



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAREB HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ADDITIONAL RENT INCREASE, AARI

Introduction

This matter dealt with an application by the Landlord for an additional rent increase above the allowable annual rent increase of 2.2% for 2014.

The Landlord said she served the most of the Tenants with the Application and Notice of Hearing (the “hearing package”) by personal delivery and a few of the Tenants were served by registered mail on or about March 26, 2014. The Landlord said there are 19 Tenants affected by this application and all were serviced the hearing package. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with the Landlord and her assistant, 7 of the Tenants and a support person for some of the Tenants’.

Issue(s) to be Decided

Has the Landlord shown that if the additional rent increase is permitted the rent payable for the units in question will be more in keeping or lower than rent payable in other similar units in the rental complex and other units in the same geographic area.

Background and Evidence

The Landlord said they purchased the rental complex in June, 2012 and they understood the complex to be an affordable income housing development for senior citizens. The Landlord continued to say that in fact it is a low income rental complex for senior citizens that was operated as a non profit facility prior to them purchasing it. The Landlord said it was their mistake misunderstanding the designation on the rental complex.

The Landlord continued to say that their costs have increased over the last years and she said land taxes are \$20,000.00 now, which the non profit society did not have to pay. As well the Landlord said water costs have increased by 25% and they are

repairing the units as they turn over or when they can make repairs to the units. The Landlord said they understood the building was in need of repairs when they purchased it. The Landlord said it is a slow process but they are making repairs.

The Landlord continued to say that they have applied for an additional 7.8% rent increase on all the units with a rent of less than \$400.00. This included 16 bachelor suites and three 1one bedroom units. One of the one bedroom units has a rent of \$433.00 and the Landlord said this unit's rent was not in line with other similar one bedroom units.

The Landlord said at present if a tenant moves into the building bachelor units are renting between \$500.00 and \$575.00 depending if the tenant pays for heat and water or no utilities. The Landlord said the one bedroom units are renting for \$650.00 with no utilities included. As well the Landlord said another rental complex in the area rents bachelor units which are smaller than the units in this complex for \$550.00 per month and one bedrooms units for \$750.00 to \$800.00 if the units have been updated and \$650.00 to \$700.00 if the units need repairs. The Landlord said this is considerably more than what she is requesting in the additional rent increase.

As a result the Landlord said she is requesting an additional rent increase of 7.8% with the allowable annual rent increase of 2.2% for a total rent increase of 10% for 2014. The Landlord said the increased rents would still be lower than the entry rents to her building and lower than comparable rental units in the area. The Landlord also said they have a waiting list to get into her rental complex.

The Tenants all spoke in response to the Landlord's application:

Tenant M.D. said she was opposed to the rent increase on a principled basis as there is a covenant on the property between the non profit organization that operated the rental complex prior to the Landlord purchasing it and the City. The Tenant did not know exactly what the covenant was, but she thought it was to keep rents low for senior citizens. In addition the Tenant said she was on a fixed income and would find the rent increase difficult to handle.

Tenant E.N. said she did not have much to say other than a rent increase of 10% is too high for her and her unit need repairs.

Tenant M.A. said they are paying sufficient rent for what they are getting as the units need repairs and she too does not like the principle of a 10% rent increase.

Tenant R.M. said he is against the 10 % rent increase because of the repairs need on the property and that there are problems in the rental complex. The Tenant said the Landlord is trying to evict him at the present time.

Tenant R.M said she has lived in the complex for 24 years and she does not want a rent increase because she is on a fixed budget and another increased cost would be very difficult for her.

Tenant J.B. said he is the tenant is the one bedroom who pays more than \$400.00 in rent per month. He said he doesn't believe the rent should go up by 10% as the rental complex was built by and operated by a non profit organization and now that it is owned by a private profit motivated Landlord it is not fair to the tenants to have a 10% rent increase. Tenant J.B. also said if the rent goes up by 10% he and his daughter may look for alternative accommodation.

Tenant D.H. was last to speak and said he had no complains, but a 10% rent increase was too high.

It should be noted that the Tenants did not submit any written evidence for the hearing.

The Landlord said she has spoken with the City and the City understands the issue of the property being designated for low income seniors, but the Landlord said the City told her to apply for the additional rent increase. In addition the City faxed in an unsigned covering letter dated June 13, 2014 and copies of the land use contract between the city and the previous owners, a copy of an amendment to the by-law regarding the development of the rental complex, a copy of the minutes to the meeting amending the by-law for development of the property, copies of publications of the development of the property, a copy of the amended Land Use contract between the City and the previous owner and copies of the acknowledgement of officers of a corporation for the previous owners.

The information provided in the fax from the City confirms that the rental complex is to provide "Low Cost housing rent for Elderly Citizens", but it does not give any details on how that is to be done.

The Landlord said she has been in discussions with the City and is trying to pass on information about income assistance to seniors through the "the Safer program" so that the Tenants may have additional income assistance to pay for the rent increase.

A number of the Tenants said they know about the Safer program and they do not qualify for it.

In closing the Tenants did not add to the testimony already given.

In closing the Landlord said there were a number of Tenants that wrote or told her they agreed with the rent increase of 2.2% and 7.8%. The Landlord said she just received these letters and said she would fax them into the Arbitrator after the hearing.

The Landlord faxed 6 letters from tenants that agreed with the 10% rent increase into the Arbitrator following the hearing.

Analysis

Section 43 of the Acts says: (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Regulation 23 says: (1) A landlord may apply under section 43 (3) of the Act *[additional rent increase]* if one or more of the following apply:

(a) 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;

(b) the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

(i) could not have been foreseen under reasonable circumstances, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

(2) If the landlord applies for an increase under paragraph (1) (b), (c), or (d), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage.

- (3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

(a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;

(b) the rent history for the affected rental unit in the 3 years preceding the date of the application;

(c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;

(d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;

(e) the relationship between the change described in paragraph (d) and the rent increase applied for;

(f) a relevant submission from an affected tenant;

(g) a finding by the director that the landlord has contravened section 32 of the Act *[obligation to repair and maintain]*;

(h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year;

(i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;

- (j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
 - (k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has
 - (i) submitted false or misleading evidence, or
 - (ii) failed to comply with an order of the director for the disclosure of documents.
- (4) In considering an application under subsection (1), the director may
- (a) grant the application, in full or in part,
 - (b) refuse the application,
 - (c) order that the increase granted under subsection (1) be phased in over a period of time, or
 - (d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the residential property.
- (5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

In this situation the Tenants have voiced their concerns about the additional rent increase the Landlord has applied for, but they have not provided any corroborating evidence to support their concerns. Most of the Tenant's mentioned a covenant on the property, but the details of this covenant were not submitted nor did the Tenant's know the contents of the covenant. The Landlord had the City fax in the bylaw information and the Land Use Agreement which covers the development of the property and that the property was to be used for Low Income senior citizens, but the documents give to details on how the rental complex is to operated.

In addition the Landlord has provided comparable rental rates in this complex and rental rates in one other rental complex that is in the same general area and has similar rental units. The Landlord has demonstrated that a bachelor unit in good condition in the rental complex rents for \$500.00 to \$575.00 depending on who pays the utilities and that a one bed room unit in the rental complex in good condition pays \$650.00 plus utilities per month.

The Landlord is requesting a 10% total increase in rental rates for 2014 which will increase the rent of the 19 tenants affected in this application by a low of \$28.75 to a high of \$42.00 per month and the monthly rental for these 19 tenants will increase from previous rental rates from \$296.25 to \$433.00 to the new rental rates of \$325.00 to \$475.00. In comparing the potential rental rates on these 19 rental units to the rental rates on the presently rented units in the range of \$500.00 to \$575.00 for a bachelor and \$650.00 for a one bed room; I find the Landlord has established ground for the additional rent increase. I find the rental rates on the rental units in the Landlord's application are below market rate and do warrant the allowable annual rent increase of 2.2% for 2014 and a onetime additional rent increase in the amount of 7.8% for 2014. I award the Landlord a rent increase for 2014 in the total amount of 10% for the rental units in the Landlord's application.

The Landlord is required to notify the Tenant's of the rent increases in accordance with the Act and regulations.

Conclusion

The Landlord's application for an additional rent increase of 7.8% is granted.

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 16, 2014

Residential Tenancy Branch

