



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with an application by the landlords for an additional rent increase. Although served with the application by registered mail actually received on September 3, 2015, neither tenant appeared nor did they file any written submissions or evidence.

Issue(s) to be Decided

Should a rent increase greater than the annual allowable increase be granted and, if so, in what amount?

Background and Evidence

This tenancy commenced September 1, 2011 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. At the start of the tenancy the rent, which is due on the first day of the month, was \$1900.00. The landlord testified that this was a fair rent for this unit at that time. The rent includes gas, hot water and parking for one motor vehicle in secure underground parking.

The unit is a two bedroom, two bathroom apartment with a solarium, approximately 800 square feet. It is an upscale unit that includes such niceties as a gas range, panelled refrigerator, drawer-style dishwasher, in-suite laundry, and a nice balcony area. The building amenities include a fitness room and a meeting room.

The owner of the unit testified that they bought this unit before it was completed. Construction was delayed as a result of the economic downturn in 2008 and the occupancy permit was not granted until 2010 or 2011. They rented the unit as soon as the occupancy permit was granted. The owner thought that these were the only tenants they have ever had.

The owner testified that their mortgage obligations did not start until the occupancy permit was granted but they have been subsidizing the unit ever since.

The rent was not increased in 2012. Effective September 1, 2013 the rent was increased by 2.63% to \$1950.00 and effective September 1, 2014 the rent was increased by 1.54% to 1980.00.

With one exception, the circumstances regarding this rental unit have been extremely stable since the start of this tenancy. The tenants have been good tenants. The landlords' operating costs, including the cost of their mortgage, have not changed. No major repairs or upgrades have been required. There have been no applications for dispute resolution filed by either the landlords or the tenants. There has been no change in any service or facility offered by the landlords.

According to the landlord the only thing that has changed is the market. The landlord is asking for an increase of 23.74% to bring the rent to \$2450.00.

In support of their application the landlord submitted advertisements for several similar units. They explained that this building is substantially owner occupied which is why they were not able to provide any comparables from this building.

Unit	Description	Size	Monthly Rent
#1	2 bedroom/2 bath, fully furnished, a little outside this neighbourhood	795 sq.ft.,	\$2395.00 + utilities
#2	2 bedroom + den/2 bath	800 sq.ft.	\$2400.00
#3	2 bedroom + den/2 bath	803 sq.ft.	\$2450.00
#4	2 bedroom/2bath, no outside space	720 sq.ft.	\$2600.00
#5	2 bedroom/1 bath; older	830 sq.ft.	\$2500.00

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision, in particular, *Policy Guideline 37: Rent Increases*.

Section 43(1) of the *Residential Tenancy Act* allows a landlord to impose a rent increase up to the amount calculated in accordance with the regulation. The regulation prescribes the formula by which the annual allowable rent increase is calculated; basically the annual rate of inflation plus 2%.

As explained in the *Guideline*, a landlord cannot carry forward any unused portion of an allowable rent increase without an arbitrator's order. Put into its' simplest terms, the law is that if you don't use it, you lose it.

The *Guideline* explains that the legislation allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic annual allowable rent increase. Section 23(1) of the *Residential Tenancy Regulation* sets out the limited number of situations in which an increase may be considered and section 23(3) sets out the factors that an arbitrator must consider when deciding whether to approve an application for a rent increase.

The landlords' application is made pursuant to section 23(1)(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 units that are similar to, and in the same geographic area as, the rental unit.”

The *Guideline* explains that on an application such as this the landlord has the burden of proving that the rent for the rental unit is significantly lower than the current rent for similar units in the same geographic area and that additional rent increases under this section will only be granted in exceptional circumstances. As set out in the *Guideline*:

“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 rent (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, and the length of time over which the significantly lower rent or rents was paid.”

This provision is usually used to increase the rent of units that have been occupied for many years and for which the rent has only been raised occasionally. That is not the situation here. The unit has only been occupied by these tenants for four years and rent increases have been imposed in two of the three preceding years.

The landlords have never increased the rent by the full amount allowed in any year of this tenancy. In 2012 the allowable rent increase was 4.3%; in 2013 it was 3.8%; and in 2014 it was 2.2%. The actual rent increases imposed by the landlords were 0% in 2012; 2.63% in 2013, and 1.54% in 2014. If the landlords had increased the rent by the full allowable amount every year the rent would now be \$2038.71 instead of \$1980.00 and after the allowable rent increase for 2015 the rent would be increased to \$2089.68.

This is an investment property for the landlords and they have the assistance of professional property managers so there were probably good business reasons for not raising the rent to the full extent allowed by the law in 2012, 2013 and 2014.

The landlords have written this particular contract – they agreed to rent the unit for \$1900.00 and they decided to impose rent increases in amounts below those allowed by law. To a large extent they are bound by their own contract.

This provision of the legislation is not intended to provide a mechanism for landlords to take advantage of a recent upswing in the market and a recent change in the market is not an exceptional circumstance. Accordingly, the landlords' application for an additional rent increase is dismissed.

Conclusion

The landlords' application for an additional rent increase is dismissed, for the reasons set out above. If the landlords wish to increase the rent by the amount allowed by the *Regulation* they must serve the tenants with a Notice of Rent Increase in the approved form, if they have not already done so.

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: November 10, 2015

Residential Tenancy Branch

