



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding G&M ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order authorizing the landlord an additional rent increase pursuant to section 43 and 69.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence submitted by the other party.

At the outset, the landlord's agent (the landlord) requested that matters with the tenants of units 103, 104, 112, 201, 208, 306, 313 and 314 be withdrawn as the issues with those tenants have been resolved through mutual agreement. As such, no further action is required for these portions of the landlord's application.

At the outset, the tenants' legal advocate (the tenants) stated that she had instructions to speak on behalf of units 101, 105, 115, 203, 204, 213, 308, 310, 311 and 315. The

Tenants of unit 111, 304 and 307 did not attend or submit any documentary evidence and were not represented by the legal advocate. The landlord stated that these three tenants were served with the notice of hearing package in person on January 25, 2017.

The tenants confirmed receipt of the landlord's notice of hearing package. The tenants also clarified that there was an unnamed second tenant, N.B. for unit #115 that the landlord failed to identify in the application that the tenants wished to have added. No objections were made by the landlord. As such, the landlord's application shall reflect the addition of a second individual, N.B. for unit #115.

I accept the undisputed affirmed testimony of the landlord and tenants and find that both parties have been sufficiently served as per section 90 of the Act. Neither party raised any service issues.

At the end of the hearing the tenant's legal advocate through polling of the represented tenants agreed that one copy of the decision could be sent c/o: Unit #115 for those parties represented.

Issue(s) to be Decided

Is the landlord entitled to an order authorizing an additional rent increase?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an additional rent increase for the below listed rental units as the rent is lower than comparable units or sites:

Unit	Tenant(s)	Current Rent	Increase	New Rent
#101		\$1,075.00	\$475.00	\$1,550.00
#105		\$1,160.00	\$390.00	\$1,550.00
#115		\$1,160.00	\$390.00	\$1,550.00
#203		\$1,065.00	\$485.00	\$1,550.00
#213		\$1,265.00	\$285.00	\$1,550.00
#308		\$949.00	\$251.00	\$1,200.00
#310		\$854.00	\$346.00	\$1,200.00
#311		\$1,149.00	\$401.00	\$1,550.00
#315		\$1,033.00	\$517.00	\$1,550.00

The landlord provided evidence that the rental property is a three-storey non-basement concrete apartment building with 45 units built in 1962. The premises consist of 21 one-bedroom units and 24 two-bedroom units. There are approximately 23 open and covered parking stalls, various storage rooms and a manager's suite.

The landlord relies upon a 26 page report prepared by a third party for an appraisal analysis of the landlord's rental property in comparison with 13 surrounding properties with rental units dated September 2016.

The landlord's report relies upon a direct comparison with other apartment buildings of similar scope and quality within the nearby neighborhood. The report relies upon a Canadian Mortgage and Housing Corporation (CMHC) Rental Market Report dated December 2015. The report notes that the CMHC report are undifferentiated with respect to unit site, location, age, condition, etc. It states that this particular neighborhood shows the average reported monthly rents from 2014 to 2015 for one and two bedroom units are:

1BR		2 BR	
2014	2015	2014	2015
\$987.00	\$1,037.00	\$1,329.00	\$1,367.00

The report shows that in comparison with current monthly rents in comparison with the CMHC reported monthly rents there is a difference between 9% and 12% for one and two bedroom units.

The report identified eight nearby rental properties for comparisons with the following breakdown of monthly rent range for one and two bedroom units.

	1 Bedroom Rent Range	Average	2 Bedroom Rent Range	Average
1.	\$934.00-\$1,201.00	\$1,099.00	\$1,237.00-\$1,500.00	\$1,417.00
2.	\$1,085.00-\$1,275.00	\$1,170.00	\$1,430.00-\$1,430.00	\$1,430.00
3.	\$800.00-\$1,000.00	\$905.00	\$1,300.00-\$1,350.00	\$1,330.00
4.	\$735.00-\$1,124.00	\$842.00	\$996.00-\$1,214.00	\$1,074.00
5.	\$1,075.00-\$1,128.00	\$1,112.00	\$1,800.00-\$2,000.00	\$1,900.00
6.	\$935.00-\$1,128.00	\$959.00	\$1,435.00-\$1,435.00	\$1,435.00
7.	\$795.00-\$990.00	\$883.00	n/a	n/a
8.	\$600.00-\$850.00	\$762.00	\$850.00-\$1,250.00	\$1,064.00

The report references one landlord with the following 5 rental properties with their listed monthly rents for one and two bedroom units. A notation stated that the posted rents shown are for waitlisted rental apartments managed by this landlord.

	1 Bedroom	2 Bedroom
9.	\$1,100.00	\$1,550.00
10.	\$1,150.00	-
11.	\$1,250.00	\$1,850.00
12.	\$1,100.00-\$1,150.00	\$1,480.00-\$1,500.00
13.	\$1,150.00-\$1,200.00	\$1,475.00

The report provides general information regarding the size and age of the comparable rental properties and referred to 10 current listings found on the internet for rental units in apartment buildings in the same neighborhood.

		Size (Sq.)	Monthly Rent	Notes
1.	1 Bedroom		\$1,495.00	includes heat and hot water...
2.	1 Bedroom		\$1,285.00	large, with oak floors, include heat, H/W,
3.	1 Bedroom		\$1,198.00	large, includes hot water
4.	1 Bedroom	640	\$1,695.00	Top floor, renovated, views, In-suite laundry,...
5.	1 Bedroom	603	\$1,850.00	Large north facing patio.
6.	1 Bedroom		\$1,375.00	Renovated, patio facing park.
7.	1 Bedroom		\$1,400.00	Renovated
8.	2 Bedroom		\$1,700.00	Includes heat, large balcony
9.	2 Bedroom		\$1,550.00	Includes hot water.
10.	2 Bedroom		\$2,095.00	Character renovated, high end finishing

The report refers to the primary factors affecting rental rates are:

- Supply and demand
- Location
- Access to transit
- Layout and design
- Age or improvements
- Parking availability, safety and proximity
- Proximity to amenities

The report is summarized stating:

In summary, the data described and analyzed suggest that the following ranges or rents:

- *Indices No. 1 to 8 provide support for rental range of \$1,100.00 to \$1,170.00 per month for one-bedroom units and around \$1,425.00 per month for two bedroom units.*
- *Indices No. 9 through 13 provide support for one-bedroom rental rates of \$1,100.00 to \$1,250.00 per month and \$1,475.00 to \$1,550.00 for two-bedroom units.*
- *The listings on (the internet) show asking rates of \$1,198.00 to \$1,375.00 per month for one-bedroom units and \$1,550.00 to \$1,700.00 for two-bedroom units.*

The report concludes by stating,

The most recent tenancy for the subject was the two bedroom unit 312 lease this month for \$1,600 per month. This unit was inspected and found to be average condition without updates to the kitchen and washroom, but has good north facing views from the upper level. This rate, is a good comparison for the applicable overall average rent for the subject two-bedroom units.

In conclusion, the data described and analyzed suggests that the average market rent for the subject one-bedroom units should be between \$1,100.00 and \$1,375 per month and that average two-bedroom rent should be between \$1,425 and \$1,700 per month.

Without further means to refine the applicable rate, we have settled on the following market rents for the subject:

\$1,200 average one-bedroom unit rent per month

\$1,600 average two-bedroom unit rent per month

The foregoing market rent estimates include the landlord's provision of heating and hot water, but excludes electricity services to the suite and parking.

The tenants dispute the landlord's application for an additional rent increase stating that the landlord has failed to meet the statutory criteria. The tenants submit that the landlord has the burden of proving any claim for a rent increase of an amount greater than the prescribed amount. The tenants stated,

The Tenants submit that the statutory basis for the rent increases have not been met for a number of reasons, including:

- a. The rent increase is not being applied for under exceptional circumstances;*
- b. The Landlord has not provided similar unit comparators;*
- c. In the alternative, the comparator buildings provided by the Landlord (the Buildings), are not sufficient or relevant comparisons to the subject building or subject units.*

The landlord responded that providing a listing of similar units was an "undue burden" for the landlord.

The tenants stated that based upon the landlord's report, no similar units for one and two bedroom units have been offered as comparisons as required by Residential Tenancy Branch Policy Guideline #37 (the Guideline) which states in part that additional rent increases pursuant to section 43(1) of the Act and sections 23 (1) of the Residential Tenancy Regulations (the Regulations) will only be granted in exceptional circumstances. The tenants claim that the landlord has failed to provide any information to support the existence of any exceptional circumstances.

The tenants argued that there is a high standard for exceptional circumstances that qualify for an above allowable rent increase under the Act. The tenants have provided details of 4 different circumstances in which have not qualified as exceptional. They are:

- a Landlord fails to implement an allowable rent increase;
- a Landlord contends that they are 'losing money on a rental unit due to its rent and having to install a new roof and conduct some minor repairs to the unit';
- the rent for a current unit is significantly lower rent which is a result of the landlord's recent success at renting out similar units at a higher rate;
- a Landlord's desire to get the rent up higher in order to make their purchase a good investment.

The tenants state that the landlord's report fails to provide sufficient information on which a determination can be made that the units in those different buildings are similar to the Tenants' units "by way of comparable size, age or unit, construction, interior and exterior ambiance (including view), and sense of community." The tenants provided undisputed affirmed testimony that there is significant variation between the units in the landlord's listed buildings. The tenants argued that a monthly rent range for different units in a building does not provide sufficient basis for a similar unit comparison. The tenants stated that the landlord's submitted report fails to provide sufficient factual basis to make a similar unit comparison as required by the Guideline as a similar building comparison cannot be made in place of a similar unit comparison.

The tenants have provided copies of each of the tenants' unit features in an effort to make a similar unit comparison based upon the landlord's listed similar building features. The tenants have provided a spreadsheet and a map based upon the landlord's report that such a comparison cannot be made as the landlord's details are insufficient to make a finding.

Analysis

Pursuant to sections 43 (3) and 69 (a) of the Act, a landlord may make a request for a rent increase in an amount that is greater than the amount calculated under the regulations by making an application for dispute resolution. Residential Tenancy Branch Policy Guideline #37 also states in part.

Additional Rent Increase under the Residential Tenancy Act

*The Residential Tenancy Act allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. **The policy intent is to allow the landlord to apply for dispute resolution only in "extraordinary" situations.** The Residential Tenancy Regulation⁴ sets out the limited grounds for such an application. A landlord may apply for an additional rent increase if one or more of the following apply:*

(a) after the allowable 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;

In examining and assessing the Application and supporting material provided by the landlord, the evidence of both parties regarding comparable units, and the Tenants' submission, I find that the landlord has failed to provide sufficient evidence that the current rate of rent for the subject(s) rental unit(s) are significantly lower than that the current rent payable for similar units in the same geographic area.

In this case, the landlord has failed to provide sufficient details of any "extraordinary" situation in which they are seeking an additional rent increase. I also accept the tenants' claim that the landlord has failed to provide a clear comparison of rental units and relies solely on similar rental buildings. I find that the landlord's reasoning that this was an "undue burden" to be flawed. The tenants were able to extrapolate some details of similar rental units based upon the landlord's report.

"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. To determine whether the circumstances are exceptional, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

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 services or facilities (e.g. parking, laundry) that are included in the rent of the comparable 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 rent. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographic area with similar amenities, should be part of the evidence provided by the landlord.

The landlord has failed to provide sufficient evidence to support a finding for an additional rent increase.

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: May 9, 2017

Residential Tenancy Branch