



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on May 6, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an additional rent increase more than what is permitted by regulation and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would commence on April 1, 2014. The present rent is \$1000 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$500 at the start of the tenancy.

The landlord has applied for arbitration of a dispute in the tenancy at the above address and requests an order pursuant to section 43(3) of the Residential Tenancy Act for approval of a rent increase in an amount that is greater than the amount calculated under the regulations. The base rent is \$1000 per month. The permitted increase is 2.5% or the sum of \$25 per month. The landlord seeks to increase the rent by \$275 per month to \$1275.

The landlord presented the following evidence:

- The rental unit is a two bedroom townhouse of approximately 1050 square feet.
- The landlord lived in the rental unit until 2010. It was rented since then. The tenant previous to this tenant paid rent of \$1050 per month.
- The rental property experienced two floods caused by burst pipes which lead to major renovations. The last renovations cost over \$13,000.
- There are few rental units in the general area.
- The landlord produced a copy of an advertisement showing a comparable of a two bedroom rental unit (much smaller in size at 850 square feet) where the landlord was asking for rent of \$1250 per month.
- The landlord produced a letter from a Property Management Company that states he recently rented a slightly larger two bedroom duplex for \$1750 and that he felt he would have no trouble renting the rental unit for a minimum of \$1400 per month but would likely be able to get up to \$1600 per month.
- This is the first time the landlord has filed an application for an additional rent increase.
- There is a previous dispute between the parties which lead to the tenant filing an Application for Dispute Resolution. The issue involved whether the tenant was entitled to compensation for the reduced value of the tenancy caused by a flood. The landlord had offered some compensation. The result was that the tenant was entitled to reduce the rent by \$500 for February and \$250 for March.
- There is no evidence the landlord has failed to maintain or repair the rental unit.

- The rental unit is part of a three unit strata property. One of the other units is occupied by owner. The second unit is occupied by another set of owners part of the time.

The tenant testified it is hard to find rental accommodation in this community. She has been looking for another place but has not been successful. Her situation is more difficult as her son is moving to Vancouver and he will not be able to assist. She is looking from a roommate to help her pay the rent and is concerned whether the landlord will approve. The tenant did not provide any evidence to dispute the landlord's evidence that the rent is significantly lower than current rents payable for similar units in the same geographic area.

Section 43 of the Residential Tenancy Act provides as follows:

Amount of rent increase

- 43** (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.

Policy Guideline #37 includes the following:

An arbitrator's examination and assessment of an AARI will be based significantly on the arbitrator's reasonable interpretation of:

- the application and supporting material;
- evidence provided that substantiates the necessity for the proposed rent increase;
- the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation; and
- the tenant's relevant submission.

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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. An additional rent increase under this provision can apply to a single unit, or many units in a building. 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.

The rent for the rental unit may be considered “significantly lower” when (i) the rent for the rental unit is considerably below the current rent payable for similar units in the same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit. In the former, \$50 may not be considered a significantly lower

ANALYSIS:

After hearing the disputed evidence I determined the landlord has established that the current rent being charged is significantly lower than the current rent payable for similar units in the same geographic area. The base rent is \$1000. The only comparable presented is significantly smaller in size and the asking rent is \$1250 per month. The evidence presented given the size and renovations indicates the market rent is \$1400 per month and perhaps higher. I determined the landlord has established sufficient grounds to serve a Notice of Rent Increase increasing the rent to \$1275. The Notice of Rent Increase must comply with section 42. I do not accept the submission of the landlord that I should order the rent increase immediately as in my view the tenant must be given a reasonable time to determine whether she wishes to remain in the rental unit. Section 42 provides as follows:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

ORDER

I order that the landlord be at liberty to serve a Notice of Rent Increase in accordance with the Act for an additional rent increase that would increase the rent to \$1275 per month.

I dismissed any claim against the tenants for the cost of the filing fee as the tenant has agreed to the proposed rent increase.

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: August 19, 2015

Residential Tenancy Branch

