



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 by way of conference call concerning an application made by the landlord for an additional rent increase.

The landlord attended the hearing with an observer, who did not take part in the proceedings. The tenants were represented by an agent, and some of the tenants also attended the hearing. Two observers with the tenants, who did not take part in the proceedings were also present, as well as a person representing one of the tenants, who gave oral testimony. The landlord and 1 of the tenants also gave affirmed testimony, and the parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that rent should be increased by an amount in excess of the allowable amount under the *Residential Tenancy Act* and the regulations?

Background and Evidence

The landlord testified that the landlord purchased the rental building, an apartment building containing 18 rental units in September, 2014. The last rent increase was effective November 1, 2014 at 2.5% and the landlord seeks to raise the rent by 20%, which is 17.5% over the allowable amount for this year. Two new people have moved in and the landlord has rented those units at the increased amount, and another tenant is not disputing the increase.

The landlord testified that she spoke to each apartment building within the City asking what the rent currently is for their 1 and 2 bedroom apartments and a list has been provided that covers all apartments that the landlord knows of within the City. This apartment building has significantly lower rents. The building is close to downtown, and other buildings which are similar have higher rents. This building also includes cable in the rent for all units, as well as parking, are good sized apartments and well-maintained.

The landlord also stated that 3 comparables have been provided by the tenants, but the landlord disagrees that they are comparable, in that some are basement suites or above restaurants on the main street. The landlord's comparables show that this complex has rents of between \$625.00 and \$788.00. The rents include heat, hot water, cable, storage and parking. Others in the City are:

- A) Located close to downtown, 2 – 3 driving minutes, including utilities and parking:
 - One bedroom - \$820.00;
 - Two bedrooms - \$950.00.
- B) Located downtown, including hot water, heat and electricity:
 - One bedroom - \$700.00;
 - Parking - \$35.00.
- C) Located 5 driving minutes from downtown, including parking:
 - One bedroom - \$850.00;
 - Two bedrooms - \$950.00.
- D) Located 5 driving minutes from downtown, including parking:
 - Studio suite - \$660.00;
 - One bedroom - \$710.00.
- E) Located 5 driving minutes from downtown, including heat and parking:
 - One bedroom - \$825.00;
 - Two bedrooms - \$950.00.
- F) Located downtown, including heat and hot water:
 - One bedroom - \$775.00;
 - Parking - \$25.00.
- G) Located downtown, not including utilities or parking:
 - Two bedrooms - \$1,100.00.
- H) Located downtown, including heat:
 - One bedroom – between \$700.00 and \$800.00;
 - Two bedrooms \$1,000.00.

The landlord has also provided a map of the City showing the proximity of the apartment buildings to downtown, and a recent article from the local newspaper stating that the average price to rent a one bedroom apartment is \$836.00 and \$1,038.00 for a two bedroom unit. The landlord stated that this building is in great condition, very well maintained and is the only building downtown that includes parking. Few include cable or storage. An increase of 20% would bring the building to even rent of what others rent for. This building is also in high demand.

One of the tenants (KR) testified that she has lived in the rental complex for 33 years. With respect to upgrades to the rental unit, the backing behind the bathtub was gyprock until a year ago when it was replaced. The rental unit has been painted about 3 times in 33 years, the last of which was 2 years ago. Due to a flood in an upper unit, the linoleum in the rental unit was replaced.

The tenant further testified that she has no heat control in the rental unit and in winter the apartment seems to be colder and no one knows why. The tenant would prefer to turn it off and on but the thermostat is in the basement.

The tenant also had to provide her own fridge and stove. The previous landlord brought a stove 9 years ago but the tenant still uses her own fridge.

There are no carpets provided in the rental unit and the tenant had them installed.

There are no fans in the kitchen or bathroom of the tenant's rental unit; just grating in the ceiling in both rooms.

The tenants' witness (AM) testified that she does not reside in the rental complex but her grandmother resides on the 2nd floor and the witness visits every day or every second day. The floors of her grandmother's unit are part cork and part linoleum. The kitchen is a small apartment size kitchen with a stove and fridge and no other appliances. The witness testified that the oven can't be opened without moving the dining table.

The witness also testified that she has been in other apartments within the City and works in a commercial building that has apartments above. The apartments in that building are smaller than the apartment the witness' grandmother lives in.

Also provided in the evidentiary material of the tenants' are submissions from tenants stating that the apartment building is a two story walk-up with no elevators, built in 1955, and none of the units have had any major upgrades since any of the tenants moved in. Windows are not cleaned regularly, the laundry area is not kept very clean, and flooring

in most units is worn out. None of the units have balconies, dishwashers or in-suite laundry, and are only equipped with a stove and refrigerator.

The heat for the entire building is controlled by one unit in the basement and some units feel too hot while others feel too cold.

There are no fans, windows or electrical outlets in the bathrooms and ventilation is poor throughout the building. Ventilation systems exist with vents in the bathrooms and kitchens, but the fans don't work and the system has not been cleaned regularly.

There are 10 parking spaces available to tenants, but 18 units in the building. Parking on the street is limited to 2 hours during the day, and poor lighting exists in the parking area.

Storage is included, but not individual locking units for tenants, but an open area that can be accessed by anyone with a key.

The landlord and the tenants, through their counsel, were given the opportunity to make closing submissions.

Analysis

The landlord applies for an additional rent increase pursuant to Section 43 (3) of the *Residential Tenancy Act*, which states, 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.

The regulation to which the landlord applies specifies:

23 (1) A landlord may apply under section 43 (3) of the Act [*additional rent increase*] if one or more of the following apply:

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;

and that is the test to be met. In order to be successful the landlord must establish that rent for the units within the complex are significantly lower than similar rental units in the same geographic area. The regulations also specify what factors I must consider:

(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;

(d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;

(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 have reviewed the evidentiary material provided by the parties, including written submissions. I also refer to Residential Tenancy Branch Policy Guideline #37 – Rent Increases:

“The policy intent is to allow the landlord to apply for dispute resolution only in “extraordinary” situations.” ... “A landlord may apply for an additional rent increase if one or more of the following apply:

- (a) After the allowable 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;
- (b) The landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that
 - i. Could not have been foreseen under reasonable circumstances, and
 - ii. Will not recur within a time period that is reasonable for the repair or renovation;
- (c) The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;
- (d) The landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;
- (e) The landlord, as a tenant, has received an additional rent increase under this section for the same 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.

“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 dependant on particular attributes of the subject unit, such as proximity to a prominent landscape feature (e.g., 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. 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 was paid.

In this case, the landlord has not provided any evidence of the rent history for the affected units for the last 3 years, or a change in a service or facility in the last 12 months, so those factors cannot be considered.

The landlord has provided information with respect to an increase in insurance costs and cable costs, but has not provided any evidence of that.

Further, I am not satisfied that the landlord has established that the comparables are similar to the rental units in this building. There is little or no evidence of balconies, in-suite laundry, parking, in-suite thermostats, dishwashers or other appliances. At least some of the tenants in this building have provided their own appliances in their rental units, or carpeting. There is no evidence of repairs or renovations or a financial loss to the landlord for financing costs for purchasing the property.

In the circumstances, I find that the landlord has failed to meet the test, and I deny the application.

Conclusion

For the reasons set out above, 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: November 20, 2015

Residential Tenancy Branch

