



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RI

Preliminary Issues

At the outset of this proceeding the Tenant introduced herself and spelled her surname. She confirmed that her surname does not include the letter “P”. The Tenant acknowledged that the spelling mistake was a common occurrence. Despite the spelling mistake she knew the application was related to her tenancy and attended to dispute the application. Accordingly, the style of cause was amended to correct the spelling of the Tenant’s surname, pursuant to section 64 (3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution on March 13, 2014, by the Landlord to obtain an Order for an additional rent increase.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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, respond to each other’s testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the statutory requirement of proof to obtain an Order for an additional rent increase?

Background and Evidence

It was undisputed that the Tenant entered into a written month to month tenancy agreement, with the previous owner, which began on October 1, 2007. Her rent began at \$700.00 per month and included utilities. No security deposit was required to be paid. Shortly after the new owner purchased the property, the rent was increased and the Tenant agreed to start paying 1/3 of the total utilities. The current monthly rent is payable on or before the first of each month in the amount of \$752.00 plus 1/3 of utilities.

The Landlord testified that the Tenant has not been issued a rent increase since June 1, 2013 and her current rent is not in line with the current market value rent for the area. She pointed to her evidence which included five advertisements for two bedroom suites and argued that the Landlord feels \$1,000.00 per month is a reasonable rent in comparison. She stated that the comparables submitted were chosen based on square footage, appliances, area, "etcetera, etcetera, etcetera".

The Landlord indicated that the property is currently up for sale. She said that rent was \$700.00 back in 2007 so it has remained low for quite a long time. She noted that the previous owners were not aware of the market value rent so were not applying for regular rent increases. She argued that there have been no significant issues with this rental unit and therefore the market value rent should apply.

The Tenant disputed the Landlord's claim and argued that \$1,000.00 per month would not be a fair rent increase as it is not market value. She argued that all her landlords have always had the opportunity to raise her rent regularly so she should not be penalized because they failed to do so.

The Tenant provided a detailed written response to the application, in her evidence, which argued her main points and included photographs of her rental unit. She argued that her rental suite could not be considered a two bedroom, despite the real estate advertisement, because the second room did not have a clothes closet or a source of heat. She stated that her rental unit is better referred to as 1 bedroom plus a den.

The Tenant refuted the comparable advertisements provided by the Landlord arguing that none of them list square footage, all are listed as two bedrooms, and all the rent amounts include the cost of utilities. Her utilities average about \$123.83 so when added to her rent of \$752.00 her monthly average equals \$875.83. She submitted 4 comparables which more accurately represent her rental unit and range from \$795.00 to \$895.00 per month with utilities included.

In closing, the Landlord submitted that the rental unit was 1024 square feet and has always been described as a two bedroom unit by realtors. She confirmed the description may be a personal opinion.

The Tenant noted that the realtor is marketing the suite as a two bedroom rental income property to encourage a higher selling price.

Analysis

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 the 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.

In this case the current monthly rent is \$752.00 and after the 2014 rent increase of 2.2% allowed under the Regulation is applied, the monthly rent would be **\$768.54**.

When determining the existence of exceptional circumstances it is not sufficient for a landlord to base their claim that the rental unit has a significantly lower rent that results simply from the landlord's recent success at renting out similar units at a higher rate.

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. It is not exceptional circumstances if a landlord fails to implement an allowable rent increase.

In this case the Tenant has not been issued regular rent increases since the onset of her tenancy on October 1, 2007. The undisputed evidence was that the previous owners simply neglected or chose not to issue annual rent increases. There is evidence that the terms of the tenancy were altered to require the Tenant to start paying 1/3 of the costs of the utilities. Accordingly, I find no basis to indicate rent has been kept artificially low; nor is there evidence to prove that the circumstances in this case are exceptional.

For examples of similar units the Landlord relied on advertisements which indicate utilities are included in the cost of rent and a very brief testimony to explain how they should be considered comparables. The Tenant disputed the Landlord's evidence arguing that her unit should be considered a 1 bedroom with a den. Notwithstanding the Landlord's submission that real estate agents refer to the suite as a two bedroom unit, I accept the Tenant's argument that the unit is a 1 bedroom and a den as there is no clothes closet and no source of heat for the second room. The Tenant also provided photographs of her unit and advertisements showing comparable units with lower rents than those provided by the Landlord.

The geographic area of the submitted comparables was not in dispute.

Based on the aforementioned, I find there to be insufficient evidence to meet the high standard of proof required to prove the presence of exceptional circumstances or to prove that market value rent of similar units are significantly higher than the Tenant's rent. Accordingly, I find the Landlord's application must fail.

Conclusion

The Landlord has not met the burden of proof required for an additional rent increase. Therefore I DISMISS the Landlord's application, without leave to reapply.

The Landlord is at liberty to issue the required 3 month notice, on the prescribed form, if she wishes to increase the Tenant's rent in accordance with the legislated amount for 2014 at 2.2 %.

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: May 30, 2014

Residential Tenancy Branch

