



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O (AAR)

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an additional rent increase.

The landlord and both tenants attended the hearing, and all parties gave affirmed testimony. The parties were also given the opportunity to question each other about the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Should the landlord be permitted to increase the rent by a higher amount than permitted by the *Residential Tenancy Act* and regulations?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2011 and has reverted to a month-to-month tenancy. The tenants still reside in the rental unit. Rent in the amount of \$1,400.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$700.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that rent has not been increased since the beginning of the tenancy, and had a discussion with one of the tenants about an increase to \$1,750.00 per month. The tenant had asked if that was the amount permitted, and the landlord replied that an application could be made to increase it to that amount. The tenant

replied that the tenants were getting a good deal so it wasn't a surprise and the landlord made the application for an additional rent increase to the Residential Tenancy Branch.

The rental unit had also been listed for sale and the landlord received some negative feedback and testified that if it doesn't sell, the landlord will have to raise the rent.

The landlord also testified that the rental unit is a full house containing 3 bedrooms, 1 ½ bathrooms, is 1,350 square feet, with a double garage, and has provided copies of some advertisements from a local advertising website as comparisons to the rental unit, as follows:

- \$2,350.00 per month for a 2 bedroom, plus den, 2 bath home, same area in the city as the rental unit, 1,660 square feet;
- \$2,000.00 per month for a 3 bedroom, 2 bath home, same area in general, abit larger than the rental unit at 1,700 square feet;
- \$1,850.00 per month for the upper level of a home, 3 bedrooms, 2 baths,, shared garage, and utilities included, 1,400 square feet, not sure of location;
- \$1,700.00 per month for a 3 bedroom, 2 bath home which appears to have a dingle garage and is located downtown;
- \$1,680.00 per month for a 3 bedroom, 1 bath home within the same area with a separate entrance.

The landlord relies on Section 23 (1) of the *Residential Tenancy Act*, and seeks an order permitting the landlord to increase the monthly rent from \$1,400.00 per month to \$1,750.00 per month.

The first tenant testified that some of the comparables provided by the landlord include utilities, which would compensate for the increase in rent. The tenants currently pay all utilities, which amount to about \$40.00 per month for water and sewer, \$100.00 per month for natural gas, \$100.00 per month for electricity, about \$50.00 per month for wifi and \$100.00 per month for cable.

The tenant also testified that the first advertisement provided by the landlord is a home on a no-through road, and the rental unit is on a busy road. Although the advertisement doesn't mention utilities, it mentions maple cabinets so it is likely that renovations have been done. The tenant's current rental unit has had the flooring replaced, and a new fridge and stove, but considering the information and the fact that the home in the advertisement is in a different area of the city, the tenant submits that it's not a good comparison to the rental unit.

The landlord's second advertisement is for a home that is 350 or 400 square feet larger, so is not a good comparison.

The tenant submits that in fairness rent should not be raised by the amount that the landlord seeks.

The second tenant testified that the flooring was replaced in the rental unit after the tenants had moved in. The landlord wanted to do it prior, but the tenants had to move, so the landlord completed it after the tenants moved in.

Appliances were replaced about 6 months ago.

Analysis

The regulations to the *Residential Tenancy Act* states:

Additional rent increase

23 (1) A landlord may apply under section 43 (3) of the Act [*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.

Section 43 of the *Act* states:

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3),

or

- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

I have reviewed the advertisements provided by the landlord, and although the tenants have not provided proof of the amount of utilities that they currently pay, the landlord did not dispute the fact that utilities are not included in the rent, and I find that the amounts for utilities stated by the first tenant are reasonable. Rent is currently \$1,400.00 per month, and in this case, I am not satisfied that the landlord has established, considering the geographic locations and utilities, that the rent for the rental unit is significantly lower than the rent payable for other rental units, and the landlord's application is hereby dismissed.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: June 10, 2015

Residential Tenancy Branch

