



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing was convened upon the application of the landlord seeking an additional rent increase for one unit of a duplex in a suburban two bedroom unit with two additional rooms downstairs. Under the *Residential Tenancy Act* ("the Act"), the landlord is able to apply a rent increase of 2.5% or \$19.37 per month raising the rent from \$775.00 to \$794.37. However, the landlord wishes to raise the rent to \$1643.00 per month, an increase of 112% or \$868.00 per month. *This is the corrected amount as the landlord's application requests an increase of 112% for an increase of \$870.00 per month and a total monthly rental amount of \$1645.00 per month. These numbers appear to be determined by rounding up the figures after calculating them.*

Both parties appeared at the hearing. The tenant confirmed that he received the landlord's application for an additional rent increase on April 29, 2015 by registered mail. I am satisfied that the landlord has complied with the Act in his service of his application for dispute resolution to the tenant.

Issue to be Decided

Is the landlord entitled to an additional rent increase for this rental unit?

Background and Evidence

The landlord applied for the additional rent increase on the ground that the amount paid monthly for this rental unit is significantly lower than comparable rental units. The landlord provided written evidence that this tenant has been living in this rental property since October 1, 1997 when he signed a month to month tenancy agreement. At the outset of this tenancy, monthly rent was \$775.00 payable on the first of each month.

The history of rent increases with respect to this tenancy is reflected in a previous decision of an arbitrator at the Residential Tenancy Branch (“RTB”). That arbitrator found, in a decision dated February 3, 2015, that the landlord had given the above rent increases (in amounts beyond those prescribed by the RTB) without the use of the approved form. That arbitrator determined there had been a rent overpayment of \$24,660.00 which the tenant was entitled to recover. That arbitrator ordered that;

the landlord pay to the tenant the sum of \$24,660 plus \$100 for the cost of the filing fee for a total of \$24,760 such sum may be applied to future rent

Both parties agreed that the following information reflects rental payment amounts;

Year	Monthly Rent	Rent Increase	Amount of overpayment per year
1997 to 2003	\$775		
2004	\$825	\$50	\$600
2005	\$825	\$50	\$600
2006	\$850	\$75	\$900
2007	\$910	\$135	\$1620
2008	\$960	\$185	\$2220
2009	\$1035	\$260	\$3120
2010	\$1035	\$260	\$3120
2011	\$1035	\$260	\$3120
2012	\$1035	\$260	\$3120
2013	\$1035	\$260	\$3120
2014	\$1035	\$260	\$3120
		<u>TOTAL</u>	<u>\$24,660</u> <u>(emphasis added)</u>

To support his current application for a 112% additional rent increase, the landlord included in his written evidence package a professional appraisal package that included;

- Advertisements for range of “comparable” rental properties in the area;
- Market information and analysis of *comparable* rental properties in the area;
- Details of a home inspection conducted by professional home appraisers;
- Details of rental property including title search and land use controls; as well as
- Photographs of the rental unit.

The appraisers estimated, based on their analysis of the rental property that \$1645.00 was an appropriate amount of monthly rent for this unit. Most of the properties described as *comparables*, listed and evaluated in the appraisal report were for dissimilar types of rental properties. Most of the properties were either single family homes or newer townhouse units of similar square footage, based on the square footage determined by the appraisers. The appraisers determined the square footage with the inclusion of indoor storage space and unfinished basement space. One of the twelve comparables listed was a similar duplex style residence.

The appraisal report indicated that the “mandate for this assignment entails an estimate of the current market rent potential for the subject as at the effective date of April 10, 2015.” The comparables provided for determining the appropriate rental amount for this residential premise were based on online ads and therefore reflect properties that are not currently renting for the rental amount listed. The units considered ranged in square footage from 800 to 2115 square feet. A “map of comparables” provided as part of the appraiser’s report shows a fairly wide span of area throughout the dense and diverse city where the rental unit is.

The report compared these available rental properties to the tenant’s rental unit, indicating that while the monthly rental amounts for these units varied from \$820.00 to \$2600.00, the tenant currently pays \$775.00 per month or (95% of that market amount). The square footage of the rental unit is 1060 square feet for the upstairs with, according to the appraiser’s report, 760 square feet in the main floor or downstairs. The appraiser described the residence in her report and in her testimony at this hearing as an older half of a duplex with a main floor including one bedroom, a storage room and a utility room as well as an upstairs with two bedrooms (one with an ensuite). She described a four piece bathroom in the residence as well as a kitchen, living and dining room. Her report also indicated that;

- the floor plan and construction of the residence were dated and there was evidence of wear and tear, renovation would be the “best use” of this property;

- the dishwasher within the rental unit was not functioning;
- some of the bath fixtures as well as the dishwasher and other facilities appeared to be “original”, meaning approximately 42 or more years old;
- there was no flooring installed in the storage room and appeared to be no flooring installed in the main bedroom (at most, carpet over concrete subfloor);
- the walls were painted or had “vintage wallpaper”; and that
- there was a derelict shed and a fence in poor condition on the premises.

The landlord testified that the next door duplex unit is currently rented for \$1900.00 per month. The appraisers report provided this same information however I note that the introduction to the report states that the appraisers did not verify client-supplied information. The reference to the rent for the other side of the duplex was based solely on the landlord’s information to the appraisers in preparation of their report.

The tenant submitted that at least some of the comparable units used in the appraiser’s report appear to be in better condition than his rental unit which he testified has not been updated since he commenced his tenancy. The tenant questioned the condition of the rental property generally, noting that, when he first rented the unit in 1997, it required extensive clean up and repair that he did himself. He stated that he continues to repair the unit, often at his own cost. He provided photographic evidence to support his position that the unit was in some disrepair. His photographs included pipes that were taped with duct tape and broken plumbing, evidence of a before and after repair to a bathtub in the residence done by the tenant himself, marks on the ceiling and floors that appear to be due to water damage. The landlord provided undisputed testimony that the tenant is reimbursed for any costs he chooses to incur to improve the rental unit.

The landlord submitted that his costs to maintain this rental property continue to rise. He testified that, since 1997, the property taxes, and all utilities, particularly the water costs have dramatically increased. The appraisers/witnesses who testified at this hearing highlighted and commented on different areas of their report, including an explanation of the limits of their *comparables* provided. Under examination by the tenant, three portions of their report were noted in particular;

- the basement or downstairs (“main floor” in the report) is unfinished square footage;
- repairs and updates are needed to increase thermal efficiency, functionality of appliances and safety in a 42 year old home; and
- the fence on the property is at the end of its useful life.

Analysis

Section 43 of the *Act* allows a landlord to apply to the Residential Tenancy Branch for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

Amount of rent increase

- 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;
- 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.

The Residential Tenancy Regulation (“the Regulation”) pursuant to the *Act* sets out the limited grounds for applying for an Additional Rent Increase. In this case, the landlord has applied for additional rent under the following provisions of subsection 23(1)(a) of the Regulation:

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 23(3) of the Regulation lists a number of factors that I must consider in deciding whether to approve an application for an additional rent increase pursuant to section 23(1) of the Regulation.

- 23(3)
- (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 ...;

(d) a change in operating expenses and capital expenditures in the 3 years preceding the date ...;

(e) the relationship between the change described in paragraph (d) and the rent increase applied for;

(f) a relevant submission from an affected tenant;

(g) a finding by the director that the landlord has contravened section 32 of the Act [*obligation to repair and maintain*];

(h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year;

(i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;

(j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;

(k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has

(i) submitted false or misleading evidence, or

(ii) failed to comply with an order of the director for the disclosure of documents.

I note that, in considering the subsections of 23(3) of the *Act*, some relevant considerations include;

- There was, in effect, no rental increase for the preceding 17 years as a result of the previous RTB decision;
- Some of the change in operating expenses of the landlord are as a result of his own loss at the previous RTB hearing (while some is attributable to inflation);
- The tenant testified, without dispute from the landlord, that renovations have been required on the rental unit. Some are still required, according to the tenant. That testimony was supported by the photographic evidence and partly by the appraiser's report;

- The comparables used by the landlord's appraisers are somewhat dissimilar in that they reflect a square footage that may be larger than the tenant's useable square footage within his residence as well as in better repair than his rental unit and they are in a variety of areas throughout the city where the unit is located;
- In the previous RTB hearing, an arbitrator acting on behalf of the director, in a previous dispute resolution proceeding in relation to an application under this section, found that the landlord had failed to meet his obligations and the requirements of the *Act* in implementing rental increases.

The submission of the tenant at this hearing was that the landlord is making this application as alternative action as a result of his dissatisfaction with the previous decision.

The previous RTB decision with respect to annual rent increases determined that the landlord had failed to take all of the appropriate steps and follow the guidelines of the *Act*. The landlord testified that he now takes this step solely because the rental amount the tenant is paying is well below other rents in the same area.

Residential Tenancy Policy Guideline # 37 provides the following guidance to the interpretation of 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...

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...

"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...

The landlord must clearly set out all the sources from which the rent information was gathered...

In this case, the landlord provided evidence of advertised rental units in a wide area near the rental unit that reflected significantly higher rents. Most of those units were compared in some fashion but only one was a unit within a duplex, as is the rental unit in this tenancy. I find that the landlord's evidence, particularly as described by the appraisers is somewhat useful in examining the appropriate rental amount but its usefulness is limited because of the differences in the comparables provided.

Furthermore, Residential Tenancy Policy Guideline No. 37 allows the landlord to apply for dispute resolution only in "extraordinary" situations. Extraordinary is defined as beyond what is usual, regular or customary. I find that the current situation, where the tenant is paying a rental amount that has been shown to be lower than other rentals in the area, particularly on the other side of his duplex and where the tenant is now responsible only for the rate agreed to under the residential tenancy agreement signed in 1997, is unusual. However, it is a result of the failure of the landlord to comply with the provisions of the *Residential Tenancy Act* that this scenario arises.

This situation is unusual in that, as a result of a previous decision where it was found that the landlord did not comply with the *Act* in implementing rental increases, the tenant now pays a rental amount that he agreed to pay in 1997, 17 years ago. It is likely at least somewhat lower than monthly rent in similar properties as of the date of this hearing.

The duplex neighbor may pay a rental amount of \$1900.00 monthly but there are a variety of circumstances that may result in this discrepancy, including when their tenancy began, the state of repair of their unit and the compliance by the landlord with the *Act* in applying their rent and any increases. There was no evidence provided to allow a fulsome comparison to the other unit in the duplex. I also accept the tenant's undisputed and somewhat corroborated testimony that the unit is in some disrepair given its age and lack of maintenance.

After considering all of the factors outlined in section 23(3) of the Regulation and Policy Guideline 37, I find that the landlord has satisfied the requirement that he demonstrate that the tenant's rent is significantly lower than the rent payable for other rental units that are sufficiently similar to, and in the same geographic areas as the rental unit. However, I do not find that the landlord has demonstrated that there are exceptional circumstances that entitle him to an additional rent increase beyond the annual amount allowed under section 22 of the Regulation. I find that the landlord is not entitled to an additional rent increase beyond the current annual rental increase amount Allowable under the *Act*.

The landlord sought to increase the tenant's rent by an unreasonable amount (112%) in all of these circumstances. I note that the tenant has been previously ordered to recover the monies that he paid to the landlord in rental increases over the last 17 years and this is the principle reason why the rental amount is lower than other rental units in the area. The previous RTB decision was meant to reverse the effects of non-compliance with the *Act* and I will not provide a decision that, in essence, voids the effect of that previous decision. Justice has been administered fairly in addressing the landlord's failure to increase rent in accordance with the *Act*.

Therefore, I find that the landlord has not sufficiently shown that there are exceptional circumstances warranting any additional rent increase. The landlord is entitled to increase the rent annually in accordance with the regular rental provisions of the *Act*.

Conclusion

I dismiss the landlord's application for an additional rent increase for this rental unit.

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 3, 2015

Residential Tenancy Branch

