



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CA REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ARI

Introduction:

Only the landlord attended the hearing. He provided evidence that he had served the tenant with the Application by registered mail on April 29, 2016. I find the tenant was legally served pursuant to section 89 of the Act. The landlord applies pursuant to section 43 of the *Residential Tenancy Act* (the Act) for an additional rent increase.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that after applying the rent increase permitted by the Regulation, the rent for the unit is significantly lower than the rent paid for other rental units similar to and in the same geographic area as the rental unit?

Background and Evidence

Only the landlord attended the hearing although the tenant submitted some documents in dispute. The landlord was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 1, 2014 on a fixed term to expire on July 31, 2016. Rent is \$1400 a month and has not been increased during the term. There is a security deposit of \$700 and a pet damage deposit of \$250.

The landlord states that this tenant's rent is significantly lower than similar units in the same geographic area and in similar condition to the tenant's unit. He provided 8 comparables, 4 from the same complex and 4 from an adjoining complex. The rents are lower in the adjoining complex, he states, because the units have bare concrete unfinished basements (amounting to about a third the size of the unit) whereas this complex has nicely finished basements. The rents in the adjoining complex range from \$1435 to \$1525 with the last increase being January 2016. The rents in the subject complex range from \$1400 (the subject unit) to \$2,000 a month with two units other than the tenant's unit paying \$2,000 and one \$1995 a month with the effective 2016 increase. The landlord stated the other three units are the same size, layout and in the same general condition as the subject unit. The subject unit has had no increases since August 1, 2014. The landlord bought the building in July 2015. He points to the fact the tenant's lease is with a company with the same last name as the tenant's. He said the lower rent was likely a family arrangement.

The tenant states in her documents that her unit was not renovated at the same time as the others and did not receive the same upgrades so the landlord did not increase her rent. She

denies it was a family concession. She notes damages in her unit such as no kitchen drawers, cigarette burns in the basement tub, cracked sinks and tiles, water damage behind the basement toilet, leaking tap and infestation of wasps and ants. The landlord said that before his application, the tenant never complained of any of these items. He said they would ask \$2100 a month if the tenant moved for market rents reflect this value. He said all the kitchen cabinets in all the units were finished with shelves instead of drawers, the scratches and slight sink discolourations are minor and don't affect the market rent. The landlord recently repainted and replaced carpets in the basement area of this unit and they are always prepared to fix items on complaint of the tenant and replaced the missing dryer knob after it was noted in the April inspection. Photographs of the unit inspection done on April 27, 2016 are supplied as evidence.

Analysis:

Policy Guideline 37 of the Residential Policy Guidelines sets out important factors that are considered in an application for an additional rent increase (AARI). It states in part:

“The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount. The tenants will have an opportunity to appear at the hearing of the application, question the landlord’s evidence, and submit their own evidence.

In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors... The arbitrator will determine which factors are relevant to the application before him or her: [I have included only the factors relevant to this Application]

- *the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;*
- *the rent history for the affected unit for the preceding 3 years;*
- *Any change in a service or facility provided in the preceding 12 months;...*
- *a relevant submission from an affected tenant;*
- *a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation⁶;...*

An arbitrator’s examination and assessment of an AARI will be based significantly on the arbitrator’s reasonable interpretation of:

- *the application and supporting material;*
- *evidence provided that substantiates the necessity for the proposed rent increase;*
- *the landlord’s disclosure of additional information relevant to the arbitrator’s considerations under the applicable Regulation⁷; and*
- *the tenant’s relevant submission.*

Evidence regarding lack of repair or maintenance will be considered only where it is shown to be relevant to whether an expenditure was the result of previous inadequate repair or maintenance. A tenant’s claim about what a landlord has not done to repair and maintain the residential property may be addressed in an application for dispute resolution about repair and maintenance.

Significantly lower rent⁸

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... 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 was paid...

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...

*I find the most relevant comparables supplied by the landlord are the three units in the same building as the subject unit. I find the weight of the evidence is that they are of the same layout in the same geographic area and with the same amenities. I find insufficient evidence that they differ in renovation or quality of renovation. I find insufficient evidence that the tenant complained in writing of lack of maintenance or that the landlord failed to repair. In any case as noted in this Policy Guideline, *Evidence regarding lack of repair or maintenance will be considered only where it is shown to be relevant to whether an expenditure was the result of previous inadequate repair or maintenance. A tenant’s claim about what a landlord has not done to repair and maintain the residential property may be addressed in an application for dispute resolution about repair and maintenance.**

I find the landlord is not claiming maintenance expenditures as a basis for his claim and if the tenant has maintenance issues, she may address them in an Application for Dispute Resolution to have them resolved.

I find all the other three units in the subject building are rented for \$1995 or \$2000 a month effective 2016. The tenant's rent with the allowable 2.9% increase for 2016 would be \$1440.60 a month which is \$554.40 lower than the unit rented in March 2016 for \$1995.00. I find this is significantly lower than similar properties in the same geographic area. I find her rent has been lower for the two years of her fixed term and the unit was rented to her by the previous owner who had the same last name as her. I note the evidence that the adjoining complex if rented with a finished basement would have one third more space which would be possibly additional rental space in the basement. If the lowest rent of \$1435 in the adjoining complex was increased by one third, I calculate it would be over \$1900. However, I find there is insufficient evidence that the units in the adjoining complex are renovated and in the same condition as the subject unit.

The landlord requests a rent increase of \$559.40 to \$2,000 a month (an additional 40% over the legislated 2.9%). I note the last unit rented in the subject building was in March 2016 for a rent of \$1995. The other \$2000 rents were achieved through 2016 lawful increases. I find the March 2016 rent may be more reflective of the current condition of the units. I find the tenant's rent is significantly lower than the last unit rented. I find the landlord entitled to an additional rent increase of 39.60% (total 42.5%) to \$1995.00 per month.

Conclusion:

I find the landlord entitled to an additional rent increase which will result in the subject unit having a rent of \$1995 per month commencing 3 months after Notice is served in accordance with section 43 of the Act.

I HEREBY ORDER that the rent is \$1995 commencing 3 months after service of rent increase in accordance with section 43 of the Act.

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: June 15, 2016

Residential Tenancy Branch