



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

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

- an order to obtain an additional rent increase, pursuant to section 43.

The landlord, the "landlord's agent" AM, and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent, who is his wife and the co-owner of this rental unit, had authority to speak on his behalf at this hearing. This hearing lasted approximately 75 minutes in order to allow both parties to fully present their submissions.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application and the landlord was duly served with the tenants' written evidence.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below. Both parties agreed to the following facts. This tenancy began on August 17, 2015 for a fixed term of one year, after which it continued on a month-to-month basis. Monthly rent

in the amount of \$2,100.00 is payable on the first day of each month, which includes hot water and gas utilities. A security deposit of \$1,050.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed but no copy was provided for this hearing. The tenants continue to reside in the rental unit.

The landlord provided coloured photographs, as well as a description of the rental unit, with his application. Both parties agreed that the rental unit is a top floor, two-bedroom, one-bathroom condominium in a low-rise four-storey apartment building. The landlord initially did not know how old the unit was, stating that it was 17 to 18 years old. During the hearing, the landlord located the strata floor plans for the unit and clarified that it was almost 22 years old because it was built in October 1995. The landlord claimed that the unit is 822 square feet in size, has a balcony and fireplace, in-suite washer and dryer, ample storage space, one parking space, and a separate hot water tank in the unit. He testified that the interior of the unit was renovated, including new kitchen appliances, new granite kitchen counters, a new sink, faucet, garburator, water tank, window handles, and exhaust fan, among other improvements. He stated that the building is pet-friendly and located in a central neighbourhood within walking distance to the beach and other neighbourhood amenities. The landlord maintained that the renovations occurred sometime between 2009 and 2011, while the landlord was occupying the unit, prior to the tenants moving in. He explained that in 2010, strata repairs were done to the railings, windows, and the envelope of the building. He said that the unit has not been renovated since the tenants moved in, and only standard repairs have been done during the tenants' tenancy, as required.

The landlord claims that after the allowable yearly rent increase amount of 3.7% for 2017 of \$77.70 under section 22 of the *Residential Tenancy Regulation* ("*Regulation*"), 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 landlord seeks an additional rent increase of \$122.30 above the allowable *Regulation* amount, for a total rent of \$2,300.00 per month, including the \$77.70 allowable amount.

The landlord said that after he moved out of the rental unit, the different tenants who lived there between March 1, 2011 and July 30, 2015, prior to the tenants moving in, all paid rent of only \$2,100.00 per month, the amount that the tenants currently pay. The landlord stated that no legal rent increases have been imposed on the tenants during this tenancy. He claimed that the tenant's rent was not even increased by the allowable yearly *Regulation* amounts because his wife gave birth to two children, and they were his main focus. The landlord testified that he realized that he should seek a rent increase since his wife lost her job, she had to obtain employment insurance, and his children's expenses have to be considered. He stated that the latest assessment on the

rental unit increased by 30% so he owes more taxes. He further noted that the inflation rate is now higher in the province.

The landlord provided a chart of nine other rental properties, which he says is within a five kilometre radius of the rental unit, and he considers them to be comparable to the unit. In his comparison chart, the landlord compared the location, number of bedrooms, the amount of rent, the age of the unit, whether the units offered in-suite laundry, parking, balconies, and fireplaces, and whether they were dog-friendly. The landlord provided partial advertisement printouts from a popular online rental website, which shows postings of different units at varying prices. The landlord provided a monthly rent range between \$2,100.00 and \$2,850.00, stating that the tenants' rent of \$2,100.00 was well below the current market value in the area. The landlord provided limited photographs from the postings, stating that he did not print out all of the available photographs on the website. The landlord said that he did not know the exact age of the advertised units, as he was guessing from the photographs. He also claimed that he could not verify the information in the postings, as he did not contact the people who advertised the units, nor could he confirm whether the units rented at all and if they did, whether they rented for the advertised amounts.

The tenants dispute the landlord's application for an additional rent increase. They claim that the landlord is entitled to raise the rent to the allowable *Regulation* amount for 2017, but not above. The tenants submitted two photographs of the wear and tear to the wood floors of the rental unit, which the landlord's agent agreed showed water damage that she caused in 2009 while living at the rental unit. The tenants explained that the floors at the rental unit need to be refinished and there have been no renovations to the unit since they moved in.

The tenants maintained that the landlord did not know whether the comparable units provided by the landlord actually rented out and if so, for what rent. They said that some of the rent prices in the advertisements were reduced; the tenants provided copies of two postings that the landlord used in his chart, showing the decrease in the advertised monthly rent amount from \$2,400.00 to \$2,200.00 and from \$2,100.00 to \$1,980.00. The landlord did not dispute that the units were the same ones in his chart. The tenants maintained that the advertisements showed units that were distinguishable from their unit because the other ones are located closer to major thoroughfares, had recent renovations, and were professionally managed. They noted that the landlord failed to provide comparisons of units in the same building as the rental unit, which the landlord said did not exist at the time because it is such a small building.

Analysis

Legislation

Section 43 of the *Act* states that a landlord may impose a rent increase only up to the amount calculated in accordance with the *Regulation*, or as ordered by the director, or agreed to in writing by tenants. The annual rent increase currently permitted in the *Regulation* for 2017 is 3.7%.

Section 23(1) of the *Regulation* provides in part as follows:

Additional rent increase

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;

Section 23(3) of the *Regulation* reads in part as follows:

23(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

- (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;
- (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;
- (c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;
- (d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;
- (e) the relationship between the change described in paragraph (d) and the rent increase applied for;
- (f) a relevant submission from an affected tenant;
- (g) a finding by the director that the landlord has contravened section 32 of the *Act* [obligation to repair and maintain];
- (h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year;

- (i) *a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;*
- (j) *whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;*
- (k) *whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has*
 - (i) *submitted false or misleading evidence, or*
 - (ii) *failed to comply with an order of the director for the disclosure of documents.*

Residential Tenancy Policy Guideline 37 defines what “significantly lower rent” means:

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.

Residential Tenancy Policy Guideline 37 allows the landlord to apply for dispute resolution only in “exceptional” situations. Guidance is provided with respect to exceptional situations:

...to determine whether the circumstances are exceptional, the arbitrator will consider relevant circumstances of the tenancy, 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.

Findings

I note that, in considering the subsections of 23(3) of the *Regulation*, there was limited information provided by the landlord to support the claim that the tenants had not received an allowable rental increase under the *Regulation* in previous years. The landlord said that he did not think about increasing the rent because he had two children and his focus was on them, which was his choice, even though the rent increase option was available to him. The landlord did not increase the rent for previous tenants since he began renting it in 2011. Any potential change in the property taxes for the rental unit, which the landlord did not provide documentary evidence of, would be as a result of the increase in the value of the unit, as per the landlord’s testimony that the assessment value increased.

The landlord submitted that he sought to raise the rent because the rental amount that the tenants are paying is well below other rents in the same area and that his own costs have increased. I accept the submissions of both parties at this hearing that there have been no renovations to the rental unit since the tenants moved in. I also note that the landlord has cited mainly personal factors for applying for a rent increase, including expenses for his young children and his wife being unemployed, which are not relevant to the rental unit or an application for a rent increase.

I accept the testimony of the tenants that the properties submitted by the landlord as “comparables” were more central to major thoroughfares and having been more recently renovated. I also note that the comparables were limited in their value as they did not state the age of the units, which can be a significant factor in the rental price. The landlord agreed that he had guessed the age of the units based on the photographs in the postings, which the landlord failed to fully provide for this hearing. The landlord failed to confirm the information in the advertisements and he also failed to present the

changing rental prices, which the tenants showed for at least two units, were reduced to amounts close to their own monthly rental price. Therefore, I find that the advertised amounts do not accurately reflect the actual rental price, if these units were even rented out.

As indicated above, Residential Tenancy Policy Guideline 37 allows the landlord to apply for dispute resolution only in “extraordinary” situations. Extraordinary is defined as beyond what is usual, regular or customary. I find that the landlord failed to provide sufficient evidence that the current situation is extraordinary.

After considering all of the factors outlined in section 23(3) of the *Regulation* and Residential Tenancy Policy Guideline 37, I find that the landlord has not sufficiently satisfied the requirement that he demonstrate that the tenants’ rent is significantly lower than the rent payable for other rental units that are sufficiently similar to, and in the same geographic areas as, the rental unit. I find that the landlord has not demonstrated that there are exceptional circumstances that entitle him to an additional rent increase beyond the annual amount allowed under section 22 of the *Regulation*.

I find that the landlord is not entitled to an additional rent increase beyond the current annual amount allowable under the *Act* and *Regulation*. The landlord is entitled to increase the rent annually with the proper notice and form, in accordance with the *Act* and the *Regulation*.

Given all of the evidence, and the requirements provided under the *Regulation*, I find that the landlord has not met the burden of proof in applying for an additional rent increase. Therefore, I dismiss the landlord’s application without leave to reapply.

Conclusion

The landlord’s application is dismissed without leave to reapply.

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 05, 2017