



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 667707 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: Application for Additional Rent Increase

Introduction

This hearing was convened by conference call in response to an Application for Additional Rent Increase (the “Application”) made by the Landlord to increase the rent of three rental addresses greater than the allowable amount, pursuant to Section 43(3) of the *Residential Tenancy Act* (the “Act”).

An agent for the Landlord (the “Landlord’s agent”), the property manager and the owner appeared for the hearing for the Landlord. Two of the Tenants for unit 5, the Tenant for unit 4, and two advocates appeared for the hearing; The Tenants for unit 5 provided documentation giving them authority to act as the agent for the Tenant for unit 2.

Only the male Tenant for unit 5 provided affirmed testimony during the hearing and the female advocate made submissions and presented evidence on behalf of the Tenants. All three of the parties for the Landlord provided affirmed testimony.

The parties acknowledged receipt of each other’s documentary evidence submitted prior to the hearing. Although some of the evidence had been served late as set out in the Rules of Procedure, the parties agreed that they had been able to consider and respond to the evidence. The hearing proceeded with consideration of the parties’ documentary evidence.

The hearing process was explained and the parties acknowledged their understanding of the instructions and had no questions of the proceedings. The parties were given an opportunity to present their evidence and make submissions to 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 tenancy for rental **unit 2** started in August, 2007 on a month to month basis. Rent is payable on the first day of each month in the amount of \$500.00.

The tenancy for rental **unit 4** started in March, 2012 on a month to month basis. Rent is payable on the first day of each month in the amount of \$525.00.

The tenancy for rental **unit 5** started in August, 2007 on a month to month basis. Rent is payable on the first day of each month in the amount of \$500.00.

The Landlord made the Application on the basis that the current rent for the rental addresses is significantly lower than the rent payable for other rental units similar to and in the same geographic area as the Tenants' rental address. In the Application, the Landlord applied to increase the rent payable by the Tenants for unit 2 and 5 from **\$500.00 to \$1,500.00**, and for the Tenant of unit 4 from **\$525.00 to \$1,550.00**.

The property manager explained that the rental addresses were all three bedroom townhomes comprising of 1,400 square feet of living space.

In support of the Application, the Landlord's agent presented and referred to their documentary evidence. The first evidence package involved rental unit comparisons within the same residential complex where the rental addresses are located.

The Landlord provided a list of four properties within the same complex of the same size where the renters were being charged rental rates of \$1,500.00, \$1,300.00, \$1,000.00 and \$900.00. The Landlord also provided the respective tenancy agreements relating to these rental units. The agreements show that the tenancies were recently signed, started in 2014, and are fixed term tenancies where the Tenants are required to vacate the property at the end of the tenancy.

The Landlord's agent submitted that the rent payable by the renters of the submitted agreements was well below the amount of rent being paid by the Tenants for similar units in the same building. The property manager testified that the comparison rental units were not as good as the Tenants' units as the bathrooms did not have ceramic tiles and that the Tenants had maintained their rental units because they were long term Tenants.

The Landlord's agent then referred to evidence relating to comparison of similar rental units in the current rental market. The Landlord's agent had printed off a number of

advertisements of rental units from various websites. He submitted that the advertised rental units were similar to the Tenant's rental addresses. The first rental unit he referred to was in a similar location to the Tenants' building complex and comprised of a two bedroom, one bathroom unfurnished town home, currently on the rental market for \$1,600.00. The Landlord's agent thanked the Tenants for also providing this advertisement in their evidence because it showed that a similar rental property was going for a much higher rent amount than what the Tenants were currently paying. The Landlord's agent also added that this rental unit only has one bathroom as opposed to the one and half bathrooms the Tenants were enjoying.

The Landlord's agent then referred to multiple listings which he had printed from rental websites of rental units within the same city. The amount of rent being charged for the rental units on the advertisements ranged from approximately \$650.00 to \$4,000.00.

The Landlord's agent submitted that these advertisements all showed that renters were willing to pay the proposed rent increase in his Application for similar units that were of a similar size. The Landlord acknowledged that the majority of these advertised rental units were single family homes but submitted that the square footage of the properties advertised was similar to the Tenants' rent addresses. The Landlord's agent also submitted that there existed a big demand from renters who were willing to pay for even one room at a higher price than what the Tenants would be paying for their entire rental unit.

When the Landlord's agent was asked where these rental units were located, he was unable to provide their exact location but submitted that they were within the city and that the city was very small.

In addition, the Landlord's agent cited the Canada Mortgage and Housing Corporation (CHMC) data for average rental units in the area. He testified that the data on the website showed that for a three bedroom town home the average rental rate is \$1,240.00. The Landlord's agent also submitted that the Tenants' rent had never been increased during their tenancies.

The Tenants' advocate questioned the market rental comparison data presented by the Landlord's agent and submitted that these are not suitable comparisons because they do not show what square footage is being rented, what amenities are located nearby, the exact locations of the properties advertised and the condition of each unit. The Tenant's advocate submitted that this would not be a fair comparison to the Tenants' rental addresses.

The Tenants' advocate pointed to the fact that even in the Landlord's comparison of rental units within the same Tenants' residential complex, the lowest rent being paid is \$900.00, and the Tenant's advocate questioned how was it then possible that the Landlord seeks to charge the amounts in the Application which are above this amount.

The Tenant's advocate submitted that the Landlords have claimed that the rental unit is soon to be demolished but question the motive of the Landlord in making this Application if this is true.

The Tenant's advocate submitted that the rental agreements provided in support of the Application are all less than three years old. Furthermore, the Tenants' advocate pointed to the policy guideline to the Act in relation to rent increases and submitted that the Tenants had successfully cancelled a notice to end tenancy for Landlord use of the property in June, 2014; a copy of this decision was provided in written evidence.

The Tenant for unit 5 submitted that the rent increase was horrendous and not warranted. The Tenant testified that there were no rent increases provide to them during their tenancies and imposing such a large rent increase on them all would cripple them financially. The Tenant submitted that they were low income and retired Tenants and that it would not be possible for them to incur such a large expense.

The Tenants' advocate pointed to annotated photographic evidence provided which had been received by the Residential Tenancy Branch from the Service BC office in black and white. However, the Tenant's advocate submitted that the photographic evidence showed that the area surrounding the Tenants' residential complex was dilapidated and set in a rundown area.

The Tenant's advocate pointed to the fact that the Tenants' rental addresses were in better condition than the other units testified to by the property manager simply because the Tenants had cared for them very carefully during their tenancies.

The Tenants' advocate referred to the rental advertisement of the unit submitted by the Landlord's agent for \$1,600.00. In response, the Tenants had submitted a comparison breakdown of their rental addresses against this advertised property. The Tenants' advocate pointed out that this was the only property comparison provided by the Landlord for which an accurate comparison could be made. The Tenant's advocate pointed out that this advertised rental unit was a fourplex and not a townhouse; it housed five new appliances as opposed to two used ones; it had yards and grounds that included maintenance which was not provided for the Tenant's rental addresses, they had undergone major renovations in the interior and exterior of the complex for

which none had been conducted for the rental addresses and the building housing them in the past seven years; and, it was walking distance to the city center where there were amenities, such as shopping malls, as oppose to the Tenants' rental addresses which were over two kilometres away. The Tenant provided a map of the two locations in issues and testified that while the map indicated that they were two kilometres away in distance, this consisted of over five kilometres over distance if driven by car.

The Landlord's agent testified that they were not out to punish the Tenants. He testified that he was a new manager of the building and was seeking to bring the rental amounts up to market value which had not been imposed during these tenancies.

The owner disputed the testimony and evidence regarding the dilapidated condition of the rental building and testified that the residential complex is located in a desirable family area with schooling and that some parts of the area were undergoing regeneration.

Analysis

Section 23(1) of the Residential Tenancy Regulation provides that a Landlord may apply for an additional rent increase under Section 43(3) of the Act.

In this case, the Landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. Policy Guideline 37 to the Act provides particular guidance on factors that an Arbitrator may consider when determining an Application for this reason. Therefore, I refer to this guideline in making my findings on the Landlord's Application.

The policy guideline specifically states that it is not sufficient for the Landlord to solely and primarily reference CMHC statistics on rents in order to prove such an Application. Therefore, I have placed little value on the Landlord's agent's submission that the statistics show that the average amount for similar rental units is more than what the Tenants are currently paying.

Therefore, I turn my mind to the remainder of the Landlord's evidence. I focus firstly on both parties' evidence of the rental market comparisons for similar units. The policy guideline determines similar units as those of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community. 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.

As a result, I determine that the Landlord has failed to provide sufficient evidence that these are similar units that would allow me to compare these advertised rental units with that of the Tenants. I noted that the majority of the rental units advertised were single family homes, cottages, room rentals and large family homes, and not townhomes. Furthermore, I accept the submission of the Tenants' advocate and find that the advertised rental units do not provide sufficient information that allows them to be accurately and fairly compared with the Tenants' rental units. In addition, the Landlord failed to provide the exact location of these units allowing me to determine whether they were in the same geographical area. I do not accept the Landlord's submission that the city is small and therefore this information is not essential information on this basis.

If a Landlord wishes to compare all the units in a building to rental units in other buildings in the same geographic area, they need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for, are comparable. The closest rental unit that I find the Landlord has provided in evidence is the one advertised for \$1,600.00, which the parties made several submissions on during the hearing.

Based on these considerations, I find that the advertisements provided by the Landlord are not sufficient for me to determine that the rental rate can be effectively compared. I accept the Tenants' comparison submission that there are distinct and significant differences between both units; the advertised rental unit sits in a location that is more than one kilometer away and the full advertisement of the suite shows that one is able to walk to the nearby amenities and that **both** the advertised rental unit and the area it sits in have undergone major renovations.

In relation to the Landlord's evidence of the lease agreements provided in support of the rental units in the same building paying higher rents, the policy guideline stipulates that it is not sufficient for a Landlord to claim a rental unit has a significantly lower rent because of the Landlord's recent success at renting out similar units in the residential property at a higher rate.

In examining the rental agreements provided by the Landlord for this hearing, I note that they have been recently signed and they all involve short fixed term tenancies where the Tenants are required to vacate the unit at the end of the tenancy. As a result, I find

that these tenancy agreements are not sufficient and reliable evidence that the rent of other Tenants in the building is comparably higher.

The policy guideline allows an Arbitrator to also consider other factors in assessing an Application for a rent increase. One of these is whether an Arbitrator has set aside a notice to end tenancy within the preceding six months. In this case, I examined a decision submitted by the Tenants for a hearing that took place on June 9, 2014 made by a different Arbitrator. The Arbitrator canceled a notice to end tenancy for the Landlord's use of the property between the same parties, determining that the Landlord had not proved the validity and merit of the notice.

Furthermore, I accept the Tenants' submission that such a large rent increase would have a profound and substantial effect on the Tenants' ability to remain in the tenancy and could result in the ending of the tenancy. This is not the intention and purpose of an additional rent increase application.

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 that the rent of the 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. The Landlord is at liberty to issue the required three month notice, on the prescribed form, if they wish to increase a Tenant's rent in accordance with the legislated amount. The allowable increase in accordance with the Residential Tenancy Regulation for 2015 is 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: December 01, 2014

Residential Tenancy Branch

