



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes:

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Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an additional rent increase.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The parties were given the opportunity to ask questions about the hearing process. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to increase the rent beyond the annual allowable sum of 2.9% by another 78%?

Background and Evidence

This tenancy commenced in 1990. The tenant resides in an 890 square foot, two bedroom unit on the second floor of the building.

After moving into the unit the tenant began an employment relationship with the landlord as a resident manager. The tenant retired in 2012 and has remained in the rental unit.

There have been two rent increases issued in the approved form, effective March 2014 and March 2015. No other rent increase has been given since 1990. Current rent, after a proper notice was given effective March 1, 2015, is \$539.00 per month.

Rent is due on the first day of each month.

There is no written tenancy or employment agreement available, setting out the terms of the tenancy following employment. The tenant stated that the landlord had indicated the rent would not be increased following the end of employment and that the tenant could remain in the unit.

The landlord submitted that there was no agreement on future rent payable and that the unit is now well below market rent for comparable rentals in the area. The landlord stated that they

wish to obtain a rent that reflects market rents in the area.

The landlord is a large property management company and, as a result, has access to comparable information for other wood-framed, low level buildings built in the 1960's, which they own in the same geographic area. The landlord said that none of the units have undergone anything more than routine maintenance; no renovations or updating of the units has been completed.

The landlord supplied copies of tenant rent increase reports for the building in which the tenant resides and for three other buildings that are in close proximity to the rental building. Two bedrooms comparable units were highlighted.

Rent for two bedroom units in the tenants' building range from \$990.00 to \$1,030.00 for 891 square feet of space. The lowest rent is for a unit on the first floor; the highest rent is paid for a unit on the second floor. The unit rented for \$990.00 had the carpets replaced in 1999 and was last painted in 2003.

The first property used as a comparable (P.V.) is located immediately next to the rental unit building. The landlord provided comparable rent for all two bedroom units, ranging in size from 860 square feet to 900 square feet. The lowest rent for a two bedroom unit in this building is \$995.00 for two units of similar size. Examples provided included:

Sq. feet/location	Carpets replaced	Last painted	Current rent
860 – 3 rd floor	Sept. 2006	Feb. 2010	1,050.00
900 – 1 st floor	-----	March 2008	995.00
860 – 4 th floor	March 2012	Sept. 2010	1,095.00

The second property used as a comparable (P.H.) is on the block next to the tenants' building. The landlord has provided comparable rent for all two bedrooms units, ranging in size from 845 square feet to 990 square feet. The lowest rent for a two bedroom unit in this building is \$995.00 for a 986 sq. foot unit on the third floor. The landlord stated that the units in this building command somewhat higher rent as they have fireplaces. Examples provided included:

Sq. feet/location	Carpets replaced	Last painted	Current rent
845 - 3 rd floor	December 2012	Nov. 2010	1,150.00
990 - 3 rd floor	May 2013	May 2013	1,215.00
986 - 3 rd floor	-----	-----	970.00

The third property used as a comparable (R.A.) is one block from the tenants' building. The landlord has provided comparable rent for all two bedroom units, ranging in size from 710 square feet to 930 square feet. The lowest rent for a two bedroom unit in this building is \$995.00 for a 710 square foot unit on the 3rd floor. Examples provided included:

Sq. feet/location	Carpets replaced	Last painted	Current rent
710 - 2nd floor	-----	-----	1,095.00
710 - 3 rd floor	-----	Dec. 2014	995.00
930 - 3 rd floor	May 2012	April 2012	1,150.00

During the hearing the landlord was unsure of the last date the tenants' unit was painted or when the carpets were changed. The tenant rent increase report submitted for the tenants' building shows that the carpets were last changed in 1986 and it was last painted in 1995. In 2012 new kitchen and bathroom flooring was installed and the 2013 the fridge was replaced.

There has never been a hearing related to any dispute in this unit and there has not been any past attempt to end the tenancy. There have not been any changes to services or facilities in the building in the previous 12 months.

The tenants' agent responded that her mother had been told that after her employment ended the rent would not be increased. The tenant is now frail and expecting to vacate the unit due to personal care needs. The tenant cannot afford an increase in rent and an additional move that would be required should the rent increase; which would be detrimental to the tenants' health.

The agent provided photographs of the older carpet in the unit; it is worn out.

Analysis

The landlord has applied requesting an additional rent increase, pursuant to section 23 of the *Residential Tenancy Regulation*.

Residential Tenancy Branch (RTB) policy #37 provides guidance in relation to applications requesting an additional rent increase. The intention is to allow an increase only in extraordinary situations. The landlords' application is based on:

"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."

Consideration should be given to a number of factors such as rent payable for similar rental units in the property immediately before the proposed rent increase is set to come into effect. Currently the lowest rent in the tenants building for another two bedroom unit is \$990.00. The tenant had not had any rent increases between 1990 and 2014, when a Notice of Rent Increase was issued. The most recent increase came into effect on March 1, 2015. There have been no past disputes in relation to this tenancy or any other attempt to increase the rent through arbitration.

Policy suggests that the landlord has the burden of proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. Not only should the landlord provide comparisons to units in other buildings, the landlord must also submit evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

If the evidence points to rent paid that is considerably below the current rent payable for similar units in the same geographic area, or if the difference in current rent paid is considerably less than that paid in similar units, an additional rent increase may be warranted.

I find, on the balance of probabilities, that the comparable unit examples submitted by the landlord support the testimony that the units are of similar age and condition. The units used for comparison are of the same vintage and have had no significant upgrades or alterations. One building had fireplaces, which was reflected in somewhat higher rents. No other amenities were provided in the comparison units. This was unopposed by the tenant. The tenants' main argument against a rent increase was based on the health of the tenant, the disruption a move might cause and the belief that the tenant was told her rent would never be increased.

There was no evidence before me to support the submission that the landlord is not entitled to utilize the *Residential Tenancy Act* in relation to rent increase provisions. In the absence of any record of an agreement on rent payable once the employment ended I find, pursuant to

section 62(3) of the Act that the landlord is at liberty to issue notices of rent increase. I note that the increases given in 2014 and 2015 went unopposed by the tenant.

From the evidence before me I find that the rent paid by the tenant for a two bedroom rental unit is \$431.00 less than the lowest comparable rental unit brought forward by the landlord. By any measure, I find that the difference in rent paid, when compared to other units is considerable. I have considered a comparable rent of \$970.00, in another building, for a unit that is 90 square feet larger than the tenants' unit, on the third floor of a similar building, in the same geographic area. There is no evidence of any upgrade to carpets or the paint. From the evidence before me I find that the two units would be comparable in age and condition.

The tenants' rent is \$491.00 less each month than comparable units in the same building. Policy suggests that if rent has been kept low in an individual unit an application of this nature may be used to bring the rent to the level of comparable units in the same building. Based on the evidence before me I find that the landlord has met the burden of proving that the rent payable is considerably lower than any other unit in the same building and the three comparable buildings in the same geographic area and that an additional rent increase is warranted. It is, by far, the lowest rent payable in all buildings. Therefore, I find that the rent must be increased to the next lowest comparable sum; \$970.00.

Section 33(4) of the Regulation, related to rent increases, provides:

- (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 manufactured home park.*

(Emphasis added)

Based on section 33(4) of the Regulation I find that the rent increase in the sum of \$491.00 will be phased in over time.

The rent increase must be imposed in accordance with section 42 of the Act, which provides:

- 42** *(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*
- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;*
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.*
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*
- (3) A notice of a rent increase must be in the approved form.*
- (4) If a landlord's notice of a rent increase does not comply with subsections (1)*

and (2), the notice takes effect on the earliest date that does comply

As the rent was last increased effective March 1, 2015 I find that an increase has not been imposed in the past 12 months.

I find that service of this decision to the tenant and the tenants' power of attorney will form notice of the rent increase, in accordance with section 42 of the Act. Service of this decision must be completed no later than April 30, 2016. The tenant must be given at least three months' notice prior to the rent increase coming into effect. If there is any delay in service beyond April 30, 2016, the phased rent increase dates will be affected, as the tenant must be given three months' notice of the increase.

The tenants' rent is currently \$539.00. The rent increase is \$431.00. The new rent will be \$970.00.

The \$491.00 rent increase will be phased in as follows:

- Phase 1 – August 1, 2016; rent will increase by \$107.75 to \$646.75;
- Phase 2 – December 1, 2016; rent will increase by \$107.75 to \$754.50;
- Phase 3 – April 1, 2017; rent will increase by \$107.75 to \$862.25;
- Phase 4 – August 1, 2017; rent will increase by \$107.75 to \$970.00.

As imposition of this additional rent increase will conclude effective August 2017 the next Notice of Rent Increase may be issued to be effective no earlier than August 2018.

Conclusion

The landlord is entitled to an additional rent increase in the sum of \$431.00.

The landlord must serve the tenant and the tenants' power of attorney with a copy of this decision no later than April 30, 2016. This decision meets the approved form for a rent increase. The address for the power of attorney is recorded on the cover sheet of this decision.

The rent increase will be phased in between August 1, 2016 and August 1, 2017; or later if service of this decision by the landlord, occurs after April 30, 2016.

This decision is final and binding and 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: April 01, 2016

Residential Tenancy Branch