



Dispute Resolution Services

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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 Code: *ARI*

Introduction

The landlord applied for approval of a rent increase in excess of the amount allowed by the Regulations to the *Residential Tenancy Act*. The landlord served the tenants with copies of this application, supporting evidence and the notice of hearing by registered mail on June 11, 2015. The landlord filed tracking numbers for each of the 29 tenants that are named in the landlord's application. 10 tenants responded and copies of their responses were filed into evidence along with proof of service to the landlord.

Based on the documents in front of me, I find that the landlord served the respondents with the hearing package and the tenants served their evidence to the landlord in accordance with section 88 of the *Residential Tenancy Act*.

The landlord made two prior applications for an additional rent increase and both were dismissed. The latest one was heard on March 18, 2015. In a subsequent clarification, the Arbitrator confirmed that the landlord's application for an additional rent increase was dismissed with leave to reapply.

Both parties provided extensive documentary evidence. I have considered all the written evidence provided by the parties but have not necessarily alluded to all the evidence in this decision.

Issues to be Decided

Should the landlord be entitled to raise rent in an amount that is greater than what is set out in the Regulations? Has the landlord established that he has completed significant repairs to the rental property in which the rental units are located? Has the landlord established 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?

Background and Evidence

Based on the evidence before me, I find that the rental property consists of a building which houses 32 rental units. The property is owned by a non-profit Society that is dedicated to providing seniors in financial need with quality housing. The rents are maintained as low as possible while allowing the building to be financially and operationally sustainable. The board that is responsible for the Society is made up of unpaid volunteers.

The landlord has made application for an additional rent increase for 29 units. The landlord was contacted by telephone and he confirmed that the other 3 units are already paying the higher rent and are therefore not included in this application.

The landlord states in his written submission that the water pipe system of the rental property was problematic and there were ongoing water leaks which resulted in disruption and interference with the quality of lives of the occupants and an increased cost of maintenance. In addition, the tenants faced the risk of mould from the numerous water leaks.

The landlord states that the Society considered the possibility of re piping the system but was unable to do so for lack of funds. Accordingly the Society decided to undertake the significantly less expensive option of having the copper pipes lined. The cost of doing so exhausted the cash reserves of the Society and the board is now concerned that Society will face cash flow challenges for ongoing operations.

The landlord states that the building structure consists of a wood frame which is approximately 45 years old. The landlord anticipates that there will be significant maintenance projects coming up in the near future and the Society will not be in a position to cover the costs, for lack of adequate cash reserves.

The only source of income comes from rent, coin laundry and interest. The landlord is concerned that unless there is an increase in rent, the Society will not have adequate funds to properly maintain the building and allow the occupants to continue enjoying the quality of live that they currently enjoy.

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 landlord applied to raise the rent by 15% per month which consists of the allowable 2.5% plus an additional 12.5%. This would result in an increase in monthly rent from \$59.85 to \$71.25 each month.

The repair to the pipes was completed in August 2014. The landlord filed a letter from a professional engineer to confirm that the work was substantially completed on August 28, 2014.

The landlord also filed proof of expenses incurred in the form of invoices, cashed cheques and financial statements to support the cost of \$197,050.00 to re line the water pipes and the associated costs.

10 tenants provided written submissions as follows:

Tenant MG (unit 103) states that she understands the reason for the rent increase. She requests that the increase be spread over 10 years which would create less hardship for the tenants on fixed incomes.

Tenant SM (Unit 106) requests that the rent increase be stretched over a few years.

Tenant HC (unit 108) states in her written response that an increase of 15% would raise the rent to an amount that might normally only be expected in a time frame of three to five years. HC also questions the value of the tenancy at a rate that is 15% higher than the current rate and goes on to describe discrepancies inside the rental unit and in the common areas. HC also points out that with annual increases; her rent has increased by 33.9% over the term of the tenancy that started in 2006. She adds that the 15% increase will make her rent 52.8% higher than at the start of tenancy. HC states that this increase is not fair to tenants on fixed incomes and is not warranted.

Tenant EF (Unit 113) states that the landlord's request for an additional rent increase is unjustified. EF also explains that now that the pipes have been repaired, there will be a significant reduction in the maintenance costs of the plumbing system and along with a legislated rent increase; the landlord will be able to re-establish the contingency fund.

Tenant DL (Unit 114) states that he has lived in the rental property for 13 years and receives a disability pension. An increase of 15% would be financially painful and will not leave him enough for his food and other expenses.

Tenant MH (unit 209) states that the rules of procedure were not followed with regard to the prior decision and request for clarification.

MH points out some discrepancies in the landlord's letter dated November 05, 2014 and the landlord has responded with correction and clarification. MH also points out that there is a limited 10 year warranty and quotes excerpts from the prior decision dated March 26, 2015.

In conclusion MH states that the landlord has paid the related bills and possesses a surplus of \$361,164.00 as per the audited financial report. MH goes on to add that the landlord may use these funds for future repairs and therefore an additional rent increase of 12.5 % is not justified.

The landlord's response was that the warranty for re lining the pipes is for a leak proof seal for a period of ten years and the limited warranty refers to the plumbing fixtures. The landlord also explains that the surplus as mentioned by the tenant reflects historical resources that have gone into the facility, are fully invested in the assets of the society and are not available for expenditure. The landlord refers to the balance sheet provided in the financial statements that indicates that there is a net cash of \$6,873 available for maintenance and this amount is insufficient to maintain quality housing for tenants.

Tenant PC (Unit 210) states that he is on a fixed pension and cannot afford an increase of rent at this time.

Tenant MV (Unit 214) states that the rent increase is too high and being a pensioner on a fixed income, this sudden and steep increase would place MV in financial hardship and stressful living conditions.

Tenant FB (unit 216) and tenant EB (unit 215) object to the proposed additional rent increase on the grounds that the increase requested is much above the legal increase, the repairs done were to put epoxy lining in the pipes instead of replacing them and other facilities have not been improved for the last 10 years.

Analysis

On May 27, 2015, the landlord applied to the RTB for authorization to increase rent beyond the 2.5% increase allowed for 2015, under section 43(1) of the *Act* as established under section 22 of the Regulations. In the application, the landlord correctly noted that the permitted increase for 2015 is 2.5%. The landlord requested an additional increase of 12.5% for a total increase of 15% for each of the 29 rental units in this building. 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 landlord identified the following reason in the application for an additional rent increase:

The landlord has completed significant repairs or renovations to the residential property in which the rental units are located that:

- *could not have been foreseen under reasonable circumstances, and*
- *will not recur with a time period that is reasonable for the repair or renovation...*

The landlord has three 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 sufficient evidence, to show that the repair to the plumbing system was completed and that the landlord paid a total of \$197,000.00 in costs.

The landlord must also prove that the repairs could not have been foreseen under reasonable circumstances. The landlord states in his written submission that the water leaks were ongoing and resulted in disruption in the lives of the tenants and the risk of mold developing inside the rental units. The landlord looked at the cost of replacing the pipes versus lining the pipes and chose the less expensive option. Based on the landlord's written submission, I find that repairing leaks as they occurred would not resolve the problem and may have been costlier in the long run.

The plumbing system of a building for most part should probably last the life of the building. Based on the evidence in front of me I find that this system was posing problems that required repairs that drained the cash reserves of the landlord and therefore had to be replaced or significantly repaired. I find on a balance of probabilities that it is more likely than not that under reasonable circumstances; the landlord could not have foreseen the need for this significant repair.

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. The landlord presented a copy of the 10 year warranty with respect to this repair/plumbing work. The warranty states that the plumbing company that carried out the repairs will maintain a leak proof seal and lining of the pipes for a period of ten years measured from the date of installation. The landlord has filed a copy of a letter of completion of the work issued by the supervising engineer. The letter states that the work was substantially completed on August 28, 2014. Accordingly the warrantee will be in place until August 2024.

Given all of the evidence, and the requirements provided under the *Residential Tenancy Regulation*, I am satisfied that the lining of the water pipes represents a significant repair, that could not have been foreseen under reasonable circumstances and that the landlord will not incur further costs to repair the pipes for the next ten years. I further find that the landlord has met the burden of proof in applying for a rental increase. I now have to determine the amount of the rent increase that is suitable for an application such as this.

The landlord filed a copy of the financial statement for the period of October 01, 2013 to September 30, 2014. This statement shows that the total revenue which consists of rental income, interest on assets and coin laundry income did not cover the operating costs of the property and resulted in a loss of \$5,761.00.

The financial statement shows a surplus amount of \$361,164.00. The landlord explains that the surplus amount reflects historical resources that have gone into the facility, are fully invested in the assets of the society and are not available for expenditure. The landlord refers to the balance sheet provided in the financial statements that indicates that the amount of the cash resources available for operation of the property is \$33,830.00. However with amounts payable to creditors and the amount of the security deposits, the net cash available for maintenance is \$6,873.00.

The landlord states that the cost of repairing the pipes has exhausted the cash reserves of the Society and that the main source of income is the rent collected from the tenants. The landlord states that the cash reserves available are inadequate to properly maintain the building and will not cover any significant repair project.

I have considered the written submissions of the tenants and accept that the additional rent increase will pose a substantial financial burden on them. I also accept the landlord's position that in order for the tenants to continue to enjoy the current standard of accommodation and allow the building to be financially and operationally sustainable, the cash reserves need to be replenished.

The warrantee provided by the contractor will result in a significant decrease in maintenance costs from leaking pipes and this decrease will continue until August 2024, thereby giving the landlord an opportunity to build up cash reserves.

The landlord has requested an additional rent increase of 12.5%. Based on the above findings, I find it appropriate to award the landlord an additional increase of 5.5.0%.

The landlord must serve the tenant with a notice of rent increase in compliance with section 42. The rent increase will be a total of 8.0% which consists of the allowable 2.5% for 2015 plus 5.5% as granted to the landlord.

Section 42 states 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.

Conclusion

I grant the landlord an additional rent increase of 5.5% for a total rent increase of 8.0%,

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 10, 2015

Residential Tenancy Branch

