to compare the quality of the improvements between these homes. It is my view, based upon the landlord's testimony, that the kitchen and bathroom areas in the tenant's home have been painted, but otherwise cannot be said to have been renovated. The costs for a replacement roof, the new hot water heater, stove and dishwasher, and the paint on the walls are not renovations, but are ordinary costs to replace worn out portions of the home. The tenant's home does not have the view or the setting that is advertised for the home on W. 19th.

I also note that I have no photographs of the interior of the other comparable home, and the advertisement does not indicate where in North Vancouver the home is located.

I have considered all of the above factors, and I also have reviewed Policy Guideline #37, which assists in understanding the policy intention of the legislation governing this issue. I find that the 2 advertisements provided by the landlord are an extremely small sample size from which to make a comparison, and the evidence is scant as to the actual features of the homes. From the evidence before me, I am of the view that the W. 19th property is not really a comparable property, given the reference to the new renovations and bathroom updates, and the superior location.

I also take note of the testimony of the affected tenant, whose budget is stretched by the current rent. He has never missed a rental payment in 24 years, and has never been late with rent. He has expended a significant amount of energy in saving money for the landlord for roofing costs and carpeting costs. He solved the rat infestation problem for the landlord. He has tried to maintain the home in a good condition, and has washed the exterior walls most years. Nevertheless, the home appears shabby, as the exterior has not been painted in over 24 years.

It is possible that the rent is lower than what market conditions in the area would bear. However a possibility is not sufficient to establish the claim, and the burden of proof of the landlord is one of a probability, not a possibility. Based upon all of the above, I find that the landlord has failed to prove, on a balance of probabilities, that the rent currently paid by the tenant is significantly lower than rent paid for other similar rental units, and in the same geographic location. An additional rent increase is not shown to be warranted in this case.

The landlord is entitled to increase the rent only by \$36.00, which is the permitted rental increase. This will raise the rent to \$1,676.00 per month, effective January 1, 2014. The rent will remain \$1,640.00 until that time.

Conclusion

The claim for an additional rent increase is dismissed.

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: November 15, 2013

Residential Tenancy Branch