



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Delaney Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an additional rent increase.

An agent for the landlord company and the tenant attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony, and the tenant was accompanied by a Legal Advocate. Evidentiary material was also provided in advance of the hearing by both parties. The parties were given the opportunity to question each other with respect to the evidence and testimony 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 amount provided by the *Residential Tenancy Act* and the regulations?

Background and Evidence

The landlord's agent testified that he is the current property manager for a company that has contracted with the owner to manage the rental property. This month-to-month tenancy began in 2004 and the tenant still resides in the rental unit. Rent in the amount of \$705.00 per month is payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$287.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 2-bedroom suite in a 4-plex and a copy of the tenancy agreement has been provided.

The landlord seeks to increase rent by \$200.00 per month and has provided a copy of a letter dated January 8, 2016 from the landlord to the tenant seeking an agreement to raise the rent to \$900.00 per month, or for the tenant to take responsibility for the hydro bills and increase rent by \$100.00 per month.

The landlord's agent further testified that hydro is in the owner's name, which is included in the rent. The landlord's agent contacted BC Hydro to obtain averages, and the tenant's average is higher than others in the complex because the tenant uses more hydro. The tenant has an air conditioning unit and doesn't take it out in the winter months, so it sits in a window year round. The tenant keeps a warm house which has also caused humidity issues. In the summer months, the tenant keeps the air conditioning unit on 24 hours per day, 7 days per week.

The landlord also pays for water for all units. However, all 4 units in the complex have electric heat. The tenants in the other 3 units of the complex pay their own hydro, and the landlord's agent testified that their rents are: Unit 1 - \$850.00 per month + hydro; Unit 3 - \$760.00 per month + hydro; Unit 4 - \$750.00 per month + hydro. The landlord's agent has provided a spreadsheet of comparables for the 4 units within the complex as well as the 4 units in the complex next door to the rental complex. The landlord's agent testified that the \$780.00 per month listed for Unit 4 is incorrect, and the correct amount for that unit is \$750.00 per month. The spreadsheet also shows that the units in the complex next door are between \$750.00 and \$843.00 per month, and the \$750.00 per month unit shows a start date of February, 2015. Also provided are some hydro bills for a neighbouring unit within the complex for comparison purposes and one hydro bill for the rental unit dated December 8, 2015.

The landlord's agent testified that it simply isn't fair to the owner that this tenant's rent is much less than others. The landlord's agent proposes that the tenant's rent be increased to \$900.00 per month and the owner will continue to pay for hydro, or the tenant pay the hydro and rent be increased by \$100.00 per month.

The landlord's witness testified that she resided next door to the tenant in a separate building and would visit the tenant. The witness is a "hydro miser" and does not like unnecessary electricity to be used, so would walk around the tenant's home turning off lights. The tenant told the witness that she doesn't pay for it so it doesn't matter.

The tenant testified that she is away most of the day with heat turned down, and her 17 year old daughter is at school all day. From October to December, 2015 the tenant was home due to a back injury, but testified that the heat is never on in the bedrooms. The tenant disputes the witness' testimony and testified that the tenant hasn't seen the witness for 3 years.

The windows in the rental unit are all old and heat escapes. The tenant can feel cold air coming into the rental unit and when it's cold outside, they sometimes freeze and get misty inside, or freeze so that they can't open. The walls are hot, and when the tenant talked to the landlord, the landlord said new blinds would help, but the landlord hasn't yet provided them. The air conditioner is taken out every year, but due to her back injury, the tenant didn't take it out this last winter.

The tenant also testified that other units in the complex have been renovated with new cupboards, flooring and painting when previous tenants have moved out.

Rent has been increased every year since the tenant moved in and at the beginning of the tenancy rent was \$575.00 per month.

The tenant's Advocate submitted that the landlord's evidentiary material and figures respecting hydro costs of the rental unit and other rental units in the complex and the neighbouring complex contain errors.

The tenant has provided comparables, which the tenant's advocate stated are difficult to find due to a 0% vacancy rate. Copies of advertisements have also been provided, in which one tenant pays \$750.00 per month for a rental unit that is closer to town and all utilities are included. The tenant's advocate called the landlord who advised that all utilities are included. Another is for a half of a house at \$850.00 per month, and again the tenant's advocate called the owner who said all utilities are included and renovations have been done.

The tenant's advocate submits that the landlord should look at other options of why hydro is higher and perhaps with respect to renovations. Other tenants pay their own hydro, but the increase requested by the landlord is unreasonable.

Analysis

The landlord's application is made pursuant to Section 23 (1) (a) of the Residential Tenancy regulations, which states 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;

In this case, the landlord raised the rent in accordance with Section 22 in September, 2015 which increased the rent to \$705.00 per month effective January 1, 2016.

Although there are errors in the spreadsheet provided by the landlord, I find that the other 3 units pay between \$750.00 and \$850.00 per month, and the other 3 units pay their own hydro.

The regulations also specify what 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;

I find that paragraphs (c) and (g) through (k) inclusive do not apply to this application, and (g) through (k) are omitted above.

Regardless of the amount of the hydro bills, the parties have an agreement that hydro is included in the rent. The application before me is for an additional rent increase, not a change in the terms of the tenancy agreement. However, I find that paragraphs (d) and (e) of the regulations apply to this application due to the costs incurred by the landlord for hydro that the landlord does not incur for any of the other units, regardless of whether this rental unit uses more hydro than others in the area or why.

I have reviewed the hydro bill for the rental unit and the spreadsheet provided by the landlord. The landlord has provided one hydro bill for the rental unit dated December 8, 2015 showing a payment of \$332.62 on December 3, 2015 for a previous bill and a current charge of \$210.19. The only other hydro bills provided are those of a neighbour for comparison purposes, however those bills contain a lot of credits, and I do not find them to be relevant to this application. The landlord has provided evidence that this rental unit uses more hydro than another, but has not provided sufficient evidence of

how much the landlord has paid. The landlord's spreadsheet shows an approximation of \$160.00 per month. If I were to accept that, I would have to find that the tenant pays \$50.00 + \$160.00 less than other units. The December 3, 2015 hydro bill shows that the landlord pays for hydro on an equal payment plan of \$165.00 per month but there is no indication of when that plan started.

I also consider the advertisements provided by the tenant showing that rents for similar units range between \$750.00 and \$850.00 per month including all utilities.

Considering the evidence before me, I am satisfied that the landlord has established paragraph (3) (a) in that rent for other units is at least \$45.00 per month more expensive than the rental unit. I am also satisfied that the landlord has established paragraph (3) (b) in that the landlord has increased rent by the amount permitted by the regulations for the previous 3 years or more. With respect to the remaining considerations outlined in the regulations:

- (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;

I find that the landlord has failed to provide sufficient evidence of the cost of hydro to the landlord or how that has changed since the tenancy agreement was created. The hydro is relevant to the application, and the only evidence of that are an approximation in a spreadsheet and one bill in December, 2015.

The regulations also specify:

- (4) In considering an application under subsection (1), the director may

- (a) grant the application, in full or in part,

- (b) refuse the application,

- (c) order that the increase granted under subsection (1) be phased in over a period of time, or

- (d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the residential property.

- (5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

This has been a lengthy tenancy, and I accept the undisputed testimony of the tenant that rent has been increased every year. Landlords may increase rent for new tenants, and I find it reasonable to believe that is the reason for the differences in the amounts payable for rent and what's included with respect to utilities. I also accept the undisputed testimony of the tenant that the landlord has made improvements to other units when tenancies end, and I find that to be reasonable. In the circumstances, I find that the landlord has established an additional rental increase in the amount of \$45.00 per month. Considering that the landlord has increased rent effective January 1, 2016 and a landlord is required to give a tenant 3 months notice of an increase before the date rent is payable under the tenancy agreement, I order that the increase take effect July 1, 2016.

Conclusion

For the reasons set out above, I hereby grant an additional rent increase in favour of the landlord in the amount of \$45.00 per month effective July 1, 2016.

This order is final and binding and may be enforced.

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 17, 2016

Residential Tenancy Branch