



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's application for an additional rent increase over and above the amount provided for in the Residential Tenancy Regulation. Both parties gave affirmed evidence. The tenants acknowledged receipt of the landlords' documentary evidence. The landlord advised that although HT did not participate in today's hearing, he was served personally in accordance with Section 89 of the Act. I am satisfied that all parties were served the landlords documentary evidence for this hearing.

Preliminary Issue

At the outset of the hearing the landlord advised that a settlement had been reached with the tenant occupying suite # 8 and he no longer wished to pursue that portion of the claim, accordingly; the landlords claim for unit # 8 is withdrawn.

Issue to be Decided

- Whether the landlord is entitled to a rent increase beyond the amount permitted by the legislation?

Background and Evidence

The landlord gave the following testimony.

The landlord stated that he is seeking an additional rent increase beyond the 3.7% as per the regulations. The landlord testified that he is seeking an increase of \$330.00 for unit #2 raising the rent from \$970.00 to \$1300.00, \$320.00 for unit #3 raising the rent from \$980.00 to \$1300.00; both two bedrooms and a \$200.00 increase for unit #9 raising the rent from \$750.00 to \$950.00. The landlord stated that this unit is significantly lower than others in the building and in the area. The landlord stated that he has provided more than enough evidence to support his position.

The tenants gave the following testimony:

Both tenants oppose an additional rent increase. FL testified that the landlord could have raised the rents in accordance with the regulations every year, but chose not to. FL testified that it's unfair to increase it all at once on account that the landlord chose not to exercise their right. JB testified that the building is old and dated and regardless of the location, the rent is fair market value for the condition of the building.

Analysis

Section 23 of the Regulation addresses **Additional rent increase**, and provides in part as follows:

23(1) A landlord may apply under section 43(3) of the Act [*additional rent increase*] if one or more of the following apply:

- (a) 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;
- (b) 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;
- (c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;
- (d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;
- (e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

(2) If the landlord applies for an increase under paragraph (1)(b), (c), or (d), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage.

As earlier stated, grounds for an additional rent increase identified by the landlord in the application are “rent lower than comparable units, and location”

Following from the above, the matter before me is limited to an application for an additional rent increase on the basis of “rent lower than comparable units.”

Section 43 of the Act addresses **Amount of rent increase**, and provides in part as follows:

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.

In the landlord's application, it is documented that the permitted increase is 3.7%. Residential Tenancy Policy Guideline # 37 speaks to "Rent Increases" and under the heading - **Significantly lower rent**, provides as follows:

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. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar units in the residential property at a higher rate or those of surrounding buildings.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and any additional separate charges for services or facilities (e.g., parking, laundry) that are included in the rent of the comparable rental units in other properties. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographic area, it is **not** sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord.

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. Where there are a number of comparable units with a range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range. For example, an arbitrator may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

Section 23(4) of the Regulation provides, in part:

23(4) In considering an application under subsection (1), the director may

- (a) grant the application, in full or in part,
- (b) refuse the application,...

The landlord has been successful at renting out similar units in the same residential property at a higher rate. However, these units have undergone some renovation / upgrading and brand new tenants have commenced their tenancies at raised levels of rent. There have been no upgrades in the subject units where the tenants have resided from 6-10 years. In the result, I am unable to conclude that these units can be considered to be "similar units" as defined above in the Guideline.

Finally, even if I were to conclude that the subject units were similar to other units in the building where higher rents are being paid, the Guideline further provides:

Additional rent increases under this section will be granted only in exceptional circumstances. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar units in the residential property at a higher rate.

The general increase in market rent is already factored into the allowable annual increase under the *Act*. Clearly, market rent is not the critical factor in determining significantly lower rent.

The landlord was very unsure of many of the details of the building and the units. The landlord was unaware of the unit size, what if any services like heat or hot water was included, whether each had a parking spot or storage locker. Further, the landlord continually answered questions "I'm not sure, I don't have that information at this time". Due to the incomplete and insufficient evidence before me, the landlord has failed to provide the basis of which to make a detailed and comprehensive analysis of comparable units in the area. The landlords' appraisal is very general in its terms and lacks the comparative components of the subject units. Based on the very disjointed and vague nature of the landlords' testimony, he has failed to provide sufficient evidence to support his position for an additional rent increase.

Conclusion

The landlord has failed to meet the burden of proving that he is entitled to a rent increase beyond the amount permitted by the legislation, accordingly; the landlords' 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 27, 2017

Residential Tenancy Branch