Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Duncan and Nora Etches M.D. Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing was convened in response to an application for a rent increase by the Landlord pursuant to section 43 of the *Residential Tenancy Act* (the "Act").

Several Tenants did not attend the hearing. Of these Tenants, the Landlord states that Tenants RK, DW, JS, DR, RL, LM, BN, BH, MA, BC, VC, , RT, and YT were all served with the application for dispute resolution and notice of hearing (the "Materials") in person. Given this evidence I find that the Landlord served these Tenants in accordance with Section 89 of the Act and that these Tenants are deemed to have received the Materials.

The Landlord states that the Tenants MH, CW, BL, JM, JH, PL, SO, NM, CD, were served by posting the Materials on the doors of their units. As this method of service is not allowed under the Act I dismiss the application against these Tenants.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an additional rent increase?

Background and Evidence

The Landlord states that they are seeking a rent increase greater than allowed under the Act because they have made significant repairs to a 48 year old elevator that was built in 1969. The Landlord states that for the past 2 years the elevator has not been stopping on the floor levels due to outdated technology and that repairs have had to be constantly made with adjustments

each time. The Landlord states that despite the adjustments the elevator would continue to fail. The Landlord states that the elevator also required upgrades to meet provincial regulation requirements. The Landlord states that the largest cost is the new computer board that was installed.

The Landlord states that the upgrade was not foreseeable because before the past 2 years there were no problems and the elevator only required monthly maintenance. The Landlord states that there was no reason to foresee any upgrade and that the elevator would only fail in occasion requiring a reset. The problems started with extra repairs in the last 2 years except for one occasion where pebbles were causing the problem. The Landlord states that the trigger for repairs was the need to upgrade for provincial requirements. The Landlord states that they have no contingency fund because there is not enough money left over for this and that maintenance costs should not come out of profits because the owners deserve to make money. The Landlord submits that the upgrade cost $91,100.00. The Landlord seeks an increase of 3.45% over the allowed increase of 3.7%.

Tenant BP states that she has lived in the building since 2001 and that there have been constant stopping problems for about 5 to 6 years. The Tenant states that she would also hear the elevator open and close by itself many times a night and that this started about 3 to 4 years ago. This Tenant states that at this point the Landlord started putting fans on the motor. Roommate RS states that in the past 5 years and at least once a month the elevator was out of commission an average of 1 to 2 days. Tenant GJ states that the Tenants are not responsible for building maintenance. Tenant BA states that the elevator has had problems not stopping at floors since the Tenant moved in 4.5 years ago. This Tenant states that in 2013 they were given a notice from the Landlord that the elevator was not working and that Tenants should only use at their own risk. This Tenant states that the notice included a report from the elevator repair persons of unsafe use.

Tenant YS states that the costs to upgrade the elevator are maintenance costs and that the Landlord should have had a contingency fund for maintenance costs. This Tenant states that this is really the main point and that any reasonable owner would know that contingency funds for maintenance are necessary. This Tenant states that the Landlord is not meeting their obligations. Tenant JM states that they were not informed of any problems with the elevator

when they first rented the unit over a year ago and that they did not receive any compensation for the loss of use of the elevator in May and June 2016 when the elevator did not operate at all. This Tenant states that repairs are the cost of doing business and that they are not in a strata or are owners who are responsible for such costs. Tenant BA states that the elevator was actually down for 3 months in 2016. This Tenant states that in the 4 years they have lived in the building the Landlord has come around to check units and has been notified of repairs but none have occurred.

Analysis

Section 43(3) of the Act provides that in the circumstances prescribed in the regulations, a landlord may request the approval of a rent increase in an amount that is greater than the amount calculated under the regulations by making an application for dispute resolution. Section 23(1) of the Regulations provides that a landlord may apply for an additional rent increase if, inter alia, 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.

Policy Guideline #40 provides that the useful life of an elevator is 20 years. Given the evidence from more than one Tenant that the elevator has frequently not been operating property for up to 5 years I prefer this evidence over the Landlord's evidence that problems have only been occurring in the past 2 years. Given the age of the elevator I also consider that the elevators' useful life expired more than 20 years ago. The Landlord has not provided any evidence of any exceptional circumstances that occurred that are responsible for the required upgrades and it would be reasonable to expect upgrades to any aging infrastructure.

Ongoing repairs and maintenance is the responsibility of a landlord over the length of the landlord's ownership of a rental building and I do not accept that it could not be reasonably foreseen that an aging elevator would require either replacement or upgrading by the time it was 49 years old and that this would, without setting aside funds over the years, require the eventual and sudden need for a large sum of money. An increase in rent greater than allowed by the Act in these circumstances would have the effect of requiring current tenants to pay for ongoing

and required maintenance that includes upgrades to meet government standards or for the damages from accumulated wear and tear over the years.

For these reasons and given the Landlord's own evidence that the elevator has not been in compliance with provincial regulations for the past two years I find that the need for upgrades to the elevator could have reasonably been foreseen quite some time ago. I find therefore that the Landlord has not substantiated an entitlement to a greater increase in rent than that allowed under the Act and I dismiss the application.

Conclusion

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: February 24, 2017

Residential Tenancy Branch