Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER KIWANIS SENIOR CITIZENS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing was convened upon the application of the landlord seeking an additional rent increase for twenty nine units in a large residential building that assists in housing low income seniors.

The landlords (Landlord GD and Landlord CI) and the landlord's caretaker attended the hearing. Six tenants attended the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The tenants present (Tenant SM, Tenant HC, Tenant EF, Tenant DL, Tenant MH, Tenant FB) all confirmed that the landlord's caretaker provided them with an application for an additional rent increase on November 13, 2014. I accept, based on their own testimony, that Tenant SM, Tenant HC, Tenant EF, Tenant DL, Tenant MH, and Tenant FB (collectively referred to as "the six tenants") received the landlord's application for dispute resolution hearing for rent increase. The landlord's caretaker testified that he served the remaining tenants named in this application by placing the notices under their doors.

Section 89 (1) of the *Residential Tenancy Act* outlines how an application for dispute resolution for a monetary award must be given by a landlord to a tenant which include the following:

> *(a) by leaving a copy with the person; …*
>
> *(c) by sending a copy by registered mail to the address at which the person resides … OR*
>
> *(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;…*

Unless an Arbitrator appointed under the *Act* has made an order allowing substituted service of an application for dispute resolution, there are only three methods of service when a landlord is serving a tenant with a dispute resolution package. Residential Policy Guideline No. 12 provides that, when a landlord is personally serving a tenant, service requires physically handing a copy of the document to the person being served. Failure to serve documents in a way recognized by

the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

I find the following 20 tenants (Tenant EB, Tenant HY, Tenant BJ, Tenant DC, Tenant MH, Tenant NB, Tenant MF, Tenant BU, Tenant FC, Tenant NH, Tenant PC, Tenant LG, Tenant MS, Tenant VM, Tenant BE, Tenant JQ, Tenant DM, Tenant IL, Tenant MG, Tenant JM) were not served with the landlord's dispute resolution hearing package in accordance with the *Act*. As a result of lack of proper service, I find that the application with respect to the aforementioned tenants (hereafter referred to as "the 20 tenants") dismissed without leave to re-apply.

Issues to be Decided

Is the landlord entitled to an additional rent increase for this rental premises, specifically regarding of the six tenants?

Background and Evidence

Landlord GD testified that their application is based on the depletion of their contingency fund as a result of repairs to the pipes throughout the residential premises. Landlord CI testified that the landlords' need to increase the rent is due to a need to replenish their contingency fund as they have further repairs to undertake.

The landlord's caretaker, who is also a tenant in the building, testified that he has been in his role for approximately 15 years. He testified that the building is at least 50 years old. He testified that the problem that has finally been addressed with regard to the leaks, and the plumbing, has been an ongoing problem in all of the time he has worked at the building.

Landlord GD confirmed the testimony of both the landlord's caretaker and Tenant HC that there have been standard annual rent increases over time. Tenant EF testified that there has been more than one application by the landlord in the past several years for an additional rent increase. Tenant EF testified that, from his knowledge, the rent paid by the low income tenants in the residence is in keeping with others in the area.

Tenant EF and other tenants present testified that the landlord applied last year for an additional rent increase. Last year, the plumbing work had not been done but, according to more than one tenant, the landlord brought an application to increase the rent based on estimates for the work. That application was dismissed.

Tenant FB testified, on behalf of several tenants, that the tenants who have had rent increase notices served to them are all long term tenants and seniors. Landlord DG testified that new tenants were not saddled with this rent increase as they have received their housing at market cost.

Under the *Residential Tenancy Act* ("the *Act*") and the *Regulation* issued pursuant to the *Act*, the landlord would be able to obtain a rent increase of 2.5% per month without applying for an additional rent increase for 2015. The rent for the units within the building that the landlord seeks to raise range from $399.00 per month to $475.00 per month, according to the records provided by the landlord dated November 2013. The tenants in attendance testified that their rent has been raised annually since November 2013. The landlord applied to raise the rent for specific units in this building by 15% per month, the allowable 2.5% plus an additional 12.5%. For the tenants named within the landlord's application, this would result in an increase in monthly rent from $59.85 to $71.25 each month.

Analysis

In accordance with the *Residential Tenancy Regulation*, a landlord may impose an Annual Rent Increase up to, but not greater than, the percentage amount specified in the Regulation for 2015 (i.e., 2.5%).

The *Act* allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. The policy intent is to allow the landlord to apply for dispute resolution only in "extraordinary" situations. The circumstances under which the landlord sought to increase the rent, for repairs to plumbing in an aged building, are not exceptional or unusual in any way with respect to residential tenancy matters.

The landlord has several burdens to meet to be successful in this application. First, the landlord must provide evidence of the significant repairs and the cost of those repairs. The landlord has provided evidence, in a variety of forms, to show that the renovation was completed and the landlord paid for the cost of that renovation. Second, a landlord must show that the repairs or renovations could not have been foreseen in reasonable circumstances. The testimony of the landlord's caretaker, Landlord CI and several of the tenants who attended this hearing raises the contrary position. In fact, the undisputed testimony at the hearing was that the pipes, plumbing and many other maintenance issues have been problematic and remained unaddressed for at least 15 years.

The landlord is also required to show that this problem with plumbing and leaks will not recur within a time period that is reasonable for the repair or renovation. While the landlord presented a copy of the 10 year warranty with respect to this renovation/plumbing work, the landlord also testified that the least expensive alternative was chosen to fix a longstanding, large problem. Even if the landlord was able to prove that these repairs were not foreseeable, I do not find that the landlord can show that this problem will not recur.

Section 23(1) of the *Regulation* sets out the limited grounds for an application for an additional rent increase if one or more of the following apply:

(a) 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;

(b) the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

(i) could not have been foreseen under reasonable circumstances, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

Section 23(2) of the *Regulation* states "If the landlord applies for an increase under paragraph (1) (b), (c), or (d), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage."

The landlord applied for an additional rental increase under paragraph 23 (1) (b) of the *Regulation* based on the significant repairs to the residential property in which the rental unit is located. The landlord submitted that these repairs could not have been foreseen under reasonable circumstances, and will not recur within a time period that is reasonable for the repair or renovation.

The landlord testified that he has not applied with respect to all of the rental units in the residential property. He testified that the 'new' tenants have come into their tenancy at a higher rental amount. He testified that he has applied with respect to units that, he believes, are significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area. The tenants present at this hearing dispute this claim. I note that the landlord has not made any application under paragraph (a) or provided any evidence to support this type of claim.

Under the *Regulation*, a landlord may not be selective in imposing a rent increase for renovations to the building under paragraph 23(1)(b) as above. If a landlord applies for an increase under paragraph (b), as the landlord has done here, the landlord must make a single application to increase the rent for ALL rental units in the building by an equal percentage.

Landlord GD's testimony indicated that this provision of the *Act* was not adhered to as 29 units within a larger building were targeted for rent increases.

Given all of the evidence, and the requirements provided under the *Residential Tenancy Regulation*, I find that the landlord has not met the burden of proof in applying for a rental increase. Therefore, I dismiss the landlord's application.

Further, the landlord is not entitled to recover the filing fee as he was not successful in this application.

Conclusion

I dismiss the landlord's application for an additional rent increase against the 20 tenants with leave to reapply.

I dismiss the landlord's application for an additional rent increase against the six tenants.

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: March 26, 2015

Residential Tenancy Branch