



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AARI

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an additional rent increase.

Three of the tenants and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord provided documentary evidence to the Residential Tenancy Branch (RTB) and to the tenants in advance of this hearing. The tenants confirmed receipt of evidence. The tenant AE testified that he had provided documentary evidence to the RTB but not the landlord. In accordance to the Rules of procedure rule 3.15; the respondent's evidence must be served to the applicant and the RTB at least seven days before a hearing and in this this case the respondent's evidence was only sent to the RTB two days prior to the hearing and not to the landlord. Therefore pursuant to rule 3.17 of the Rules of Procedure I will not consider the respondent's evidence but heard oral submissions instead.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

Is the Landlord entitled to an Order to impose an additional rent increase, pursuant to section 43 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that the tenant AR has been living in a one bedroom unit for 10 years his current rent is \$750.00 per month and his last rent increase was in 2014. The tenant GS did not attend the hearing and the landlord confirmed that she has been living in a three bedroom unit since 2015 and her current rent is \$1,600.00 per month. The tenants AE and VE have been living in a three bedroom unit since 2008. Their current rent is \$1,450.00 and their last rent increase was in December, 2014. The tenant LK has been living in a one bedroom unit for the last 18 years. His current rent is \$750.00, although he has a rent reduction of \$50.00 for cutting the grass, and his last rent increase was in January, 2015. The parties agree that there have been no rent increases in 2016 and the utilities, with the exception of cable and internet, are included in the tenants' rent.

The landlord testified that the tenants rent a side by side duplex that was built in 1978. The upper units have three bedrooms and the lower units have one bedroom. The units all have a kitchen, living room and laundry. The building is located in the lower mission area and a block away from the lake and beach. It is five blocks from the hospital, and close to a small shopping mall. The tenants have the use of a small yard and parking and two of the tenants have a garage.

The landlord testified that the rent is significantly lower than rent payable for other rental units that are similar to, but not identical to; in the same geographic areas as the rental unit. One bedroom units in the area rent for an average rent of \$1,139.50 and three bedroom units in the area have an average rent of \$1,920.00. Of the comparable units provided only one has utilities included in the rent and one has cable and internet included.

The landlord testified that he obtained information about comparable rents from a property manager who conducted a comprehensive study and produced a report. The landlord referred to this report in evidence. It must be noted here that these documents

are difficult to read as the print is very small and the final document was illegible due to the size of the print and the fact that the print was blurred. The landlord testified that true comparables were difficult to find as there are limited rental units on the market in the area. Some of the comparables used are carriage houses some are townhouses and some are suites and condos. The landlord suggests that a town house and carriage house are still comparable to a duplex.

The report provided by the landlord show units according to the amount of bedrooms, the rent charged, the location of the unit, the style of home, such as carriage house, suite, townhouse or condo, whether or not they are furnished, how many bathrooms they have, whether or not utilities are included in rent, whether or not pets are allowed, whether or not smoking is allowed, and how many parking stalls they have.

The landlord testified that he does not know the age of the properties suggested as comparable units and has not viewed the properties either inside or outside but had rather based his views on the report compiled by this property manager. The landlord testified that some but not all of the units are in the same geographical area. The one bedroom units used for comparables range from a monthly rent between \$850.00 and \$1,300.00.

The landlord submitted that because of the sought after area the tenants' duplex is located in, it would be reasonable to conclude that the tenants' rental units would be more desirable and would command a higher market value rent than units shown in less desirable areas.

The landlord turned to their evidence of 3 bedroom comparable rental units and agrees that only one is in the same geographical area while the others are located in other areas of town and are all townhouses. Again the landlord agreed he relied on the information provided and has not viewed any of these townhouses to determine the condition, the general ambiance, views or other local amenities. These townhouses range from \$1,650.00 to \$2,750.00. Of the six comparables used three of the

townhouses have three bathrooms and three have two bathrooms, one has utilities included, three have parking and three don't.

The tenant LK testified that the rent increase for his one bedroom unit is excessive at \$150.00 per month. The landlord has not given the tenants a rent increase this year and the last rent increase was in January 2015. LK testified that the only comparable unit on the report is across from the collage and is a two bedroom unit at \$900.00. The other one is in the downtown area at \$900.00 and is therefore not a true comparable. The tenant testified that the rent increase for his unit should be \$21.75 a month and he is happy to pay this but disputes the additional increase. LK testified that their utilities included in the rent are lighting and water and his half of the duplex shares laundry facilities in the basement, none of the units have their own facilities for laundry.

AE testified that he lives in a three bedroom unit. The report of comparable rents provided by the landlord was completed by a third party and the landlord has not provided that party's credentials or resources in compiling this list. They have no way to know if these comparable units are renovated units or new units. Their duplex was built in 1978 and the general appearance is old. The appliances such as the washer and dryer are from the early 1990's, the stove is from the 1980's, the tenant replaced his own fridge in 2011 and the cabinets are all from the 1970's. The only other comparable is one of the landlords other properties. The two bedroom properties are in the east of the city at least 8K away and should not be used as a comparable.

AE testified the duplex is not close to a shopping mall, they have a small strip mall nearby and the mall is five blocks away. When it comes to the structure of the unit the bedroom door opens to the outside but only has an interior door fitted. AE testified that currently they pay \$1,450.00 a month in rent and the landlord wants to increase this by \$350.00 which AE believes is unjustified for his unit.

AR testified that he lives in a one bedroom unit and his rent is \$750.00. AR testified that he understands that rents do have to go up each year but the landlord has not increased his rent since 2014. Now the landlord wants to put it up by \$150.00 a month

in one go which is difficult for tenants to deal with. This is not a beautiful building and it does have some issues with the units being much older. One of the comparables used by the landlord is a two part apartment building. One part is older and one is newer. The comparables do not show which unit is advertised at rent of \$850.00.

Analysis

After carefully considering the aforementioned and the legible documentary evidence submitted by the landlord I make the following findings based on a balance of probabilities:

The landlord has made application for an additional rent increase pursuant to Section 43(3) of the *Act* and section 23(1) of the regulation. Section 23 (1)(a) of the regulations provides that a landlord may apply under section 43 (3) of the *Act* [*additional rent increase*] if 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.

Based on the aforementioned, I find the landlord filed an Application for Dispute Resolution to seek an additional rent increase within the requirements set forth under the *Act*.

The burden of proof of market value rent lies with the landlord who has to meet the high statutory requirement of proving that rent being charged for similar units in the same geographic area is significantly higher than the tenants' rent. Section 37 of the *Residential Tenancy Policy Guideline # 37* stipulates that:

- An application must be based on the **projected rent** after the allowable rent increase is added; and

- Additional rent increases under this section will be granted only in **exceptional circumstances**; and
- “**Similar units**” means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community; and
- 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.

Projected rent - In this case the current monthly rent for the three bedroom units in this duplex is \$1,600.00 for unit 483b and \$1,450.00 for unit 493b. After the 2016 rent increase of 2.9% allowed under the Regulation is applied, the tenants’ monthly rent in unit 483b would be **\$1,646.40** and in unit 493b the tenants’ monthly rent would be **\$1,492.05**.

Exceptional circumstances - To determine the exceptional circumstances I must consider the relevant circumstances of the tenancy, the duration of the tenancy, and the frequency and amount of rent increases given during the tenancy.

Upon review of the evidence I find the landlord has not raised the rent by the allowable amount in unit 483A and 493B since 2014 and the rent for unit 493A has not been raised since 2015. The landlord did not provide information for unit 483B as the tenant moved in in 2015. Tenants in the one bedroom units have lived there for 10 and 18 years respectively. The tenants in the three bedroom unit 493B have lived there since 2008. The landlord is allowed under the *Act* to raise the rent each year by the allowable amount for that year. However, the landlord failed to do this and now finds the rents for these units are lower than other units .

Similar units – In determining market value rent section 23 (1) of the Regulation stipulates that I must consider if the tenants' projected 2016 rent is significantly lower than the rent payable for other rental units that are **similar** to the tenants' units [emphasis added].

Funk & Wagnalls Standard College Dictionary (1974) defines "similar" as:

1. *Bearing resemblance to one another or to something else; like, **but not completely identical*** [emphasis added];
2. *Of like characteristic, nature, or degree; of the same scope, order or purpose.*

Black's Law Dictionary Seventh Edition (1999) defines "comparable" as:

A piece of property used as a comparison to determine the value of a similar piece of property.

As noted above, *Residential Tenancy Policy Guideline # 37* indicates that when determining what is a similar unit I must consider units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

I find that in order to determine market value rent of the tenants' units I must consider rents currently being charged for other units in the same geographic area while comparing the other unit's size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community and considering all similarities and differences.

I accept the landlord's argument that if all items must be the same the units used as comparables would have to be identical and not similar and that there is little on the market currently to make these comparisons. Therefore, the landlord has presented other one and three bedroom units he claims are similar to the tenants' units. I have

reviewed the evidence from the landlord in the form of a report of rentals; the landlord has not provided information to show the comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community. The landlord has simply provided a list of units showing town houses, condos and suites with one, two and three bedrooms. Without further evidence to support that these are comparable units I am unable to conclude on a balance of probabilities that these units are similar to the tenants' units other than the fact that they have the same number of bedrooms. There is insufficient evidence to show that these comparable units do not command a higher market rent than the tenants' units because they are either newer properties with a better ambiance both on the interior and exterior, or that they have a larger square footage. Certainly the three bedrooms presented as comparables have two or three bathrooms and not just the one that these tenants have in their units. Furthermore, there is insufficient evidence to show if the comparable units have their own laundry facilities or garage parking.

Same geographic area – In determining the market value rent I have considered the broad sampling of units provided and accept that some of the one bedroom comparable units provided were in the same geographic area as the tenants' units but most of the three bedroom units were not.

After consideration of the above definitions and the arguments put forth by each party, and a review of the samples to be compared with the tenants' units, I found that the landlord has insufficient evidence, standing alone, that shows that the report provided show units that are similar to the tenants' units that would allow me to determine if these units are true comparables. Even with regard to these two three bedroom units that should be comparable as they are both located in the same duplex, there is insufficient evidence from the landlord to show why one of the duplex units commands rent of \$1,600.00 and why one only commands rent of \$1,450.00. This may be to do with renovations in unit 483B or upgraded appliances or other factors; however, as the landlord has provided insufficient evidence to determine this I am unable to even use this as a comparable unit to unit 493B.

Consequently, I find the landlord's application has not met the burden of proof required in this matter and the landlord is only entitled to raise the tenants' rent by the allowable amount of 2.9% in 2016 or 3.7% in 2017 after proper notice has been provided to the tenants in accordance with sections.41, 42, and 43 of the *Act*.

Conclusion

Due to the above the landlord's application for an additional rent increase 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: September 22, 2016

Residential Tenancy Branch

