



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This is the landlord's application for an additional rent increase pursuant to subsection 43(3) of *Residential Tenancy Act* (the Act). The landlord seeks to increase the tenant's rent to \$1,626.00: a total rent increase of 26.5%.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by its agent. The agent confirmed that she had authority to act on behalf of the landlord.

The agent testified that the landlord served the tenant with the dispute resolution package (including all evidence before me) on 29 April 2015 by registered mail. The tenant confirmed receipt. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The agent confirmed receipt of the tenant's evidence.

Issue(s) to be Decided

Is the landlord entitled to an order allowing it to increase rent beyond the prescribed amount?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord applies to increase rent by 26.5%. This includes the allowable rent increase of 2.5% and an additional rent increase of 24%.

This tenancy began in 1998. Current monthly rent is \$1,288.00.

Both the agent and the tenant testified that it is difficult to find comparators in the geographical area of the rental unit. The tenant testified that the only three-bedroom units currently for rent were furnished units.

The landlord has commissioned two appraisal reports in respect of market rent for the units within the residential property.

The first report was completed in 2012. I was not provided with a copy of this report. The agent testified that this report set out that the monthly market rent for the rental unit was \$1,730.00.

The second report was completed in August 2014 (the August Report). I was provided with a copy of this report. The report was authored by an employee of a commercial appraisal service. The August Report was not specifically created for this application. The August Report set out that at that date monthly market rent for the rental unit was \$1,762.20. The agent testified that there have been no material changes to the rental unit or residential property since the August Report was prepared. The landlord's board of directors ratified increases of market rent to 8.4% less than the recommended market rents in March of this year.

The copy of the August report I was provided included pages 1-4 and 32-40. The agent testified that the missing pages were photographs of the interior of other units in the building. The agent testified that the rental unit was not inspected by the August Report appraiser.

The report at page 32 sets out the appraiser's approach:

Research involved examining the characteristics of a total of 6 apartments offered for rent in the immediate area (3 one bedroom and 3 two bedroom). Approximately 12 more were analyzed but not used in the report. The comparable used are the most comparable for the subject assignment.

...

After the required adjustments have been applied to the rental comparable, the prices per square foot was then calculated. The midpoint of these ranges was then selected for the one bedrooms and the two bedrooms. The resulting averages determined are \$1.95 per square foot for one bedroom apartments and \$1.80 per square foot for two and three bedroom apartments. The reason for the difference in value is due to economies of scale.

Page 34 of the August Report sets out the two-bedroom comparables:

Unit 1 is located one block from the rental unit. The appraiser notes that this unit has “excellent water and city views”. Further it is noted that, “[t]he unit is also of superior finish and the building offers a pool and other amenities.” The appraiser applies a 30% “negative adjustment” as a result. There is no further explanation of how the reduction quantum was derived.

Unit 2 is located six blocks from the rental unit. The appraiser notes that the building is “newer and therefore superior to the subject, and has been adjusted 15% for this quality.” There is no further explanation of the adjustment.

Unit 3 is within the same complex as Unit 2. The same 15% adjustment has been applied for its newness.

Page 40 of the August Report sets out the certification statement of the report:

Based on the appraisal investigation detailed herein and the valuation methodology applied it is our opinion that as of August 11, 2014, the market rent for the 42 units is estimated to be \$1.95 per square foot for one bedroom units and \$1.80 per square foot for two bedroom units.

[emphasis added]

There are nine three-bedroom units contained within the residential property. I was not provided with any report detailing a comparison between the eight other three- bedroom units and the rental unit. The agent testified that four of the three-bedroom rental units are rented at a monthly rate of \$1,626.00. The landlord did not submit any evidence with respect to the remaining four rental units.

The tenant provided written submissions in response to the landlord’s application. Unit 1 contains a fireplace, granite countertops, stainless steel appliances, a dishwasher, microwave, in-suite washer and dryer, and air conditioning. The rental unit does not contain these features. A resident of the residential property in which Unit 1 is contained would have access to various amenities including concierge service, a pool, a sauna, squash courts, and meeting rooms. The tenant does not have access to these features as a resident of the residential property in which the rental unit is contained.

The tenant testified that added issues that he deals with in his rental unit are repeated bedbug treatments, drug paraphernalia outside his entrance way, and frequent elevator outages. The tenant testified that his carpeting and wall paint have not been updated since before the beginning of his tenancy some 16 years ago.

The tenant provided a photo essay comparison with his rental unit to Unit 1:

Entryway Rental Unit: The entryway includes a metal barred gate. Litter and excrement (which the tenant suggests is human) are visible on the ground.

Entryway Unit 1: The entryway has two stories of glass windows into the lobby. The entryway is clean and well maintained.

Lobby Rental Unit: The lobby contains a folding table with a brown table cloth.

Lobby Unit 1: The lobby is marble and wood finished. A concierge desk is visible.

Fitness Room Rental Unit: The fitness room contains a stepper, elliptical, and treadmill.

Fitness Room Unit 1: The fitness room contains weight machines, fitness balls, cardio equipment and has a view of the pool.

View from Rental Unit: The tenant's view is a view of the roof of a neighbouring building's air-conditioning units.

View from Unit 1: The view is of downtown, a park, and the mountains on the North Shore.

Analysis

Paragraph 23(1)(a) of the *Residential Tenancy Regulation* (the Regulation) sets out that a landlord may apply to increase rent beyond the prescribed amount where, after the rent increase allowed under section 22, 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.

Pursuant to paragraph 23(2)(a) of the Regulation, in considering a landlord's application I must consider the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect.

Residential Tenancy Policy Guideline, “37. Rent Increases” (the Guideline) provides further assistance in determining this application:

The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount.

...

Significantly lower rent

The landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. ...If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

...

“Similar units” means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

...

Additional rent increases under this section will be granted only in exceptional circumstances. 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. ...In comparing rents, the landlord must include the Allowable Rent Increase and any additional separate charges for services or facilities (e.g.: parking, laundry) that are included in the rent of the comparable rental units in other properties. ... Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord...

[emphasis added; footnotes omitted]

The landlord failed to provide an analysis of its own internal comparators. There are eight three-bedroom units within the residential property other than the rental unit. The landlord has provided testimony that the rent for four of these units is \$1,626.00. The landlord has not provided the rent amounts for the remaining four units. The landlord has not provided any analysis with respect to how these other three-bedroom units compare to the rental unit. I find that the landlord has failed to provide rent for all comparable units in the residential property as required by paragraph 23(2)(a) of the Regulation and Guidelines.

The August Report only certifies the appraisal with respect to one- and two-bedroom units. There is no such certification for three-bedroom units. Further, none of the rental units used as external comparables is a three-bedroom unit. In addition, no specific review of the rental unit was conducted by the appraiser. The tenant's photo essay and written submission document extreme differences between at least one of the comparators and the rental unit. The August Report fails to provide reasoning as to how the discounts were determined with respect to the comparator units. As well, the August Report fails to indicate why an economy of scale reduction was applied when comparing one-bedroom units to two- and three-bedroom units, but no further reduction was applied as between two- and three-bedroom units. On this basis, I find that the landlord has failed to show that the comparators are "similar units" within the meaning set out within the Guideline.

On the basis of the landlord's failure to provide a rent for all the comparable rental units within the residential property and the landlord's failure to provide comparables that are "similar units" or contain similar amenities, I refuse the landlord's application.

Conclusion

The landlord's application for an additional rent increase is refused and the landlord's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 24, 2015

Residential Tenancy Branch

