



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA, INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RI

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on August 18, 2016. The Landlord filed seeking an order for an additional rent increase of 77.1%.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's Assistant. The Landlord and Tenant gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party affirmed they served the other with copies of the same documents that they had served the Residential Tenancy Branch (RTB). Each party acknowledged receipt of the other's documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's and Tenant's submissions as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the burden of proof to be granted an Order for a rent increase above the legislated amount?

Background and Evidence

The Tenant entered into a month to month tenancy agreement which began on February 1, 2012. Rent of \$1,500.00 is payable on the first of each month and on December 17, 2011 the Tenant paid \$750.00 as the security deposit.

The Landlord testified the rental unit had been previously managed by the Strata Council. She took over managed of the rental unit effective July 1, 2016. The Landlord was at the unit in early August 2016 after taking over management; however, she has not "inspected" the unit.

The Landlord described the rental unit key features as being: 968 square foot; 2 bedroom plus a den; the den might be used as the dining room; 2 bathrooms; a large kitchen with island; open concept; hardwood floor; electric fireplace; is in a 33 story high rise apartment building which was built in 2005; and is located in a prime location in the downtown core. The building provides the following amenities: security; concierge; lounge sitting area; gym; outdoor; outdoor whirlpool/hot tub; steam room; and a garden terrace. The Landlord asserted the building was a "luxury" building located on a highly sought after corner location across from a park.

The Landlord testified that based on her research which included 7 sample units, rent in this downtown location averages at \$3.27 per square foot. She submitted there were 3 units in the same building which were being rented between \$3.16 and \$4.29 per square foot depending on the upgrades and floor location. The remaining 4 samples were being rented at \$2.56 to \$3.68 per square foot. The Landlord asserted that based on her samples the Tenant's rent should be \$3,165.00 per month.

The Landlord stated the Tenant's rent has been well below market value for the past 5 years. The Strata Council has requested that she be given a rent increase to bring her rent to market value. The Landlord stated she was not aware of any extenuating circumstances which have kept the rent at \$1,500.00 per month.

The Tenant testified that when she was first offered the suite she was told the Strata Council was looking for a long term tenant who would care for the suite. She stated that over the years she had approached the Strata Council asking about increases and was told they did not want to increase her rent because they wanted to keep her as she was a good tenant. She noted that in 2015 she had \$1,500.00 worth of window treatments installed after which the Strata Council told her there would be no increase to accommodate for that expense.

The Tenant submitted that the Strata Council told her in May 2016 that they wanted to increase her rent to market value. She said she attempted to negotiate an increase that would be equal to the total amount of annual rent increases provided for by the legislation and the Strata Council refused.

The Tenant argued that the samples the Landlord submitted were not comparable to her unit. She noted that those samples included units that were primarily updated with granite countertops, not quartz; had stainless steel appliances; were on higher floors (10 – 31st floor) which had better views and commanded higher rent; had built in closets; and some samples were advertised as furnished units.

The Tenant pointed to her evidence which included pictures of her view which displayed a parking lot and lane way behind a hotel and bar. She argued that her unit was a basic unit and it did not have a den, that area was a built in storage room. She said her unit was dark and did not have the same views as the higher units used as comparables by the Landlord. She asserted she could not utilize her deck as it was noisy and dirty from the delivery trucks going to the hotel and stirring up dust. She submitted that there have been no improvements completed on her unit since she moved in; except for improvements she paid to have completed.

The Tenant submitted documentary evidence of a “Market Report” for monthly rents from 2012 which prove her rent at the start of her tenancy was “mid-range market value”. In addition she provided evidence that rent trends on some sites were showing rents decreasing. The Tenant argued the Landlord’s submission does not prove the market value of her rental unit and their request is not a fair increase.

The Landlord confirmed that some units submitted as comparables included furnished units. She stated she had deducted 25% off of the monthly rent to accommodate for the furnishings based on her rental agency experience that furnished units commanded about 25% more rent. The Landlord argued that based on her opinion, location and square footage accounts for more than a view when determining the rent.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

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 regulation 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.

The burden of proof of the market value rent lies with the Landlord who has to meet the statutory requirement of proving that rents being charged for similar units in the same geographic area are significantly higher than the Tenants' rent.

When determining this application for an additional rent increase, I considered *Residential Tenancy Policy Guideline 37* which provides as follows:

- a. An application must be based on the projected rent after the allowable rent increase is added;
- b. Additional rent increases under this section will be granted only in **exceptional circumstances**;
- c. "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
- d. 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.

Regarding the Projected Rent

As per the Landlord's application, the current monthly rent is \$1,500.00 which would increase to \$1,543.50 after the legislated 2.9% increase for 2016. The Landlord seeks to increase the monthly rent to \$2,700.00 which would be an additional \$1,156.50 or approximately 74.927% above the legislated amount.

The undisputed evidence was the Tenant has never been issued a rent increase during her tenancy which began on February 1, 2012.

Regarding Exceptional Circumstances

When determining the existence of exceptional circumstances it is **not** sufficient for a landlord to base their claim on the rental unit having a significantly lower rent that results simply from the landlord's recent success at renting out similar units at a higher rate.

In addition, 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.

It is not exceptional circumstances if a landlord fails to implement an allowable rent increase.

From her own submissions, the Landlord was not aware of exceptional circumstance which has kept the Tenant's rent at \$1,500.00. Rather, the undisputed evidence was the Tenant had approached the Strata Council in years past inquiring about rent increases and each time she was told that no increase would be implemented. Therefore, I find there was insufficient evidence to prove that the circumstances in this case were exceptional.

Regarding Similar Units

For examples of similar units I found the Landlord's submissions focused more on the construction industry distinction of price per square foot rather than submitting examples of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community, to other examples with higher rents. In addition the Landlord submitted samples that were furnished units without sufficient evidence to prove furnished units commanded a 25% higher monthly rent than unfurnished units; a calculation the Landlord relied upon in her oral submissions.

In the presence of the Tenant's disputed verbal testimony and documentary evidence of rent comparison, I find the Landlord provided insufficient evidence of similar units with a higher market value rent.

Regarding Same Geographic Area

The Landlord submitted examples of units that had recently been re-rented in their building and units in the same geographic area. I accept that all of the Landlord's comparables would be the same distance from the same amenities. However, those comparable units were all located on higher floors which included a better view and therefore, would command a higher rent than the Tenant's rent.

In addition, I note that the Landlord was not able to provide evidence of the actual layout, condition, or view from the Tenant's rental unit. From her own submissions, the Landlord had not conducted an inspection of the unit and submitted her application seeking a higher rent based simply on comparables in the same geographic area.

Section 23(4) of the *Regulations* stipulates that 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 residential property.

Accordingly, based on the totality of the evidence before me, I conclude the Landlord submitted insufficient evidence to meet the test for a rent increase of 74.927% above the legislated amount. As such, the application is refused in its entirety, pursuant to section 23(4)(b) of the *Regulation*.

Conclusion

The Landlord was found to have submitted insufficient evidence to prove their application for an additional rent increase and the application was refused.

This decision is final, legally 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: November 21, 2016

Residential Tenancy Branch