



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with an application by the landlord for a rent increase in an amount greater than the basic Annual Rent Increase. Both parties appeared and gave affirmed evidence.

Although the landlord had served her evidence on the tenant after the time for doing so had passed and the tenant was offered an adjournment the tenant indicated that he wanted to go ahead with the hearing.

The landlord advised that the tenant's name and the address of the rental unit were incorrect on the Notice of Hearing sent to the parties.

Issue(s) to be Decided

Is the landlord entitled to a rent increase in an amount greater than the basic Annual Rent Increase and, if so, in what amount?

Background and Evidence

The landlord has owned this home for about ten years and has always rented it out. She has always charged a monthly rent of \$2650.00.

The house is a larger home and there have always been multiple tenants. The pattern is that one tenant is designated as the contact person for all the residents of the house. That person collects the rent from all the other occupants and makes one payment to the landlord. Any requests for maintenance or any other landlord/tenant communications that is required is conducted between the landlord and the contact person.

Tenants move in and out of the house. There was no evidence that the landlord has had to advertise for tenants. It appears that new tenants are recruited by existing tenants. When the contact person moves out a new contact person is organized.

There has never been a written tenancy agreement and the landlord has never collected a security deposit or a pet damage deposit.

The current contact person moved into this house in February 2012. He found the place through a friend who was moving out. A different tenant was the contact person at that time. That contact person moved out in the spring of 2013 and the tenant has been the contact person ever since.

There are currently five other people living in the house. According to the landlord none have lived in the house longer than the tenant.

The parties describe the house as 3000 to 2500 square feet. Depending on whether it is the landlord or the tenant who is describing whether a particular room is finished or functional it has two or three bathrooms, six or seven bedrooms, and one or two kitchens. They agreed that it has two washer/dryer combinations, multiple separate living areas, a garage and a carport, multiple decks and beautiful ocean and mountain views.

The home is about 100 years old. The only major repairs or upgrades the landlord has made in the past ten years were to replace the flooring in 2010 and a major roof repair in 2015.

The assessed value of the property increased by 15% in 2015, and 25% in 2016. However, the actual property tax charged only increased by \$335.00 or 7.5% between 2015 and 2016.

The landlord provided the information from some ads on Craig's List as comparables. She said it was difficult to find comparables because of the unique nature of this property but she looked for other rental units that had a similar number of bedrooms and bathrooms. The tenant pointed out that some of the comparables had amenities such as fireplaces, gas ranges and new appliances that were not present in this property. He also pointed out that many of the comparables were located in different parts of the city.

The comparables provided by the landlord were as follows:

	Size in Square Feet	Bedrooms /Bathrooms	Comments	Advertised Rent
1	4000	6/6	15 years old, gas fireplaces, four car garage, Jacuzzi	\$4200.00
2		/3		\$3600.00
3	2260	5/1.5		\$3600.00
4	2500	5/3		\$3500.00
5	1650	5/2	New	\$3500.00
6	1800	5/2		\$3200.00
7	2500	4/2	New reno, gourmet kitchen, plus 2 bedroom suite	\$4300.00
8	3000	5 beds		\$3390.00
9	2200		Fully renovated 1914 character home, 3 suites with a total of 6 beds and 3 baths	\$3200.00

Analysis

If the landlord had increased the rent by the permitted amount every year since 2007 the monthly rent would now be \$3781.71. If she had increased it by the permitted amount every

year since 2014 (the year after the tenant became the contact person), the monthly rent would be \$2856.51. She is asking for a rent increase to \$3108.24, a little less than the median of the two amounts.

The law applicable to these types of applications is summarized in *Residential Tenancy Policy Guideline 37: Rent Increases*, available on-line at the Residential Tenancy Branch web site.

The *Guideline* explains that these applications are for “extraordinary” situations only. Some examples of extraordinary situations are:

- 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.

Based on the evidence presented the landlord’s only argument is the first paragraph as the repairs that have been made in the past ten years are both foreseeable and usual and while there has been a significant increase in the assessed value of the property the increase in property taxes is not significant.

The *Guideline* explains that when a landlord applies for an increase on the ground that the rent is significantly lower than the rent currently paid for similar units in the same geographic area the burden of proof is on the landlord. “Similar units” means rental units of comparable size, age, 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.

One of the circumstances where such an increase may be granted is when the landlord has kept the rent low in a particular unit for a long term renter (i.e. over several years), an additional rent increase may be used to bring the rent into line with comparable unit. To determine whether the circumstances are exceptional, the arbitrator will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents were paid.

I have heard and granted applications for additional rent increases in situations where the same tenant has lived in the same rental unit for ten years or more with only one or two rent increases

during the term of the tenancy. That is not the situation here. There have been multiple tenants and multiple tenancy agreements over the past ten years. The landlord could have imposed some order by formalizing her rental arrangements with the occupants of this house and, when each new tenancy agreement was entered into, setting the rent at an amount that reflected market conditions.

The tenancy agreement with this tenant only commenced when he became the “contact person”, only three years ago. According to the landlord the other occupants have been there for shorter periods of time. The length of these tenancies does not amount to an extraordinary circumstance that would justify an additional rent increase.

Conclusion

For the reasons set out above, the landlord's application 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: April 29, 2016

Residential Tenancy Branch