



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0863038 BC Ltd.
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes: ARI

Introduction

In response to the landlord's application for a rent increase above the limit set by the Residential Tenancy Regulation (the "Regulation"), a hearing was scheduled for May 11, 2015. While there were several tenants in attendance on that occasion, the landlord did not appear. Accordingly, by Decision dated May 11, 2015 the landlord's application was dismissed without leave to reapply. In that Decision it is noted, in part, as follows:

Despite the abundance of evidence provided by the tenants the hearing did not have benefit of any evidence by the landlord. The tenants stated they have not received any communication from the landlord since receiving the original Application and Notice of Hearing.

Subsequent to the above Decision the landlord filed an Application for Review Consideration on May 28, 2015. By Review Consideration Decision dated June 05, 2015, the landlord's application was allowed. In the result, the Decision of May 11, 2015 was suspended and a new hearing ("Review Hearing") was scheduled. In part, the Review Consideration Decision reads as follows:

Notices of the time and date of the hearing are included with this Review Consideration Decision for the landlord to serve to the tenant within 3 days of receipt of this Decision. The landlord must also serve a copy of this Decision to the tenant.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing.

This Review Hearing was scheduled to commence at 11:30 a.m. on August 04, 2015. Both parties attended and / or were represented and gave affirmed testimony.

Preliminary Matters

The landlord amended the original application by withdrawing 3 particular units and the respective tenants, as the subject tenants are no longer residents in the building. These units / tenants are as follows:

- # 103: tenant "ML"
- # 202: tenant "ML" (different from above)
- # 301: tenant "TN"

The tenants in attendance to the hearing addressed a range of concerns related to the landlord's application which includes, but are not limited to, the following:

- that the landlord submitted no documentary evidence to support the application to be heard at the hearing scheduled for May 11, 2015;
- that the landlord's Application for Review Consideration was improperly allowed;
- that the landlord's documentary evidence for the purposes of the present hearing was served on or about July 30, 2015, and not earlier; and
- that the landlord's submission consists largely of a rebuttals of claims made in the tenants' initial submissions for purposes of the hearing scheduled for May 11, 2015.

The tenants described the frustration and aggravation of having taken time to respond to the landlord's application, and of being required to attend a second hearing, in the alleged absence of any demonstration of good faith on the part of the landlord to properly engage the dispute resolution process. There was discussion of adjournment, of withdrawal by the landlord of his application, and of immediate dismissal of the landlord's application. Ultimately, it was determined that the landlord preferred to proceed with the hearing, and that nothing in the landlord's recent documentary submission required additional time for further consideration by the tenants prior to commencement of the hearing. Accordingly, the hearing proceeded as scheduled.

Issue(s) to be Decided

Whether the landlord is entitled to a rent increase above the limit set by the Regulation.

Background and Evidence

The 11 units which are the subject of this application are amongst a total of 16 units located in a building which was constructed in 2007. It is understood that the current owners purchased the building approximately 1 year ago. An overview of the current status of rent *vis-à-vis* the increase permitted and the increase sought for the subject units is set out immediately below.

Unit 100

\$1,750.00: *current rent*

September 15, 2014: *date of last rent increase*

\$300.00: *requested increase*

\$2,050.00: *total rent sought*

\$43.75: *2.5% allowable rent increase in 2015 [$\$1,750.00 + \$43.75 = \$1,793.75$]*

Unit 101

\$1,750.00: *current rent*

March 01, 2014: *date of last rent increase*

\$200.00: *requested increase*

\$2,050.00: *total rent sought*

\$43.75: *2.5% allowable rent increase in 2015 [$\$1,750.00 + \$43.75 = \$1,793.75$]*

Unit 102

\$2,150.00: *current rent*

April 01, 2012: *date of last rent increase*

\$350.00: *requested increase*

\$2,500.00: *total rent sought*

\$53.75: *2.5% allowable rent increase in 2015 [$\$2,150.00 + \$53.75 = \$2,203.75$]*

Unit 200

\$1,775.00: *current rent*

March 01, 2012: *date of last rent increase*

\$275.00: *requested increase*

\$2,050.00: *total rent sought*

\$44.37: *2.5% allowable rent increase in 2015 [$\$1,775.00 + \$44.37 = \$1,819.37$]*

Unit 201

\$1,750.00: *current rent*

February 01, 2013: *date of last rent increase*

\$200.00: *requested increase*

\$1,950.00: *total rent sought*

\$43.75: *2.5% allowable rent increase in 2015 [$\$1,750.00 + \$43.75 = \$1,793.75$]*

Unit 300

\$1,685.00: *current rent*
February 14, 2009: *date of last rent increase*

\$365.00: *requested increase*
\$2,050.00: *total rent sought*

\$42.12: *2.5% allowable rent increase in 2015* [$\$1,685.00 + \$42.12 = \$1,727.12$]

Unit 302

\$2,172.00: *current rent*
November 01, 2013: *date of last rent increase*

\$328.00: *requested increase*
\$2,500.00: *total rent sought*

\$54.30: *2.5% allowable rent increase in 2015* [$\$2,172.00 + \$54.30 = \$2,226.30$]

Unit 303

\$1,750.00: *current rent*
June 01, 2012: *date of last rent increase*

\$250.00: *requested increase*
\$2,000.00: *total rent sought*

\$43.75: *2.5% allowable rent increase in 2015* [$\$1,750.00 + \$43.75 = \$1,793.75$]

Unit 400

\$1,700.00: *current rent*
May 01, 2007: *date of last rent increase*

\$350.00: *requested increase*
\$2,050.00: *total rent sought*

\$42.50: *2.5% allowable rent increase in 2015* [$\$1,700.00 + \$42.50 = \$1,742.50$]

Unit 402

\$2,145.00: *current rent*
May 01, 2009: *date of last rent increase*

\$355.00: *requested increase*
\$2,500.00: *total rent sought*

\$53.62: *2.5% allowable rent increase in 2015* [$\$2,145.00 + \$53.62 = \$2,198.62$]

Unit 403

\$1,700.00: *current rent*

April 13, 2007: *date of last rent increase*

\$300.00: *requested increase*

\$2,000.00: *total rent sought*

\$42.50: *2.5% allowable rent increase in 2015 [$\$1,700.00 + \$42.50 = \$1,742.50$]*

The landlord's application reflects a position that rent paid for the subject units is significantly lower than rent payable for other rental units which are similar to and in the same geographic area as the subject units. In the application the landlord documents that the average rent for the subject units is presently about \$2.37 per square foot, whereas rent for a comparable unit is \$3.06 per square foot. However, no particular units / buildings are identified for purposes of comparison in the original application. Indeed, as previously noted, further to the application itself, the landlord made no documentary submission for the hearing scheduled on May 11, 2015.

In response to the landlord's application, a detailed and extensive comparative documentary analysis was submitted by the tenants. The tenants concluded that the landlord's rent per square foot comparison was made in relation to units at "WE," which they describe as having been "built to a more luxurious standard" and "with a significant number of features that are absent" from the subject units / building. The tenants maintain that a far more reasonable comparison can be made with units at "PRT," and in that comparison the "effective" rent paid for the subject units is actually higher.

In the documentary submission made by the landlord for purposes of the Review Hearing, comparisons are made between rents paid for the subject units, rents paid in units at "WE" as well as at units in the "IB" on "C" Avenue which was built in 1974. The landlord's submission concerning "WE" identifies specific units and consists largely of points made in rebuttal to the submission made by the tenants for the original hearing. The landlord contends that there "are some notable differences between the interior of [units at "WE"] and those at [the subject building], however they do not justify this large of a gap in rent. The ["WE"] building has air conditioning, and generally a slightly higher standard of finishing to materials and appliances." Further, in the landlord's submission, buildings accommodating units at "WE" are described as "some of [the local government authority's] most exclusive luxury buildings."

As to units in the "IB" on "C" Avenue, very specific units are not identified in the landlord's submission, and the landlord broadly documents comparative features, noting that rents for north facing 1 bedroom units range up to \$1,800.00 per month, while those for north facing 2 bedroom units range up to \$2,400.00 per month.

In the summary aspect of the landlord's application, the landlord claims in part:

The owner is not attempting to obtain rent that is on par with [other buildings cited in the submission], rather he is hoping to bring rents in line with what they are worth and what is fair for this quality of housing in [the local government authority].

The greatest evidence of this can be demonstrated from two suites within the rental building that were recently vacated and re rented.

Specifically, the landlord documents that 2 units within the subject building were re rented “in the past 6 weeks” at rents in excess of what had been sought by the landlord with the previous tenants who recently vacated.

Analysis

While all of the documentary evidence and testimony has been carefully considered, only key aspects of the evidence and testimony, in addition to related legislation and Residential Tenancy Policy Guidelines are specifically addressed here.

Sections 41, 42 and 43 of the Act address, respectively, **Rent increases**, **Timing and notice of rent increases**, and **Amount of rent increase**. In particular, section 43 of the Act provides, in part:

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.

Section 23 of the Regulation addresses **Additional rent increase**, in part:

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;

Further, section 23(3) of the Regulation provides, in part:

23(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

- (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;
- (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;
- (c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;
- (f) a relevant submission from an affected tenant;

Residential Tenancy Policy Guideline # 37 speaks to “Rent Increases.” As to an application which relies on the claim of “significantly lower rent,” this Guideline provides variously and in part as follows:

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.

“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 (ie: park, shopping mall, water body) or other representative point within an area.

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 summary, I find that the landlord's application falls short of meeting the burden of proving entitlement to an additional rent increase above the limit set by the Regulation. In particular, I find that the aspect of the landlord's submission which is largely comprised of points made in rebuttal to the tenants' original detailed submission, is not sufficiently persuasive to trump the proactively analytical articulation found in the tenants' submission to dispute the landlord's application. Specifically, I find I am unable to conclude that there is adequate evidence that the "size, state, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community," are all sufficiently comparable between the units identified at "WE," and those which are the subject of the application.

As to comparisons made in the landlord's submission between units in "IB" on "C" Avenue and the subject units, I find that the information provided for units in "IB" on "C" Avenue is too broad and insufficiently specific to make meaningful comparisons for the purposes of the application.

Finally, and as clearly set out in the Guideline above, I find that the landlord's recent success in renting out 2 other units in the subject building for a higher rent than what had been contemplated by the landlord with the tenants who recently vacated, is insufficient to make the case for an additional rent increase, and no exceptional circumstances have otherwise been presented.

Section 81 of the Act addresses **Decision on application for review**, and provides in part:

81(3) The director may order that a decision or order in relation to which a review has been requested be suspended, with or without conditions, until the review has been completed and a decision given to the parties.

Section 82 of the Act addresses **Review of director's decision or order**, in part:

82(1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

(d) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Pursuant to all of the above, the original Decision dated May 11, 2015 is hereby confirmed.

Conclusion

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: September 01, 2015

Residential Tenancy Branch

