



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E.M.V. HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ARI

Introduction

This hearing dealt with an application under the Residential Tenancy Act, ("the Act"), by the landlord for a rent increase beyond that which is permitted under the Act and Regulations. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issues

The landlord originally filed his application seeking additional rent increases on 21 units. However, as of today's hearing the landlord is only pursuing an increase on the above noted units. For absolute clarity, this decision will only address the nine units listed above.

Issues(s) to be Decided

Whether the landlord is entitled to an additional rent increase after a rent increase permitted by the regulation.

Background and Evidence

Counsel for the landlord gave the following submissions.

The landlord is seeking an additional rent increase on the basis that the rent is significantly lower than the rent payable for other rental units similar to and in the same geographic area as the rental unit. Counsel submits that the landlord purchased the building in May 2015. Counsel submits that the reason the landlord chose these tenants was that they are the longest tenured tenants with the lowest rent. Counsel submits that it's only fair to shorter term tenants' who pay up to \$1400.00 per month should have some equality. The subject tenants' range of rental payments are \$914.47 to \$1079.75 with the tenancy start dates of 1970 – 2006. Counsel submits that the landlord seeks increases specific to each unit with the range being \$320.25 to \$494.64. Counsel submits that would bring the rents between \$1350.00 per month and

\$1450.00 per month. Counsel submits that the present owner inherited “very very low rents for this area” and should not be penalized for the previous owners’ actions. Counsel entered written submissions, affidavits, and documentation for this hearing. Counsel submits that the landlord is acting fairly and reasonably and that they should be entitled to the increases as requested.

LC and SM spoke on behalf of all tenants’.

SM stated that the landlord has done a poor job in submitting their application. SM stated that the landlords comparables; are not comparable. SM stated that they have been given increases in accordance with the regulations for many years and that it is unfair to penalize long term tenants for their loyalty to the building. SM stated that the landlord knew full well what he was purchasing when he obtained the building in May 2015. SM stated that an increase in accordance with the regulations is fair.

LC stated that landlords have been very unclear throughout this process; first advising that 21 units would be affected, then changing it just prior to the hearing to 9 units without explanation. LC stated that the landlords failed to provide a detailed comparison of local rental units and the services each unit came with and therefore should not be considered. LC stated that the landlords are comparing many fully renovated units to their units which have not had any upgrades for the term of their tenancies.

Analysis

Section 23 of the Regulation addresses **Additional rent increase**, and provides in part as follows:

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

- (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 rental units that are similar to, and in the same geographic area as, the rental unit;

Following from the above, the matter before me is limited to an application for an additional rent increase on the basis of “rent lower than comparable units.”

Section 43 of the Act addresses **Amount of rent increase**, and provides in part as follows:

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.

In the landlord's application, it is documented that the permitted increase is 2.9%. Residential Tenancy Policy Guideline # 37 speaks to "Rent Increases" and under the heading - **Significantly lower rent**, provides as follows:

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. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

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. In the former, \$50 may not be considered a significantly lower rent for a unit renting at \$600 and a comparative unit renting at \$650. In the latter, \$50 may be considered a significantly lower rent for a unit renting at \$200 and a comparative unit renting at \$250.

"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 dependent 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. 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 or those of surrounding buildings.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and any additional

separate charges for services or facilities (e.g., parking, laundry) that are included in the rent of the comparable rental units in other properties. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographic area, it is **not** sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents or other third party general statistics. 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 the landlord.

The amount of a 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. Where there are a number of comparable units with a range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range. For example, an arbitrator may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

The landlord has been successful at renting out other units in the same residential property at a higher rate. There have been no upgrades in the subject units where the tenants have resided. The tenants stated that many of the newly rented units have had some upgrades to them. In the result, I am unable to conclude that these units can be considered to be "similar units" as the landlord did not provide more detailed information as defined above in the Guideline.

Further, as rents have been raised in the subject units in each of the four previous years, I do not consider there are any exceptional circumstances that would support an increase which is beyond what is provided for in the Regulation.

Finally, even if I were to conclude that the subject units were similar to other units in the building where higher rents are being paid, the Guideline further provides:

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.

The general increase in market rent is already factored into the allowable annual increase under the *Act*. Clearly, market rent is not the only critical factor in determining significantly lower rent.

Additionally, the landlord submitted what they felt were comparable units in other apartment buildings. I agree with the tenants that little weight should be given to that information for the following reasons. Counsel submits that they provided the best possible evidence under the circumstances. However, one of the buildings has undergone an extensive renovation and is renting out fully renovated units out at \$1500.00 per month; I do not find this to be a comparable example.

The landlord submitted information about some nearby buildings and the common area, but submitted poor quality black and white photos of the units themselves. I am unable to determine if these are a fair comparable and give those examples little weight. Finally, the landlord submitted further documentation for two other nearby buildings and provided more photos, however the photos were once again a poor quality black and white depiction that were very grainy, blurry and were not helpful. The landlords documentation lacked the specific and detailed information required as mentioned above. The landlord relied heavily on generalities or anecdotal comparisons of other buildings when making the comparisons instead of a detailed analysis providing comparable factors such as; square footage, amenities, any upgrades, any services or facilities, parking, laundry or storage lockers.

I find that much of the landlords' documentation was general in its information and lacked the necessary detail to be successful in their application.

Conclusion

The landlords' application for an additional rent increase in respect to all the subject units of this hearing 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: March 16, 2016

Residential Tenancy Branch

