



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLROS. HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – ARI

For the tenant - DRI

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an additional rent increase. The tenant applied to dispute an additional rent increase.

The parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to increase the rent above the allowable percentage for 2015?
- Is the tenant entitled to an Order disputing the additional rent increase?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2014 for a fixed term tenancy which ended on September 30, 2015, thereafter continuing as a month to month tenancy. Rent for this unit is currently \$900.00 per month.

Counsel for the landlord stated that the landlord seeks to increase the rent by 43.3 percent from \$900.00 to \$1,290.00; an increase of \$390.00. Counsel for the landlord stated the following to support the landlord's claim:

- - The tenant was employed by the landlord when she became a tenant in this unit. The tenant's employment was terminated on April 30, 2015.
- The floor plan provided in evidence for the building shows the market rent for the tenant's unit 501 as \$1,300.00. In fact it was the tenant during her employ who posted this information on the landlords' website.
- The landlord reduced the tenant's rent to \$900.00 as part compensation for her employment. It was verbal term of the contract and the tenant received benefit of this lower rent while she was employed by the landlord.
- When the tenant's employment ended in April, 2015 the landlord verbally informed the tenant that her rent must increase to market rent.
- The tenant did not pay the market rent so written notice was given to the tenant and an application was filed for an additional rent increase.
- Market rent for units on the top floor of this building show an average rent between one and two bedroom units as \$1,206.25 per month.
- The tenant rents a corner two bedroom unit with a square footage of 1085 square feet and a view. There are currently one bedroom units renting significantly higher than the tenant's two bedroom unit. All other units also pay \$40.00 per month towards water.

Counsel for the landlord referred to the plans of other units provided in evidence. These show comparable units at a significantly higher rent. Unit's 502, 508, 608, 602, 601 are all corner units with the same square footage and view in the same building and the rent for these units is between \$1,240.00 to \$1,390.00. Units 507 and 607 have slightly higher square footage at 1120 square feet and their rents are \$1,290 and \$1,390.00 per month.

Counsel for the landlord referred to a previous tenancy agreement provided in evidence that shows when the tenant was employed by the landlord she had rented her unit 501 to another tenant at a monthly rent of \$1,250.00 plus \$40.00 for water. The tenant cancelled this tenancy agreement with that prospective tenant as she wanted to move into unit 501. Counsel for the landlord states that this shows the tenant was aware of the market rent for unit 501.

The tenant testified that she did not cancel the tenancy agreement with the first tenant. It was the prospective tenant who cancelled it.

The tenant testified that the landlord approached the tenant and asked if the tenant wanted to move into the complex as the tenant had told the landlord her home was going into foreclosure and she would lose her home and be going through bankruptcy. The tenant testified that because of this she informed the landlord that she could only afford to pay \$900.00 per month. The landlord agreed to this and there were no conditions put on her tenancy agreement either in writing or verbally that said the rent would have to go up if the tenant's employment ended.

The tenant testified that after her employment ended the landlord SS came to the tenant in June, 2015 and asked her for three postdated cheques for \$340.00. The tenant asked why and was told that her rent had gone up as she was no longer employed. The tenant refused as her tenancy agreement states her rent is \$900.00 per month. In August the landlord came to the tenant and asked when she was leaving as her lease expired. The

tenant informed the landlord that her lease reverted to a month to month tenancy at the end of the fixed term.

The tenant testified that if the lower rent was conditional on her employment then the landlord should have put something in the tenancy agreement saying her rent would increase. The tenant testified that she is aware there are other units rented for more money and the tenant has no problem with her rent being increased for the allowable amount for 2015.

Counsel for the landlord asked the tenant the following questions:

Questions to the tenant	tenants response
Is this a two bedroom unit	Yes
How many people live there	Just me
If you were short of cash why did you not rent a one bedroom unit	At that time I was employed and could afford \$900.00. I needed the extra bedroom for office space as I would do extra work for the landlord at home
Was this a condition of employment	It was not strictly for doing the landlord's work it was a benefit to the tenant having a two bedroom unit
Could you live in a one bedroom unit	I have no money to move and my health is poor. This unit was not conditional on my employment with the landlord and there are no conditions on my tenancy agreement
You explained you needed two bedrooms to use one as a home office and said it benefitted you and the landlord	This was not an understanding between the landlord and me. It benefited the landlord as I could do extra work for him after hours as a contentious employee. I also collected some rent in the building
You said some units were rented higher than market value. Are	Mine is close to market value the landlord charged different amounts depending on what he thought he

you saying your unit is market value	could get
Can you tell us if there is another two bedroom unit rented on the top two floors with rent of \$900.00	I do not know what rent is now for other units
Did you assist the landlord in renting units out when you were employed	I was a property manager and wrote the tenancy agreements up. You could get between \$900.00 and \$1,200.00 for a two bedroom unit depending on which building there were in
Can you rent another two bedroom unit for \$900.00	I don't know but you can get a two bedroom unit for \$900.00 in other buildings

The tenant called her witness. The tenant asked her witness the following questions:

Questions for witness	Response from witness
Where you employed by the landlord at the same time as me	yes
Do you remember a conversation between the landlord and me regarding rent	I remember the discussion. The landlord asked you if you wanted to move into this unit and you told him you could only afford \$900.00. the landlord agreed to this and a tenancy agreement was drawn up and signed by the landlord
Was it mentioned that this rent was a condition of employment	No it was a residential tenancy agreement

Counsel for the landlord asked the witness the following questions:

Questions for the witness	Response from witness
You said you were present when this	Yes

conversation took place	
Were you present for all conversations between the landlord and tenant	I can only verify the conversations that took place in the office
You were aware the tenant did some work for the landlord from her second bedroom	Yes the tenant did extra work at home as she dealt with all of the landlords' properties and this included collecting rent
Would it surprise you if the tenant and landlord had conversations by phone without you present	Yes but everything should have been on file as I did all the employee records concerning agreements
Do you still work for the landlord	No I quit my job but left on good terms
Is it possible the tenant and landlord had conversations about conditions of employment without you present	Anything is possible
Do you know anything about market rents	It changed for each unit I am not a property manager or realtor

I asked a question of the landlord and asked the landlord what the market rent is for the lower floors of this building. The landlord responded that rent is around the same or higher although there are no views on the lower floors these units can rent at \$1,200.00 without a view.

The landlord's agent testified that she is the landlord's bookkeeper and a one bedroom unit on the lower three floors rents for around \$975.00 per month plus \$40.00 for water and two bedroom units rent for \$1,150.00 to \$1,250.00 per month plus \$40.00 for water. This tenant does not pay water utilities.

The landlord seeks an Order allowing the landlord to increase the rent to \$1,290.00 per month. The tenant seeks to dispute this increase.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. The Legislation permits a landlord to impose a rent increase up to the amount either calculated in accordance with the regulations, or ordered by an Arbitrator on application. The rate allowed in 2015 is 2.5 percent which would increase the tenants rent by \$22.50 per month.

The *Residential Tenancy Act* allows a landlord to apply to an Arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. The policy intent is to allow the landlord to apply for dispute resolution only in “extraordinary” situations. The Residential Tenancy Regulation sets out the limited grounds for such an application. 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.

Counsel for the landlord submits that the tenant’s rent was lowered from the market rent as she was in the employ of the landlord at the time and this was compensation for her

employment. Now the tenant is no longer employed the unit should return to market rent.

The tenant argued that this was not part of the terms of her employment and was not documented on her tenancy agreement. The landlord knew how much she could afford and rented the unit to the tenant at that amount.

Counsel for the landlord also submits that the rent for this unit is significantly lower than market rent and has provided comparable units of the same size in the building.

The tenant does not dispute this but reiterated that her rent was not low because of her employment but because it was agreed upon and the landlord knew it was all she could afford.

I have considered the arguments put forth and find there is nothing in the tenancy agreement to show that the tenant enjoyed a lower rent for her unit as a condition of employment or in compensation for her employment. If this was the case the landlord should have put this in writing. Verbal agreements are almost impossible for a third party to interrupt and therefore it is simply one person's word against that of the other.

However; with regard to the landlords' claim that the tenant's rent should be increased as it is significantly lower than other comparable rents. The landlord has the burden of proof and is responsible for proving that the rent 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.

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.

I have considered the market rent for these units when they were first put on the market by the tenant when she was in the landlords employ. These market rents show units were marketed for rent between \$1,300.00 and \$1350.00 plus \$40.00 for water. The tenant's unit was similarly marketed for \$1,300.00 prior to her taking possession when she worked for the landlord. I do not find therefore that the units have had their rent increased at a higher rate in the first year but rather for some units the rent gained is lower than the market rent the landlords first proposed.

I am satisfied from the evidence before me that the tenant's rent is lower than other units of the same square footage, corner units and views. Even after the allowable annual rent increase for 2015, the tenants rent would still be significantly lower than comparable units. The floor plans show the other units to be almost identical to the tenant's unit. While the landlord has not shown comparable units in other buildings in the geographical area I am satisfied that the other units in the building that are comparable do pay a higher rent. The amount of rent varies for each of these comparable units from \$1,240.00 to \$1,390.00. The landlord has requested an increase of \$390.00 taking the tenant's rent to \$1,290.00. As there is a comparable unit for \$1,240.00 I find this is the most the landlord is entitled to increase the rent.

Furthermore as the tenancy agreement states the water is included in the rent I find the landlord is not entitled to charge the tenant for water costs per month on top of the rent.

As this is a significant increase for the tenant, I find the increase in rent may be phased in over a nine month period. The tenant's rent for January, 2016 will increase by \$113.33 to \$1,013.33; in May, 2016 the tenant's rent will increase by \$113.33 to

\$1,126.66 and from September 01, 2016 the tenant's rent will increase by \$113.33 to \$1,240.00. No further increases will be permitted in 2016.

Conclusion

I uphold the landlord's application for an additional rent as shown above.

The tenant's application to dispute the additional rent increase is 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: December 07, 2015

Residential Tenancy Branch

