



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Immobiliere Canada Investment
and [tenant name suppressed to protect privacy]

DECISION

Introduction

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

Several Tenants appeared with Legal Counsel. Of the Tenants that did not appear at this hearing:

- The Landlord withdraws its application in relation to unit #9 with Tenant AM as this tenancy has ended;
- The Landlord served the application for dispute resolution and the notice of hearing (the “Materials”) on Tenant VM of unit #1, Tenant GS of unit #5 and Tenant PR of unit #12 by registered mail on February 9, 2017. I accept that these Tenants have been properly served in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials; and
- The Landlord served the Materials on Tenant GS and KH of unit #5 by sending one package of Materials to their address by registered mail on February 9, 2017. The Landlord does not know if these Tenants are in any relationship other than co-tenants. Policy Guideline #12 provides that where more than one party is named on an application, each party must be served separately. As neither Tenant GS nor KH has been served separately I dismiss the application in relation to these two Tenants.

Issue(s) to be Decided

Has the Landlord provided sufficient evidence to allow a rental increase greater than the amount calculated under the Regulations?

Background and Evidence

The Landlord states that their company took over management of the rental units in February 2016 and that prior to this the owners had been managing the rentals. The Landlord states that the owners have not appeared at this hearing to give evidence and that the Landlord has little to no relevant evidence of events or rental increases prior to this date.

The Landlord sets out comparisons between all the one bedroom units in their building with three units the “Chilco”, the “Barclay” and the “Jervis” unit. The Landlord provides a grid of the units noting sizes, facilities, services, management, utilities and building type. The Landlord states that these units have significantly higher rents in the same geographical area and are comparable to the one bedroom units as follows:

- The Chilco unit is advertised at a rental rate of \$1,850.00 and is 800 square feet and nearly identical in size and layout with an updated kitchen and bath. The Landlord states that the interior of the unit has not been seen nor has the landlord for that unit been spoken to about the state of the unit. The Landlord provides a copy of an advertisement for the unit that depicts some photos of the unit. There is no mention of in suite laundry. The Landlord states that while this unit is closer to a large city park, the Tenants are closer to the ocean beach;
- The Barclay unit is advertised for rent of \$1,550.00 and is 550 square feet with similar age and quality of finishes. Units 2 and 4 are larger by 100 square feet; The Landlord has not seen the inside of the unit and has not spoke with the landlord of this unit, it is unknown whether the photos are of the actual unit but there is nothing to indicate that they are not actual photos; there is no mention of a security system, the only difference in tile is on the walls and there is no difference in the floor tiling; and

- The Jervis unit is advertised for rent of \$1,650.00 and is 760 square feet with similar age and quality of finishes. The landlord of this unit was not spoken with and the unit has not been seen by the Landlord and there is no confirmation that the photos in the ads are of that particular unit.

The Landlord notes that pets are allowed in the above units while permission to have a pet is required for each of the Tenants' units.

The Tenants collectively state the differences between the above units and their units as follows:

- the Chilco unit includes a washing machine and dishwasher, is closer to the major park, has modern countertops with new kitchen cabinets and hardware, has better light fixtures, has a bathroom with enclosed water pipes and a vanity with a mirror, and has a stove vent. The Tenants' units have appliances that are over 30 years old and bathrooms with cracked tiles;
- The Barclay unit has a bathroom vanity, a heated ensuite fireplace and a built in security system for each unit; the unit is contained in a concrete exterior as opposed to the Tenants wooden exterior and therefore the Barclay unit offers less noise. This unit has tile counters as opposed to the Tenants laminate counters. This unit has a fully tiled bathroom while the Tenants units have only partially tiled bathrooms with exposed pipes under the sink. This unit has track lighting; and
- The Jervis unit includes a den and a gas stove as opposed to electric. There are no photos of the bathroom, it's a larger unit (750 square feet) and the windows are in good condition as opposed to the Tenants' units whose windows were last cleaned in 2003. One of the Tenants' unit has a living room window that should open but is painted shut.

The Landlord sets out comparisons between all the one bedroom units in their building with two other units in the same building as follows:

- Unit 3# has a current rent of \$1,800.00, has been cosmetically updated and has new appliances and new laminate flooring. The Landlord states that this unit was rented in August 2016 and that previously it contained a long term (30 years) tenant whose last rent payable was \$1,106.00. The Landlord states that they do not believe that any of the Tenants saw the interior of this unit. The Landlord states that this unit has a green space only for a view as opposed to a back alley; and
- Unit #10 has a current rent of \$1,650.00. The Landlord states that the tenancy of #10 started on February 2017 and the prior tenant had been paying rent of \$1,250.00 to 1,285.00. The Landlord states that they have no evidence of the tenancy of this unit prior to 2015. The Landlord states that the new tenancy started without any renovations done to the unit.

The Tenants collectively state the differences between the above units and their units as follows:

- The interior of Unit #3 has been seen by one Tenant who states that the unit has refinished hardwood floors, that the bathroom has a new toilet and sink, the tub has been re-glazed, and that it contains a new mirror and vanity. The kitchen has a refinished wood floor, new counters, new sink, glass cabinets with new hardware and new stainless steel appliances. The unit is situated with less noise and a better view than at least one of the units; and
- Unit #10 has a larger kitchen with glass cabinets, is less noisy as located away from laundry area and entrance.

The Tenants all indicated individual differences in relation to the better positioning of the Landlord's proposed comparable units.

The Landlord sets out comparisons between a two bedroom in their building with three units the "Lincoln", the "1160" and the "852" unit. The Landlord provides a grid of the units noting sizes, facilities, services, management, utilities and building type. The Landlord states that the following units with significantly higher rents in the same geographical area are comparable as follows:

The Lincoln apartment is 200 square feet smaller and is advertised for rent at \$2,150.00. The Landlord states the 1160 apartment is about 300 square feet smaller than unit #12 and is fully renovated. Unit 12 had its floors redone at move-in and was recently painted and has an extra enclosed area for solarium or office, is on the top floor as opposed to the ground floor in the Lincoln, has a new stove and toilet.

The Tenant states that the Lincoln apartment is not comparable because it has added features such as a private entrance, gas stove and built in microwave. The Tenant states that the bathroom appears to be updated with electrical outlets, and the unit has bike storage and coin laundry. The Tenant states that there is no evidence of the size of the second bedroom in the Lincoln. The Tenant's second bedroom has no power outlet. The Tenant states that unit 12 has an enclosed patio with no power and is not usable as either a solarium or office.

The Tenant states that 1160 is not comparable because it has better and more features. The Tenant states that the unit is modern with new stainless steel appliances, including a dishwasher, new cupboards and countertops with cabinet pot lighting. The Tenant states that dogs are allowed in the 1160 and that it offers more laundry facilities and has bike storage, a fully enclosed and private outdoor space, a fully renovated bathroom, and a brick exterior. It is noted that this unit includes heat and hot water.

The Tenant states that the 852 is fully renovated with new flooring, new counters and new appliances in the kitchen and has a fully renovated bathroom. The Tenant states that this unit has a brick exterior while theirs is wood. The Tenant states that their unit was only recently repainted with refinished floors when they moved into their unit.

The Landlord states that the Tenants are all long term tenants and all are paying rent at a level below what would have been paid if they had been given annual increases. The Landlord states that had annual increases been given the rents would range from \$1341.37 to \$1,742.54 and that unit 12 would have a rent level of \$2,095.00. The Landlord states that increases were not given by the owner as this person did not know the law. The Landlord states that they are now dealing with issues and repairs to the unit which is why they are taking this step to increase the rent. The Landlord argues that the Tenants are not paying market rent and that as the building is unique it is difficult to present comparables. The Landlords state that the building is a heritage building built in the 1930's and has quirks and details that make it unique. The Landlord acknowledges that because the tenancies are long term a community has been built and it is difficult to provide comparable with such a community.

The Tenants states that they have been given rental increases almost every two years that have been either at the maximum allowed or over the allowable amount without dispute by the Tenants. The Tenants state that one of the units in their building has been listed at a rental rate of \$1,650.00 and that this has been vacant for 2 months. The Tenant states that the quirks in the building such as the milk doors do not function and that there is no history to be known about the building.

The Tenants Legal Counsel argues that the Landlord must show units of comparable size, age, ambiance and sense of community but has not shown this. Legal Counsel points to a Supreme Court Decision that sets out that "the purpose of the Act as a whole is to confer a benefit or protection on tenants" and that as a result the Act must be construed to achieve that purpose and that any ambiguity be resolved in favour of the tenant. This SC Decision also sets out the RTB policy indicating that an additional rent increase will be granted only in "exceptional circumstances", are available only in extraordinary situations and that the Landlord has the onus to provide "detailed and specific" evidence.

Legal Counsel argues that the comparables provided by the Landlord are limited to advertisements, do not provide actual rents received and do not show the rental rates of other units in the same buildings. Legal Counsel argues that the Tenant units differ in ambience and construction and are older than the Landlord's example units. Legal Counsel notes that the Landlord has not even determined whether the photos in the ads are the actual photos of the units that are being advertised for rent. Further the ad photos are black and white and are not conducive for making comparisons.

Legal Counsel argues that the Landlord has provided very little evidence and no evidence of the age of the buildings other than the heritage status of some. Legal Counsel argues that even if the advertised units were rented for the asking price, the Landlord has not provided a spectrum of the market rate and the comparables are of single units and not representative of the overall rental rates paid in the buildings. Legal Counsel argues that if the Landlord had provided all the rental rates for the building instead of only those that have become recently vacant it may be that the overall market rate for that building may be equal to the overall current rate for the Tenants' building. Legal Counsel argues that comparables should be based on other comparable long term rentals. Legal Counsel argues that the Landlord has provided no evidence of rental amounts in the area other than the new rental or the advertised rentals and that this is not evidence of comparables.

Analysis

Section 43(3) of the Act provides that in the circumstances prescribed in the regulations, a landlord may request approval of a rent increase in an amount that is greater than the amount calculated under the regulations. Section 23(1)(a) provides that a landlord may apply for an additional rent increase if, inter alia, after the allowable annual rent increase allowed under the Act, 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. It is noted that the Tenants submitted a significant amount of documentary evidence including photos of their own units and letters from occupants of

similar units in the area. This evidence has been considered in conjunction with their oral evidence.

Given the photos of the Tenants' one bedroom units, I consider the state of some of their kitchens to be wretched and barely within acceptable living condition, in particular those with the severely aged appliances and detaching countertops. Given the photos and descriptions of the Chilco unit as having extra appliances and overall updated surroundings I find that there is nothing comparable between the Tenants' units and the Chilco unit.

Policy guideline #37 provides that "It is not sufficient for a landlord to claim a rental unit 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 Landlord's use of its own units that bring in higher rental amounts than other units in the same building does not satisfy the above requirements as one could also take all the other units in the same building to show that rents are similar. As a result I do not find that the Landlord has shown any significant difference within its own building other than a couple of exceptions. I note that the one exception has been updated with new appliances and consider that this alone shows that it is not comparable. I also note the Tenants' evidence that one of the empty units in the building that is advertised at \$1,650.00 has not rented for two months indicating that the Landlord may not be successful in renting that unit at the rate advertised.

Policy guideline #37 provides that if a landlord compares all units in a building to units in other buildings the landlord should provide evidence of all rents in the other buildings, along with evidence of the comparable state of the building and comparable provision of amenities. This guideline also provides that the extent of increased costs to repair and maintain the rental units resulting from past inadequate repairs and maintenance must also be considered. The Landlord did not provide evidence of other units in the same building as the Barclay and Jervis units. The Tenants provided evidence of other units in the area that have current tenancies at lower rental rates and this evidence suggests

that these units are comparable to the Tenants units. The units presented by the Landlord as comparable units may very well be the exceptions to the other units in the building for reasons that are unknown. The Landlord has not provided direct evidence of the interior of the advertised units or any evidence from those landlords about the advertised units. As the Landlord has relied solely on advertisements, it is unknown how long these units have been on the market at the advertised price or what the rent will finally be settled upon when it is taken off the market. The Landlord's evidence indicates that if all the Tenants units had been given yearly rent increases their current rents would be approximately on par with the Barclay example within a range of approximately \$200 on either side of its advertised rent of \$1,550.00. While the Tenants may have obtained a cost savings over the years due to the lack of yearly increases, I also consider the lack of maintenance or upgrades done to the units and the cost savings accruing to the Landlord as a result. Indeed the Landlord's evidence is that they are now dealing with issues and repairs to the unit which is why they are taking this step to increase the rent. This is not an exceptional reason to seek a rent increase over the allowable amounts. Finally the Landlord has provided no evidence of similar or comparable community with the provides examples.

For these reasons and as the Landlord's units provided as comparables may very well be an exception to all or a majority of other comparable units in the area and in the building containing those units I find that the Landlord has failed to provide sufficient evidence to substantiate a higher rent increase in line with the Barclay and Jervis units. I therefore dismiss the Landlord's claim for a greater rent increase in relation to all the one bedroom units.

While the evidence of rents being sought for the two bedroom unit used as a comparable by the Landlord indicates a substantial difference in the amount of rent, I note that the Landlord again failed to provide evidence of other units in the same buildings. I also find that the Landlord's proffered comparables indicate renovated units that are much more modern and updated or units with added features and consider that this is an increased value provided for increased rent in the units. Without evidence of

the other units in the same building it cannot be determined that the Landlord has provided sufficient evidence to substantiate extraordinary reasons for approving the rent increase claimed for the Landlord's two bedroom unit and I dismiss this claim. In effect the Landlord's application is dismissed in its entirety.

Conclusion

The 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: May 18, 2017

Residential Tenancy Branch