



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0588848 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing was convened to address a claim by the landlord for an order permitting a rent increase beyond the maximum allowable pursuant to the Residential Tenancy Regulations. The landlord originally applied against 3 tenants but at the hearing advised that he was withdrawing his claim against one of the tenants. The style of cause in this decision reflects the 2 tenants against whom the landlord proceeded.

At the hearing, the landlord and the tenant D.L. settled the matters at issue on terms which are outlined in the Analysis section of this decision. With the exception of those settlement terms, this decision deals with the landlord's claim as against the tenant M.M. and where I refer to "the tenant" in this decision, I refer to M.M.

The landlord originally sought to increase the rent on all of the allowable grounds for such an application, but because the Act requires that for most types of applications of this nature the rent be increased for each unit by the same percentage, the landlord withdrew his claims on all grounds except for the ground that after implementing the allowable rent increase of 2.5% 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.

Issue to be Decided

Is the landlord entitled to an additional rent increase?

Background and Evidence

M.M.'s tenancy began in 2003 and began at \$525.00 per month. She has been subject to a number of rent increases over the years and currently pays \$740.00 per month for a 3 bedroom townhouse. The rental unit is located in a city of less than 10,000 residents which is a popular destination for mountain winter sports such as skiing and

snowboarding. While no doubt the city has other attractions in the summer which attract tourists and adventure seekers, housing is at a premium in the winter.

The landlord testified that because many renters in the community stay only for the winter months and pay extremely high rental rates, it is difficult to locate units which are available for rent year round at more reasonable rates, which are the units to which it is appropriate to compare the subject unit. Because of this restriction, the landlord compared the rental unit to 3 other units in the residential property which attract rents anywhere from \$1,300.00 per month to \$1,730.00 per month. The tenant agreed that the units to which the landlord compared her unit were indeed identical to her unit.

The tenant currently pays \$740.00 per month in rent. After applying a 2.5% rent increase, the tenant's rent would be increased by \$18.50 to \$758.50. The landlord seeks to raise the tenant's rent to \$1,300.00, which is approximately a 62% increase. The tenant argued that she cannot afford to pay a significant rent increase.

Analysis

The landlord and D.L. agreed that they will enter into a fixed term tenancy agreement under which D.L. will pay \$1,050.00 for one year beginning March 1, 2015 and ending on February 28, 2016. This sum will include power, cable and furniture.

In order to succeed in his claim as against M.M., the landlord must prove that after implementing the allowable rent increase of 2.5% 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.

Residential Tenancy Policy Guideline #37 provides as follows:

It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar units in the residential property at a higher rate. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. To determine whether the circumstances are exceptional, the arbitrator will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

Although the Policy Guideline states that it is not sufficient for the landlord to compare the rental unit to other units in the residential property I accept that there is a dearth of units in the community which are truly comparable as many others reflect unrealistically high rental rates due to renters pursuing short term rentals during the winter. In these circumstances, I find that the landlord had little choice but to compare the unit to others in the subject property and I find that his evidence is sufficient in that regard.

The tenant acknowledged that the units to which the landlord compared her unit were identical. The lowest rent for those comparable units is \$1,300.00, which is \$541.50 more than the \$758.50 which the tenant would be paying after the allowable 2.5% rent increase was implemented. I find that this is significantly lower than other similar properties and I find that the landlord is entitled to an additional rent increase.

Section 23(4)(c) of the Regulations permits me to order that a rent increase be phased in over a period of time. I find that this is an appropriate order in these circumstances given the fact that this is a long term tenancy. I therefore order that the rent increase be phased in as follows:

Phase 1: The landlord will give the tenant a notice of rent increase to raise the rent from \$740.00 to \$926.00. This rent increase will take effect 3 full months after the landlord serves the notice on the tenant. For example, if the landlord serves the notice on the tenant in the month of February, the date on which the increased rent is payable will be June 1, 2015.

Phase 2: Not earlier than one month after the rent is raised to \$926.00 per month, the landlord may give the tenant a notice of rent increase to raise the rent from \$926.00 to \$1,113.00 per month. For example, if the landlord implemented Phase 1 by giving the tenant notice in February with the rent increase taking effect in June, the landlord cannot serve the second notice of rent increase until July. This rent increase will take effect 3 full months after the landlord serves the notice on the tenant. For example, if the landlord serves the notice on the tenant in the month of July, the date on which the increased rent is payable will be November 1, 2015.

Phase 3: Not earlier than one month after the rent is raised to \$1,113.00 per month, the landlord may give the tenant a notice of rent increase to raise the rent from \$1,113.00 to \$1,300.00 per month. For example, if the landlord implemented Phase 1 by giving the tenant notice in February with the rent increase taking effect in June and implemented Phase 2 by giving the tenant notice on July with the second rent increase taking effect in November, the landlord cannot serve the third notice of rent increase until December. This rent increase will take effect 3 full months after the landlord serves the notice on

the tenant. For example, if the landlord serves the notice on the tenant in the month of December, the date on which the increased rent is payable will be April 1, 2016.

Conclusion

The claim against D.L. is settled on the terms outlined above. The landlord's claim for an additional rent increase as against M.M. is granted and will be phased in according to the schedule outlined above.

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: January 29, 2015

Residential Tenancy Branch

