



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code:

ARI

Introduction

This hearing dealt with the Landlord's application for a rent increase in excess of the limit set by the *Residential Tenancy Regulation* (the "Regulation").

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord provided the Tenants with the Notice of Hearing documents and copies of her documentary evidence on or about July 22, 2015, by courier. It was also determined that the Tenants served the Landlord with copies of their documentary evidence by registered mail on October 28, 2015. The Landlord stated that she did not require more time to consider the Tenants' documentary evidence.

Issue(s) to be Decided

After a rent increase permitted by the Regulation, is the rent for the subject rental unit significantly lower than rent payable for other rental units similar to and in the same geographic area as the subject rental unit?

Background and Evidence

The Landlord is applying to increase the monthly rent for the subject rental unit an additional 43.5% after the permitted increase of 2.5% allowed by the Regulation.

This tenancy began on October 1, 2004. Rent at the beginning of the tenancy was \$1,500.00. The Tenants paid a security deposit in the amount of \$750.00 at the beginning of the tenancy. No pet damage deposit was required.

Landlord's testimony:

The rental unit is approximately 1,160 square feet. It has 2 bedrooms and a den, 2.5 bathrooms, in-suite laundry facilities, a fireplace, and a private sun porch. Rent includes one parking lot, electricity and water. The Tenants have one cat.

The rental property is a converted church which was divided into four separate residential units. The Landlord purchased the subject rental unit in April, 2000, shortly after it was renovated. The Landlord's daughter occupied the rental unit while she was attending university. After the Landlord's daughter moved out of the rental unit in 2004, the Landlord rented it to the Tenants.

Current monthly rent is \$1,895.92. For the first three years of the tenancy, the Landlord did not increase the rent. In 2007, the Tenants agreed to a 5.15% rent increase. In 2008 and 2009, rent was increased in the amounts allowed by the Regulation. There was no rent increase in 2010, but rent was increased in accordance with the Regulation effective October 1, 2012, 2013, 2014 and 2015. The Landlord seeks an additional rent increase of \$872.12 per month, equaling a monthly rent of \$2,768.04. The Landlord testified that had she increased the rent as allowed by the Regulation, current rent would be \$2,268.07. She requested that any additional rent increase be made retroactive to October, 2015.

The Landlord stated that since the beginning of the tenancy, she has replaced the washer, dryer and water heater, as well as "completing numerous repairs". She stated that the condo fees have increased from \$200.00 to \$325.00 per month since the beginning of the tenancy. The Landlord testified that her insurance costs have also increased from \$187.00 to \$451.00. The Landlord stated that she is a non-resident to Canada and that after paying taxes, she realizes no profit from renting the rental unit.

The Landlord provided the following information with respect to rental units **in the same geographical area**:

Description	Current Rent	Additional Comments
1 Bdr, 1 Bth 700 sq ft	\$2,600.00	Not stipulated: whether there is a fireplace; laundry in-suite; parking; utilities included; or if pets allowed.
2 Bdr, 1 Bth 717 sq ft	\$2,000.00	Not stipulated: whether there is a fireplace; laundry in-suite; parking; utilities included; or if pets allowed.
2 Bdr, 1 Bth 811 sq ft	\$2,000.00	Not stipulated: whether there is a fireplace; laundry in-suite; parking; utilities included; or if pets allowed.
Description	Current Rent	Additional Comments

2 Bdr, 2 Bth 879 sq ft	\$2,000.00	Not stipulated: whether there is a fireplace; laundry in-suite; parking; utilities included; or if pets allowed.
2 Bdr, 912 sq ft	\$2,795.00	Includes fireplace, no pets allowed. Not stipulated: whether there is laundry in-suite; parking; utilities included; number of bathrooms.
2 Bdr, 1 Bth 1100 sq ft	\$2,795.00	Includes fireplace, no pets allowed. Not stipulated: whether there is laundry in-suite; parking; utilities included; number of bathrooms.
2 Bdr, 2 Bth, Den 1130 sq ft	\$2,500.00	Not stipulated: whether there is a fireplace; laundry in-suite; parking; utilities included; or if pets allowed.
2 Bdr, 2.5 Bth 1148 sq ft	\$3,000.00	Includes fireplace. Not stipulated: whether there is laundry in-suite; parking; utilities included; or if pets allowed.
2 Bdr, 2.5 Bth 1152 sq ft	\$3,400.00	Not stipulated: whether there is a fireplace; laundry in-suite; parking; utilities included; or if pets allowed.
2 Bdr 1205 sq ft	\$3,500.00	Includes in-suite laundry. Pets allowed. Not stipulated: number of bathrooms; whether there is a fireplace; or whether parking and utilities are included.
2 Bdr, 2.5 Bth 1240 sq ft	\$2,800.00	Includes fireplace. Not stipulated: whether there is laundry in-suite; parking; utilities included; or if pets allowed.
2 Bdr, 2 Bth, Den 1250 sq ft	\$3,595.00	Includes fireplace. Not stipulated: whether there is laundry in-suite; parking; utilities included; or if pets allowed.
2 Bdr, 1 Bth 900 sq ft	\$1,995.00	Shared laundry facilities, street parking, water included, pets allowed. Not stipulated: whether there is a fireplace
2 Bdr, 1 Bth 1100 sq ft	\$2,795.00	Includes fireplace. Shared laundry facilities. Parking and water included. No pets allowed.
2 Bdr, 2 Bth, Den 1600 sq ft	\$3,795.00	Includes in-suite laundry. Pets allowed. Water included. "outside-assigned" parking. Not stipulated: whether there is a fireplace.

The Landlord also provided examples of rents for other areas, but I have not included them in this Decision as they are not in the same geographical area.

Tenants' testimony

The Tenants testified that the Landlord is an absentee landlord and that they didn't meet her until 2011. They stated that they have been acting as "de facto" property managers for the Landlord, by attending strata meetings and dealing with emergency repairs. Such repairs included cleaning up water from the water heater and the washing machine when they broke; repairing a gas leak from the stove. The Tenants stated that they also coordinated repairs to the dishwasher, water heater and plumbing. The Tenants testified that they did routine maintenance including painting some of the rooms and co-ordinating fireplace maintenance.

The Tenants submitted that the Landlord's examples (which included the addresses for the properties) were mostly not comparable because most of the suites are furnished suites and are outside of the geographic area. In addition, the Tenants stated that the Landlord's examples are mostly brand new with high end appliances and water views.

The Tenants stated that the rental unit is much further from the ocean than most of the Landlord's examples. The Tenants stated that the rental unit has had no upgrading since 1999 and has never been properly painted. The Tenants provided photographs of the rental unit.

The Tenants stated that of all the Landlord's examples, only two were somewhat comparable. These two units rent for \$1,995.00 and \$2,150.00.

The Tenants provided examples of advertisements for other 2 bedroom rental properties in the same geographic area, as follows:

Description	Current Rent	Additional Comments
2 Bdr, 1 Bth 850 sq ft	\$1,500.00	Shared laundry, street parking; patio; pets allowed. Does not include utilities.
2 Bdr, 1 Bth	\$1,850.00	Laundry "on site", street parking, pets allowed. Heat and hot water included. Not included: electricity and gas. No indication of square footage.
2 Bdr, 1 Bth 1100 sq ft	\$1,850.00	Includes fireplace, patio. Not stipulated: whether there is laundry in-suite; parking; or if utilities are included.
2 Bdr, 1 Bth,	\$1,950.00	Includes a non-working fireplace (decorative only), shared laundry. No pets, utilities not included. No indication of square footage, but ad says "large".
Description	Current rent	Additional Comments
3 Bdr, 1 Bth	\$2,160.00	Utilities not included. No pets. Shared "free" laundry,

		street parking. Shower only (no bath tub). Not stipulated: whether there is a fireplace. No indication of square footage.
2 Bdr, 2 Bth	\$2,100.00	Heat and hot water included. No pets. Shared laundry, underground parking (additional \$50.00). Not stipulated: whether there is a fireplace. No indication of square footage.

Landlord's response to Tenants' testimony

The Landlord submitted that the Tenants' examples are not good examples because most have only one bath, and one has no bathtub (only a shower). In addition, most have shared laundry, whereas the Tenants have in-suite laundry.

The Landlord stated that the name of the renting agency would lead one to believe that the units were furnished, but that the examples she gave were all unfurnished.

The Landlord acknowledged that she has not had the rental unit painted for 11 years.

Analysis

This is the Landlord's Application and therefore 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 same geographic area means the area located within a reasonable radius of the subject rental unit, with similar physical and intrinsic characteristics. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by a landlord.

The Landlord provided additional information, suggesting that she was not realizing any profit from renting the rental unit, and that her costs have gone up. However, page one of the Landlord's Application indicates only the first reason for seeking an additional rent increase. Therefore, I find that this additional information is irrelevant to the Landlord's Application.

There is no provision in the Act for backdating rent increases. Section 42 of the Act does not allow for rent increases more than once in a 12 month period. The Tenants last rent increase came into effect on October 1, 2015.

I find that the Landlord did not provide sufficient evidence that there were similar rental units in the same geographical area, with similar amenities that were renting for more

money. However, the Tenants agreed that two of her examples were similar to the rental unit, one which rents for \$1,995.00 and one which rents for \$2,150.00. Therefore, I find that the Landlord is entitled to a rent increase based on the average of those two units (\$2,072.50) effective **October 1, 2016** (one year after the most recent rent increase).

Conclusion

Effective **October 1, 2016**, monthly rent will be **\$2,072.50**.

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

