



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

O

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 for two units in a single duplex dwelling.

Two tenants were named as affected by the application.

Tenant E.C. was present at the hearing and provided affirmed testimony that she received hearing documents and evidence given personally on July 31, 2016.

The landlord provided affirmed testimony that on July 31, 2016 at approximately 5:30 p.m. she personally served tenant D.W. with the hearing documents and evidence. I determined that D.W. had been served with the documents on the date of personal delivery. D.W. did not attend the hearing.

Preliminary Issues

I will refer to unit #1 as that occupied by tenant D.W.

I will refer the unit #2 as that occupied by tenant E.C.

Issue(s) to be Decided

May the landlord increase the rent for each unit by the permitted increase of 2.9% plus an additional 42.6%?

Background and Evidence

The tenants have resided in rent unit #1 and #2 for 10 and approximately 27 years, respectively. Each tenants pays rent in the sum of \$825.00 due on the first day of the month.

Unit #1 had a rent increase early in the tenancy. Unit #2 has never been issued a rent increase notice.

The application has been submitted for the reason:

After the rent increase permitted by the Regulation, the rent for the rental unit is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic area, as the rental unit.

The landlord has supplied evidence of repairs or renovations to the rental unit which are not relevant to the application before me.

The landlord said that obtaining comparable rents was difficult due to the low vacancy rate. The landlord contacted a number of property management companies in an attempt to obtain rental data but was unsuccessful. The landlord believes that between Colwood and Sidney rent averages \$1,200.00 for a two bedroom unit.

The tenants have the following amenities: three bedrooms; 1.5 bathrooms; garage; 1234 square feet on the upper floor and 980 square feet on the lower floor and a backyard.

The landlord provided:

- a photograph of the exterior of the rental unit;
- a copy of the tax assessed value for this 1979 built home;
- maps showing the location of the home relative to community services;
- street view photographs including homes across the street and down the street from the rental unit; and
- an aerial view of the home.

Rental unit #1 provides their own washing machine. In unit #2 the tenant purchased a new stove and fridge as the old ones failed. The kitchens are original to the home. In unit #2 a kitchen counter was installed by the tenants' son and the cost charged to the landlord. The kitchen faucet was supplied by the tenant and new cabinet hardware was installed by the tenant plus a bathroom fixture. The old wall paper was removed as it was over 26 years old. The tenant paid for the paint and removal supplies. The tenant has replaced the microwave, washer and dryer. The tenant installed new baseboards and painted and installed them. The tenant also had new flooring installed with the permission of the landlord. The unit was last painted by the tenant, with paint supplied by the landlord, 10 years ago. The tenant supplied photographs of the areas that have been improved over the years. A photo of interior cedar siding shows the wood in poor condition. The exterior of the home has not had any attention in 35 years.

The units do not have dishwashers.

As comparable rental units the landlord submitted the property assessed value for a home in Sidney; assessed at \$64,000.00 more than the rental unit. The landlord knows the owner of this home and that individual provided a July 12, 2016 letter indicating that they own this 1.5 bedroom duplex and rent that unit for \$1,600.00 per month. A photograph of the exterior of the comparable unit was supplied as evidence. The unit is a 15 minute walk into the center of the community. The landlord believes the unit has comparable services and facilities to the rental units. No photograph of the interior of this unit was supplied.

The landlord provided a copy of a rental listing taken from a popular web site. That unit is in an area much closer to downtown. It is a one bathroom, 1,500 square foot unit with three bedrooms. Rent sought was \$1,850.00. Photographs of this unit show hardwood floor and an

updated kitchen with stainless steel dishwasher. A small photo of the bathroom shows what appears to a modern bathroom. The rent obtained was not known.

The landlord supplied a rental listing for a three bedroom duplex near the University. It has one bathroom, carport and a washer and dryer. No information on the details of the state of this home was provided. Rent sought was \$1,750.00 plus utilities. The rent obtained was not known.

The landlord said that E.C. has taken very good care of the rental unit but if proper rent increases had been given over the years the tenants would each have paid an additional \$36,000.00 in rent. The landlord assumes the tenant in unit #1 has not maintained and repaired the unit as the tenant in unit #2 has.

The landlord confirmed during that hearing that they have no concrete proof of rents that are being paid elsewhere.

The tenant of unit #2 provided a picture of the exterior of the home and views from the home. The tenant said she lives across the road from an area that is not well-kept. A photo of a home within one block showed a home in disrepair. The tenant said that the comparable unit in Sidney is located in a much nicer community and has many more services. That community has sidewalks and curbs. The tenant submitted photographs of the Sidney comparable property and sightlines from that home; which are more desirable.

The landlord countered that the tenant does not look out at those homes that are in poor condition and that the rental unit area is quite nice. The landlord said there are sidewalks along the road to the left of the rental unit.

Analysis

Section 43(3) of the Act provides a landlord with the ability to apply for an additional rent increase that is greater than the amount calculated in accordance with the Residential Tenancy Regulation.

Amount of rent increase

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.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The landlord has confirmed that unit #1 was issued a rent increase early in the tenancy and that the landlord has not taken advantage of any further annual rent increases. Unit #2 has never had a rent increase imposed.

Section 22 of the Residential Tenancy Regulation sets the allowable annual rent increases at no more than the inflation rate, which is determined by government.

RTB policy suggests that 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. Evidence must be provided showing the state of the rental units and amenities provided for in the tenancy agreements that are used for comparison.

Policy suggests that the rent for the rental unit may be considered “significantly lower” when:

- the rent for the rental unit is considerably below the current rent payable for similar units in the same geographic area; or
- 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.

A landlord is required to supply evidence of similar units; meaning those of similar size, age, construction, interior and exterior ambiance and sense of community. The comparable units must be within a reasonable kilometer radius and is dependent on attributes such as parking, shopping bodies of water and landscape features.

As explained during the hearing additional rent increases under this section will be granted only in exceptional circumstances. I must consider circumstances such as the length 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.

I must also be provided with all sources from which the rent information was gathered. Specific and detailed information, such as rents for all the comparable units’ residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord.

Taking policy into account I have concluded on the balance of probabilities that the landlord has failed to meet the standard that supports an additional rent increase. I do note that the rental market in the area is competitive for tenants; however I cannot make any assumptions in relation to rent that might be paid; that is for the landlord to prove.

The landlord has supplied only one comparable rental unit in which the sum of rent paid is known. There was no information on the interior ambiance to demonstrate that this comparable unit is in the same or similar state to units #1 and #2. For example, there was no information regarding the services that might be included, such as appliances and the age or quality of fixtures. The landlord had no knowledge of the interior of that unit. Further, this unit was located in a community that I find differs greatly from units #1 and #2. There was no evidence that the comparable unit looked out to homes that were in a somewhat dilapidated stated, as at least one that is situated near the rental unit is.

The other two comparable units supplied were of listings for rent. There was no information supplied on the rents obtained for those units.

Therefore, in the absence of evidence to support the additional increase in rent I find that the application is dismissed with leave to reapply. The landlord is entitled to issue a Notice of Rent

Increase in the approved form, in the sum set for 2017. Any rent increase issued from this point onward would be effective in 2017.

Conclusion

The application is dismissed with leave to reapply

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: September 20, 2016

Residential Tenancy Branch