



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”) for an additional rent increase.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Is the landlord entitled to an additional rent increase?

Background and Evidence

The tenancy began in June 2008. Current Rent in the amount of \$2,096.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants.

The landlord testified that they seek an additional rent increase that is greater than the annual allowable rent increase because the rent for the unit identified is significantly lower than the rent payable for other rental units in the same geographic area.

The landlord testified the rental premises is an old character home, which is approximately 100 years old, which consists of four rental units. The landlord stated that the rental unit identified is 1380 square feet and is the main unit, which consists of 3 bedrooms, 1 bathroom, a large deck, 1 car garage and a carport.

The landlord testified that the identified rental unit has been upgraded several times in the last 40 years. The landlord stated that the appliances, and laminate flooring are about 10 years old, although the kitchen flooring was replaced about 4 or 5 years ago.

The landlord testified that the Canadian Mortgage and Housing Corporation indicates that the median rent for a 3 bedroom in this geographic area is \$2,350.00. The landlord stated that the unique character of this property having a large deck, laundry facilities, carport, and garage make the new rent proposed of \$2,650.00 per month realistic.

Submitted as rent comparable are as follows:

Example #1	Same general area as subject property.
Rental unit – ground floor	Furnished 2 bedroom, 1.5 bathrooms, in suite laundry, two secured parking spaces, hardwood floors with a 400 square foot patio
Square footage	1060
Rent	\$2,700.00

Example #2	Same general area as subject property.
Rental unit – penthouse suite	Furnished 2 bedroom, 1 bathroom, off street parking
Square footage	650
Rent	\$3,500.00

Example #3	Same general area as subject property.
Rental unit – not identified	4 bedroom, 2 bathrooms, laundry on site, detached garage
Square footage	2300
Rent	\$3,500.00

Example #4	Same general area as subject property.
Rental unit – top two floors of house	4 bedroom, 2 bathrooms, includes utilities, cable, Wi-Fi
Square footage	2000
Rent	\$3,700.00

Example #5	Same general area as subject property.
Rental unit – main floor	3 bedroom, 1 bathroom, modern kitchen, addition appliances included dishwasher, in-suite laundry, electricity and gas included, off street parking
Square footage	1300
Rent	\$2,450.00

Example #6	Same general area as subject property.
Rental unit – garden level	3 bedroom, 2 bathroom, extensively renovated in 2013, in suite laundry, street parking
Square footage	1150
Rent	\$2,550.00

Example #7	Same general area as subject property.
Rental unit	3 bedroom, 1 bathroom, new kitchen with maple countertops, new appliances, New bathroom, with double vanity, tiled shower and tiled floors, street parking
Square footage	1227
Rent	\$2,595.00

Example #8	Same general area as subject property.
Rental unit - main floor	2 bedroom, 2 bathroom – bedrooms are semi furnished, in suite laundry, newly renovated kitchen with stainless steel appliances, large deck, lots of street parking and carport
Square footage	1400
Rent	\$2,400.00

Example #9	Same general area as subject property.
Rental unit – upper level	3 bedroom, 1.5 bathrooms, large kitchen, dishwasher, shared laundry, large deck, extra storage, rent includes, heat, hot water, power, street parking
Square footage	1200
Rent	\$2,395.00

Example #10	Same general area as subject property.
Rental unit – main floor	3 bedroom, redone main floor, new appliances, flooring, paint, kitchen cupboards or dishwasher, coin laundry, yard
Square footage	1225
Rent	\$2,595.00

The tenants testified that the landlord has not provided comparisons to similar units. The tenant stated that they have done a room-by-room measurement and the square footage of the rental unit is not 1380, rather it is 1065 square feet.

The tenant testified that no upgrades have been completed to the unit since their tenancy began in 2008. The tenant stated that the kitchen has no dishwasher, power outlets and the cabinets do not shut properly, many of the drawer guides are broken, and the appliances are old. The tenant stated a cloth dryer is also not included in rent.

The tenant testified that the rental unit is not 3 bedrooms; rather it is 2 bedrooms and a den. The tenant stated the third room is very small 6 x 9 and has no closet.

The tenant stated that the Canadian Mortgage and Housing Corporation cannot be used as an accurate guide as the median rent would likely fall between a 2 bedroom and a 3 bedroom which the range would be between \$1,650.00 and \$2,350.00. The tenant indicated their current rent of \$2,096.00 is within the appropriate range.

The tenant testified that the comparisons in examples #1 and #2 cannot be considered similar, as they are furnished units.

The tenant testified that the comparison in examples #3, and #4, cannot be considered similar as comparisons as they are 4 bedroom units and the square footage is significantly more.

The tenant testified that the comparison in example #5 is a 3 bedroom, includes electricity, a dishwasher, and a modern kitchen. The tenant stated that their rent does not include electricity or dishwasher. The tenant stated that they are not sure how old their kitchen cabinets are; however, they are not modern and in need of repair.

The tenant testified that the comparison in example #6 is 3 bedrooms and has two full bathrooms, and the rental unit was renovated in 2013. The tenant stated their bathroom is very small and the fixtures are dated. The tenant stated that the comparison is also located two blocks from the water and they are seven blocks from the water.

The tenant testified that the comparison in example #7 is 3 bedrooms, was fully renovated which included new appliances, marble counter tops, and a double sink in the bathroom.

The tenant testified that the comparison in example #8 is brand new 2 bedrooms, 2 full bathrooms; semi furnished and has a deck with views.

The tenant testified that the comparison in example #9 is a 3 bedroom, 1.5 bathrooms and has a dishwasher and the utility of power is included in rent.

The tenant testified that the comparison in example #10 is a 3 bedroom, recently remodeled unit, with new appliances which included a dishwasher and cloth dryer.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the landlord bears the burden of proving any claim for a rent increase that is greater than the prescribed amount.

The Residential Tenancy Regulations provide circumstances where a landlord may seek to increase the rent greater than the prescribed rent increase. In this case, the landlord is seeking to increase the rent on the basis the rent payable for the rental unit, after applying the prescribed rent increase, remains significantly lower than the rent payable for similar units in the same geographic area.

Residential Tenancy Policy Guideline 37 provides the policy intent of the legislation with respect to rent increases. The policy guideline provides an interpretation of the terms “similar units” and the “same geographic area”, as follows:

“Similar units” means rental units 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.

In this case, I accept the comparable examples the landlord has submitted as evidence are within the same geographic area.

However, I am not satisfied the units are comparable for the following reasons. In the landlord’s written submission they indicate that the identified rental unit is 1500 square feet. In the landlord’s testimony they indicated that the rental unit is 1380 square feet. The tenant’s testimony was the rental unit was 1065 square feet. Between the three estimates there is a discrepancy of up to 435 square feet.

While the discrepancy between square footage may be interior measurements verses exterior measurements of the rooms, there was no documentary evidence from the landlord to support the actual square footage, such as house plans or appraisals.

Based on the evidence presented by both parties there is no way for me to determine if the identified unit is a comparable size to the comparisons submitted as evidence.

Further, the landlord's evidence was that the identified unit is 3 bedrooms and has used the Canadian Mortgage and Housing Corporation to show a median rent for the geographical location. However, the tenant's evidence was that the identified unit is 2 bedrooms and a den. There was no documentary evidence from the landlord to support that the identified rental unit is 3 bedrooms, such as house plans, permits from the municipality or an appraisal showing the identified unit is 3 bedrooms.

In most cases if a room does not have a closet it is normally not considered a bedroom. Therefore, based on the evidence, I find that I cannot determine if the identified unit is a 2 bedroom or 3 bedroom rental unit to make a reasonable comparison.

The Canadian Mortgage and Housing Corporation submitted, as evidence does not provide any information on the value of a den. Although it could be reasonable that the den would increase the value of the rental unit, this may have already been taken into consideration when the Canadian Mortgage and Housing Corporation, calculated the median rent for 2 bedroom rental units.

Further, comparison with 4 bedrooms, units with additional bathrooms, furnished or semi furnished units are not similar.

Further, rental units that have had their interiors renovated, such as kitchens, bathrooms, and flooring would command a higher rent rate as this would increase the ambiance or feel for the unit. It appears from the evidence that little renovations or improvements have been completed to the identified unit in ten years.

Although I accept having a garage and a carport would command a higher rent when compared to similar units without these items. However, I note in several comparisons that were submitted as evidence, off street parking was identified; however, this could mean a carport, a garage or other means of secured parking, no evidence was provided by the landlord as to what off street parking was for these comparisons.

Based on the above, I find the landlord has not submitted sufficient evidence to meet their burden of proving their claim for a rent increase that is greater than the prescribed amount. Therefore, I dismiss the landlord's application.

Conclusion

The landlord's application for an addition rent increase that is greater than the prescribed amount is dismissed.

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: May 25, 2015

Residential Tenancy Branch

