



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 9 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.

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

E.C.'s rental unit

E.C. resides in a 1 bedroom unit and currently pays \$575.00 per month. 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 just 1 other unit in the residential property. This unit is rented at \$900.00 per month and the occupant is on a one year lease agreement. The landlord testified that cable valued at \$75.00 per month is included in this occupant's rent which makes the rent equivalent to \$825.00 per month. The landlord testified that the unit is identical to the subject unit in every way, having the same carpet, fixtures and all other features. The comparable unit has not been renovated, nor has the subject unit. E.C.'s agent argued that the unit was not comparable but could not explain why. He stated that he believed the occupant in the comparable unit may have been desperate for housing and therefore paid much more than the market rate.

E.C. currently pays \$575.00 per month in rent. After applying a 2.5% rent increase, her rent would be increased by \$14.38 to \$589.38. The landlord seeks to raise E.C.'s rent to \$725.00, which is approximately a 26% increase.

O.F.'s unit

O.F. resides in a bachelor suite in the same resort city and building as E.C. and he pays \$575.00 per month. The landlord testified that in the buildings he owns, there are only 3 other bachelor suites and only one is comparable as it is in the same building and identical in its layout. The landlord testified that the comparable unit is in "better shape" than the rental unit and stated that the tenant there pays \$725.00 per month. In the other building, the suites are larger, updated, come with 2 parking stalls and rent includes power and cable, so these are not comparable.

Analysis

In order to succeed in his claim, the landlord must prove that after implementing the allowable rent increase of 2.5% the rent for the rental units are significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, these rental units.

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.

With respect to O.F.'s unit, the landlord acknowledged that the one unit to which he compared the rental unit was not truly comparable as it was in better shape. As the landlord has not provided a comparable unit with which I can compare the rental unit, I find he has not met his burden of proof and I therefore dismiss the claim as against O.F. for insufficient evidence. The landlord may raise O.F.'s rent by 2.5% in 2015 provided he does not implement that increase less than one year after O.F.'s last rent increase.

Although the agent for E.C. argued that the suite to which the landlord compared the rental unit is not comparable, he did not explain why it should not be considered comparable. In the absence of conflicting evidence, I accept the landlord's testimony that the comparable suite is identical in every way to E.C.'s suite and that he is renting to an occupant under a 1 year lease. E.C.'s agent argued that this occupant may have been desperate and have paid more than market value for the unit. In the absence of evidence that this was the case, I find it more likely that the comparable unit was rented for what the market would bear. I find it unlikely that a tenant would pay substantially more than market rent if there were other units available. The lack of housing stock is often what drives an increase in rental prices and it is likely that this is what occurred in this case.

I find that the comparable unit presented by the landlord is truly comparable to the rental unit.

The occupant of the comparable unit pays the equivalent of \$825.00 per month, which is \$210.00 more than the \$615.00 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.

The landlord may give E.C. a notice of rent increase to raise the rent from \$600.00 to \$825.00 per month. This rent increase will take effect 3 full months after the landlord serves the notice on E.C.. 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.

Conclusion

The claim against O.F. is dismissed. The landlord's claim for an additional rent increase as against E.C. 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: January 30, 2015

Residential Tenancy Branch

