



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K & G Claire Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing dealt with an application by the landlord for an additional rent increase. The landlord appeared at the hearing; the tenant did not.

The landlord testified that he served the Application for Additional Rent Increase and Notice of Hearing on the tenant by registered mail but had lost the registered mail receipt. He stated that he knew the tenant had received the item because the tenant served him with some documents in response to the application. There was no evidence from the tenant on the file.

I accepted the landlord sworn testimony that he had served the application on the tenant and I order, pursuant to section 71(2)(b) of the *Residential Tenancy Act* that the Application and Notice of Hearing were sufficiently served for the purposes of this hearing.

In his testimony the landlord referenced some documents he said he had served personally on the tenant and filed with the Residential Tenancy Branch well in advance of the hearing. They were not on the file. I gave the landlord leave to resubmit that evidence and I reserved my decision until after I received them. The documents were received by the *Residential Tenancy Act* on October 2, 2015.

Issue(s) to be Decided

Is the landlord entitled to an additional rent increase and, if so, in what amount and on what terms?

Background and Evidence

This is a long-standing tenancy. The landlord, who bought this building in 2007, thought the tenant has lived in this unit for about fifteen years. He did not have any information about rent increases that may or may not have been imposed prior to him buying the building.

The rental unit is a two bedroom apartment, located in a twenty-six suite building. The building is about forty years old. In the last two years the landlord has replaced the boiler and holding tanks, installed two new concrete sidewalks, and replaced the lobby and hallway flooring. He has also installed security cameras throughout the property.

Recently the landlord spent a half million dollars on upgrading the interior of the units. He installed new kitchens, new bathtubs, new toilets and new flooring. Before he did the work he spoke to the residents of the building. They all agreed – orally – to rent increases if he did the work. Once the renovations were complete all the tenants, except this one, have been paying a higher rent. This tenant advised the landlord that he was not required to pay the additional rent because there was no agreement in writing.

In 2007 the rent for this unit was \$690.00. The rent includes heat and hot water. After several rent increases, the last of which was effective October 1, 2014, the rent is \$817.00.

The permitted annual increase in 2015 is 2.5%, or \$20.45, which would bring the rent for this unit to \$838.05. The landlord is applying for an additional rent increase of 23.5%.

The landlord testified that this building is one of the best buildings in the area and he has no trouble renting units when they go vacant, which is not very often. With one exception all the tenants of the building have been there more than two years and many have lived there for more than ten years.

The landlord owns several buildings. He says there is a big demand for two bedroom units in this area. Recently he advertised a two bedroom unit in this building, on Craig's List only and received fifteen applications in response. He was able to rent the unit for the advertised rent of \$1100.00 per month.

The landlord filed information about four other two bedroom units in this building. All the units are corner units, as is the tenant's. After the recent remodel all of the units have the same finishes and appliances. The only difference is that the comparable units are 936 square feet while the tenant's unit is 875 square feet.

Comparables:

- 101 – This tenancy started August 1, 2014. The current monthly rent is \$1025.00. The parties have agreed that the rent will be increased to \$1050.00 effective November 1, 2015.
- 113 – This tenancy started in 2008. The current monthly rent is \$1025.00.
- 201 – The previous tenant lived there from March 1, 2008 and just recently moved out. At the end of this tenancy the monthly rent was \$1025.00. The landlord has rented this unit effective October 1, 2015 for \$1100.00 a month.
- 214 – This tenancy started in 2011. The current monthly rent is \$1011.

The landlord argued that the average rent for these four units is \$1026.00 per month, or \$1.096/square foot. Applying that rate to this unit the rent should be \$959.00. He is asking for permission to charge \$950.00 per month for this unit.

Analysis

The *Residential Tenancy Act* allows a landlord to apply to the Residential Tenancy Branch for approval of a rent increase that is greater than the annual rent increase permitted by the legislation. The grounds on which an additional rent increase may be granted by an arbitrator are set out in section 23 of the *Residential Tenancy Regulation*. The *Regulation* also sets out a number of factors that must be considered by the arbitrator when deciding an application. The principles an arbitrator must apply are more fully described in *Residential Tenancy Policy Guideline 37: Rent Increases*.

The landlord makes this application on the ground that after the allowed annual rent increase, the rent for the rental unit is significantly lower than the rent payable for other units that are similar to, and in the same geographic area as, the rental unit. (Section 23(1(a) of the *Residential Tenancy Regulation*.)

The *Guideline* explains that:

“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 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. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e. over several years) an Additional Rent Increase could be used to bring the rent into line with other similar one-bedroom apartments in the building. To determine whether the circumstances are exceptional, the arbitrator will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents are paid. . . .

The amount of rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessarily with the highest rent charged for such a unit.”

The comparables supplied by the landlord in support of this application are true comparables. The units are in the same geographic location and have identical finishes and services.

The renovations done by the landlord appear to be those expected in a regular and responsible renewal program. The fact that they have been made increases the fair market value of all the units in the building but the actual cost of the capital investment is not a factor to be considered on the request for additional rent increase.

The difference between the rent paid for this unit and the rent paid for comparable units in the same building is significant, over 20%.

This is a long-term tenancy. The reality is that if a landlord does not impose the permitted annual rent increase every year during the course of a long-term tenancy over time the rent falls behind the rates charged for comparable units. Even though this landlord has imposed the permitted annual rent increase regularly since he bought this building those increases have not been adequate to bring the rent for this unit into line with the rents charged for similar units in the building.

I find that the landlord is entitled to an additional rent increase on the grounds that the rent paid for this unit, even after the permitted annual increase, will be significantly lower than the rent paid for similar units.

I liked the landlord's method for calculating a comparable rate for this unit but my math was slightly different. The average rent of the four comparable units, as of the date of the application, is \$1021.50 or \$1.09/square foot. Applying that rate to this unit the rent would be \$954.92.

However, I recognize that the tenants have been paying a certain rent for many years and imposing a total rent increase of \$132.40 (\$950.00 – \$817.60) at once may cause significant hardship.

Taking this factor into consideration I order that the landlord may increase the rent by \$107.50, a total increase of 13.15% to bring the rent to \$925.00. This increase is

comprised of two separate components: the annual permitted rent increase of \$20.45 (2.5%) and the additional rent increase of \$87.05 (10.6%).

The landlord must serve the tenant with a Notice of Rent Increase in the prescribed form for a rent increase in an amount up to the amount that I have ordered. The effective date of the rent increase is to be calculated in the same manner that the effective date of a permitted annual rent increase is calculated.

Conclusion

A rent increase has been granted in the amount and for the reasons set out above.

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: October 16, 2015

Residential Tenancy Branch

