



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes RI

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on August 29, 2014, to obtain an Order to grant an additional rent increase, above the legislated amount for 10 rental units.

The hearing was conducted via teleconference and was attended by the Landlord's Director, (hereinafter referred to as the Landlord), the Landlord's wife and 8 Tenants as listed on the front page of this decision. Each party was given the opportunity to be heard; however, E.C. from unit # 101 disconnected from the hearing at 11:35 a.m. prior to his turn to testify. The conference call was unlocked at that time and there was no indication that E.C. attempted to dial back into the proceeding.

At the outset of this proceeding the Landlord submitted that his wife would not be providing testimony for this proceeding and that he would be dealing with this matter. That being said, I should note that throughout the entire hearing the Landlord's wife continued to speak in the background answering each one of my questions to the Landlord who then simply repeated her statements into evidence.

Each person gave affirmed testimony. Upon review of service of evidence the Landlord initially stated that only one package had been served upon each Tenant and the subsequent submissions of documents provided to the Residential Tenancy Branch (RTB) were not served upon the Tenants. The Landlord and his wife were insistent that they had not received any documents or evidence from any of the Tenants.

As each Tenant provided their testimony they indicated that they had received two packages of evidence from the Landlord, one came with the Landlord's application for dispute resolution and the second package was hand delivered by the Landlord's wife and her son. Several of the Tenants testified that they normally dealt with the Landlord's wife or the resident manager around the rental building and not the Landlord.

Those Tenants who had submitted evidence to the RTB testified how and when their evidence was served to the Landlord, his wife, or the resident manager as listed below by rental unit numbers:

#104 served their evidence to the Landlord's address listed on the application via registered mail; I requested that they fax the RTB a copy of the tracking receipt and the Canada Post tracking website information;

#112 served the resident manager in person and obtained his signature and a second copy was served to the Landlord's address listed on the application by courier and she had received delivery confirmation from the courier. I requested that she fax the RTB a copy of the proof of service information;

#204 placed his evidence in an envelope marked attention to the Landlord's wife and placed it in the resident manager's office mailbox; and

#301 personally served the Landlord's wife in August 2014.

After each Tenant provided their oral submissions the changed his initial testimony and said that they had received all of the evidence that had been submitted. He stated that during this proceeding he requested the information from his office assistant and found out that the Tenant's information had been received as indicated above.

Based on the foregoing I found that the Tenants' evidence had been sufficiently served upon the Landlord and that evidence was considered in my decision. As each Tenant confirmed receipt of the Landlord's documentary evidence, that evidence was also considered in my decision.

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, 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 burden of proof to be granted an Order to allow an additional rent increase?

Background and Evidence

The Landlord testified that he has been in this business for over 55 years, in the same general area of B.C., so he was relying upon his experience in determining that the current rents are below market value. The Landlord described the building as being built in 1970 and in relatively good condition when they purchased it on January 28, 2014 for over 7 million dollars. The Landlord argued that they wanted to get the rent up higher in order to make this purchase a good investment.

The Landlord stated that he felt the previous owner was more interested in having good tenants and not higher rent; which the Landlord now submits was the cause of the rents being below what he determined to be market value. The Landlord argued that the normal allowable annual rent increases of 2.2% cannot catch current rents up to market value rent. Upon further clarification the Landlord indicated that he was not aware that the allowable annual rent increase amount changed each year.

The Landlord referenced some advertisements he had seen on the internet and noted that while the Landlord could find units advertised for higher amounts the Tenants could inevitably find units advertised for less. He argued that his best comparisons are the rents being received from rental units they have recently rented. He noted that they rented out a two bedroom unit for \$1,450.00 that had previously been rented for \$890.00, and another 2 bedroom unit was rented in September 2014 for \$1,675.00. The Landlord acknowledged that they had painted those units and changed the flooring prior to re-renting them. He noted that since purchasing this building they have been able to re-rent seven 1 bedroom units for more than what some of these respondents are paying for their 2 bedroom units.

The Landlord stated that they have done some renovations to the lobby by installing new laminate flooring, added pictures and furniture and installed security cameras in the lobby, parking lot, and common areas such as the hallways. He argued that they have incurred expenses in their attempts to provide desired rental units.

The Landlord made three submissions of documentary evidence which consisted of pages 1 through 3 of various six page tenancy agreements, copies of Notices of Rent Increase effective in 2014 for units # 101, 104, 201, 204, 209, 301, 304, 312; a Notice of Rent Increase effective in 2013 for unit # 212; and black and white advertisements printed from the internet.

As there were multiple Tenants in attendance at the hearing they are hereinafter referred to as their unit number, rather than their position as tenant. Each Tenant was

provided an opportunity to respond to the Landlord's submissions, as summarized below.

Unit # 104 argued that the Landlord has not met the burden to prove there are exceptional circumstances that have kept their rents low. They testified that they have occupied their unit for about 5 years and have had a rent increase every year. They noted that the Landlord failed to provide a market survey and he is relying only on "new market rates" which are usually higher. They noted that the Residential Tenancy Branch (RTB) guidelines clearly state that a landlord cannot rely upon rents for recently rented units in the same building to compare to rents for existing tenancies.

Unit #104 pointed to the examples provided in the Landlord's documentary evidence which they argued were not in the same geographic area, were not the same as their rental building because the advertised units were in high rise condo units, and many had hardwood flooring, gas fireplaces, and other amenities such as bike rooms and in-suite laundry which their units do not have. They also noted that many are listed as being a higher square footage or larger than their unit.

Unit # 104 submitted documentary evidence which included: advertisements within their geographic area and of units in a similar 4 level building, photographs of their unit and exterior of their building. Their examples ranged up to \$1,500.00 per month rent.

Unit # 204 submitted that he has resided in the building since 1991 and has had a rent increase every year. He noted that the work that was done to refurbish the lobby was all cosmetic. He argued he has been a long term tenant and noted that no work had been completed in his suite. His documentary evidence consisted of an email statement and a copy of his 2014 Notice of Rent Increase into evidence.

Unit # 304 testified that she has resided in the building for 7 ½ years and has had a rent increase every year. She submitted that she felt this application for an additional rent increase is wrong because the existing tenants have not have work done to their suite. She stated that she understands if someone moves out and the Landlord renovates the unit they can ask for higher rent but that should not be applied to existing tenants. She noted that since these landlords have taken over they have doubled the cost of laundry from \$1.00 to \$2.00 per load for the washer and for the dryer; and they have increased parking from \$25.00 per month to \$40.00 per month.

Unit # 201 stated that she disagrees with this application. She submitted that she has resided in this unit for 9 years 4 months and her rent started at market value when she first moved in. She has had a rent increase each year and questioned how the Landlord

would feel if he was issued a rent increase of over 51%. She clarified the increase in laundry noting that the wash went from \$1.00 to \$2.00 and the dryer went from \$1.25 to \$2.00.

Unit # 301 submitted that he has resided in his unit for 8 years and has had a rent increase each year. He argued that the Landlord's examples are not comparable and are not even close to their unit as they are not in the same area and are a different style of building and different age. He noted that the Landlord's evidence was unclear and very grainy. He submitted evidence of similar comparables in the same area which average \$1,250.00 per month. He argued that his rental unit has the original carpets, flooring, and older appliances from the early 90's and the Landlord's examples are newer or newly renovated units.

Unit # 112 testified that she has resided in her rental unit since November 1, 2013, less than one year. She argued that her rent of \$1,100.00 is closest to market value as her rent was established less than one year ago. She stated that she had done her research prior to moving into this building and felt that the price was reasonable given that the unit was at the rear of the building, did not have a view, and was near a public access. She argued that the Landlord's application is not justified as the examples they provided are nicer apartments with hardwood floors and other amenities they don't have. She submitted that she was told by the Landlord's wife that the security cameras were installed for the Landlord's benefit so they could monitor who was in the building and in the parking lot. She argued that the lobby upgrades were simply cosmetic changes and nothing more.

Unit # 112 submitted documentary evidence which included: copies of comparable units which she argued were in their area and were all advertised for less than \$1,200.00 per month; and a written statement which questioned the validity of the Landlord's submission that they had rented out a unit for \$1,675.00. She noted that she had only ever seen the Landlord's son at that unit had only ever seen and heard a television inside, the curtains are always closed, and no one has ever seen anyone move other furniture inside the unit.

In closing, the Landlord argued that he did not hear any of the Tenants reference the square footage of their units and argued that in construction everything is based on a cost per square foot. He argued that he has friends that are currently paying \$3.22 per square foot for their unit in a new building and these Tenants are only paying \$1.24 per square foot. He noted that their parking agreement is a separate agreement and not tied to the tenancy agreement.

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 rents being charged for similar units in the same geographic area are significantly higher than the Tenants' rent. Section 37 of the *Residential Tenancy Policy Guideline # 37* stipulates that:

- a. An application must be based on the projected rent after the allowable rent increase is added;
- b. Additional rent increases under this section will be granted only in **exceptional circumstances**;
- c. "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
- d. 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.

a. Projected Rent

The Landlord submitted a completed application form for an additional rent increase which listed 10 rental units, their current rent, and listed 2.2 % as the permitted rent increase instead of the dollar amount of the permitted increase for each unit. The application was completed showing the total amount of rent increase sought, by dollar amount, which included the allowable increase of 2.2% instead of listing the additional increase requested over and above the allowable 2.2%. Therefore, there is no clear indication of the projected rent for each unit, after the 2.2% increase is applied.

The application indicates the Landlord is seeking to increase the rents for units # 312, 204, 212, 104, 112, and 304, to a comparable rent of \$1500 per month and has the word "Back" written in the column titled "Rent Before Increase". The remaining four units, #101, 201, 209, and #301, have the word "Front" written in the column titled "Rent Before Increase" and lists a Comparable rent as \$1600. The Landlord did not provide testimony or evidence that would explain the labeling of Front or Back or how those designations related to rents for comparable units.

Upon review of the information provided in section K of the application, which lists the Tenants to whom this application applies and the date of their last rent increase, I note that the Landlord listed some incorrect names and incorrect spelling of Tenants' names, which are listed in the style of cause on the front page of this Decision. Furthermore, the Landlord did not list all of the 2014 Rent Increases in section K that were provided in their documentary evidence.

Based on the above I find the Landlord's application to be lacking as it does not clearly indicate the projected rent for each unit, after the allowable 2.2% rent increase is applied, it does not provide accurate names or spelling of names for all of the respondent Tenants, and it does not list all of the 2014 Notices of Rent Increases.

b. Exceptional Circumstances

When determining the existence of exceptional circumstances it is **not** sufficient for a landlord to base their claim that the rental unit(s) 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.

The Landlord did not submit evidence indicating the length of the tenancies involved for the four units # 101, 209, 212, 312, that were not represented at the hearing. They did however provide copies of notices of rent increases for these units as follows:

101 Rent increase effective November 1, 2012 Rent of \$1035 increased to \$1079
#209 Rent increase effective November 1, 2014 Rent of \$1103 increased to \$1127.26
#212 Rent increase effective November 1, 2013 Rent of \$1074 increased to \$1094
#312 Rent increase effective November 1, 2014 Rent of \$1055 increased to \$1078.21

Although the evidence for units # 101 and 212 indicate rent increases of earlier years, (2012, 2013) and not for 2014, I do not consider that as evidence that no rent increases were imposed in 2013 and 2014 for these units. Rather, when considering the other Tenants' testimony that they all had annual rent increases, I find the above evidence could simply be another example of the Landlord providing evidence that is lacking current information as already noted upon review of their application.

While I appreciate that a business person seeks to be engaged in a profitable business, the Landlord's desire to get the rent up higher in order to make their purchase a good investment, does not constitute exceptional circumstances.

Although the Landlord's opinion is that the previous owner was more interested in having good tenants and not higher rent; I find no basis to indicate rent has been kept artificially low. Rather, the evidence proves that the Tenants have incurred annual rent increases for every year of their tenancies, which indicates the previous owner's actions of constantly increasing rents with the allowable increases, which are directly related to the rate of inflation.

In this case the Tenants who attended the hearing testified that they had all been issued an annual allowable rent increase for each year of their entire tenancies. Of the Six rental units represented at the hearing, one is a long term tenant of over 23 years, another being a short term tenant of less than 1 year; and all others were between 5 and 9 ½ year tenancies which I find to be average or medium length tenancies.

With respect to the Landlord's argument that the 2.2% allowable rent increase cannot catch current rents up to market value rent, I find that that may be the case in long term tenancies, such as the one unit that has had a tenancy for over 23 years.

Therefore, based on the above I find there is insufficient evidence to prove that the circumstances in this case are exceptional for 9 of the 10 rental units for which this application relates.

c. Similar Units

For examples of similar units the Landlord relied upon units in their building which they were able to rent in 2014. Specifically the Landlord testified about units # 309 and # 109 which were rented for \$1450 and \$1675 in the last couple of months and as recent as September 2014. The only similarity that the Landlord discussed was that these were two bedroom units in the same building as all the units listed in this application.

I note that the Tenants' submissions that the Landlord's examples outside of their building were not of the same building age, type, and did not include the same amenities such as fire places, in suite laundry, and bike rooms, went undisputed by the Landlord.

The Landlord's submissions focused more on the construction industry distinction of price per square foot rather than submitting examples of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community, to other examples with higher rents. That being said, the Landlord did not submit evidence of the actual square footage of each unit listed in this application.

As noted above, the Landlords submitted evidence of partial tenancy agreements and not the full documents for units that were allegedly rented at inflated amounts. The Tenants questioned the validity of one of the alleged tenancy agreements arguing that they had never seen anyone move furniture in and have only seen the Landlord's wife's son go in and out of the unit.

Furthermore, I find it reasonable to accept Unit # 112's submission that her monthly rent of \$1,100.00 would closely reflect the market value rent as it was established only 10 months prior to the Landlord filing their application for an additional rent increase.

After careful consideration of the above, I find the Landlord provided insufficient evidence of similar units with a higher market value rent.

d. Same Geographic Area

The Landlord did not respond to the Tenants' submission that the Landlord's examples provided in the evidence were not in the same geographic area as their rental building. The Tenants submitted examples of current advertisements that they argued were in their geographic area and were for much lower rents than the Landlord's examples. In response, the Landlord simply argued that they would naturally provide examples with higher rents while the Tenants would provide examples with lower rents.

The Landlord did however submit examples of units that had recently been re-rented in their building as examples of units in the same geographic area. The Landlord confirmed that some renovations had been completed to those units that had recently been re-rent.

After consideration of the foregoing, I find the Landlord has provided insufficient evidence of rental units in the same geographic area with higher rents.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find there to be insufficient evidence to meet the high standard of proof required to prove the presence of exceptional circumstance and to prove that the rent of the 10 subject rental units are lower than comparable or similar units that are located in the same geographic area. 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.

If the Landlord has not already done so, they are at liberty to issue the required 3 month notice, on the prescribed form, if they wish to increase a Tenant's rent in accordance with the legislated amount. The allowable increase amounts for 2014 are 2.2 % while the amounts for a rent increase that would be effective in 2015 are 2.5 %.

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 6, 2014

Residential Tenancy Branch

