



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: AARI

Introduction:

Both parties attended the hearing and gave sworn testimony. They confirmed the landlord served the Application by registered mail and personally and the tenant also served her evidence personally. I find the documents were legally served pursuant to section 89 of the Act. The landlord applies pursuant to section 43 of the *Residential Tenancy Act* (the Act) for an additional rent increase.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that after applying the rent increase permitted by the Regulation, the rent for the unit is significantly lower than the rent paid for other rental units similar to and in the same geographic area as the rental unit?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 2013, rent is \$770 a month and a security deposit of \$375 was paid. They agreed that there has been only one rent increase in the 4 years of tenancy, in 2016 for 2.9%. The landlord provided 3 comparables, all basement suites. Neither of the parties knew the actual size of the tenant's suite.

Comparable #1: \$1000 mo. 600 sq. ft.

The first comparable is a 600 sq. ft. basement 1 bedroom suite advertised for \$1000 a month. The tenant pointed out it is 6 months old whereas her home is 17 years old. Neither of the parties knew the size of the tenant's suite, the landlord estimating it at 700 sq. ft. and the tenant at 600 sq. ft. They agreed the location seemed similar in convenience. However, the landlord pointed out that the tenant is allowed to have pets whereas the advertised suite does not permit them; the laundry is in suite in the tenant's unit while the advertised unit has a shared building laundry. The tenant said the age of the home affects the quality of the interior. She included some pictures showing

water/mould deterioration especially to the below ground bedroom and some kitchen cabinets that needed repair. The landlord said she has replaced the furnace, the windows and in the unit, the washer and refrigerator. She tries to attend to requests from the tenant and the tenant agreed she did.

Comparable #2: \$1050 mo. 525 sq. ft.

It is advertised as completely renovated with new appliances, private laundry, French doors leading to a patio and very bright. The tenant said by comparison her unit is not renovated, it has no dishwasher, no private covered patio or yard space, no shed storage and is not bright for it is $\frac{3}{4}$ in the ground. She said she has windows in each of her rooms but the ground slopes so her bedroom has a lot of underground area. The landlord pointed out that the tenant's unit has a bathtub and this one does not.

Comparable #3: \$1100 mo. 560 sq. ft.

The tenant pointed out that by comparison, she has no storage space, private patio, no driveway parking, no large backyard, no garden and she or visitors cannot smoke on the property. The landlord said this comparable has no cable/Wi-Fi included whereas the tenant's is included. It cost her \$1623 last year for this alone. It is shared with her son and her who live upstairs.

The tenant also provided some comparables.

Tenant comparable #1: \$700 mo. 600 sq.

All utilities included. The landlord pointed out the laundry is shared and the location is a much older location so likely a much older home. The subject home is 17 years old.

Tenant comparable #2: \$750 mo. 570 sq. ft.

6 year old home, includes utilities and internet also. The parties agreed that their location is closer to highway access and the West Coast Express so it is a better location than this comparable. The landlord also pointed out that there are no pets, no smoking and no laundry available.

Tenant comparable #3: \$800 mo. 535 sq.

It is advertised as bright but has a shared laundry, shared utilities and no pets or smoking. The landlord pointed out her utility bills to consider for fair comparison. Internet/Wi-Fi was \$1623 last year, \$1750 for hydro, \$721 for gas. She notes also her suite is legal which means she pays \$746 for municipal services to it such as sewer, water and garbage. She notes that none of the comparables state their advertised suites are legal which may mean they were not inspected properly to conform to building and safety standards. The parties agreed this location was comparable.

Tenant comparable #4: \$800 mo. No sq. ft. listed

This is newly renovated, has a skylight with vaulted ceilings, it has lots of storage. It is also advertised as having new appliances, granite countertops, dishwasher and a 4 piece bath. However it has a shared laundry and the parties agreed it is in a much busier location than their home.

Analysis:

Policy Guideline 37 of the Residential Policy Guidelines sets out important factors that are considered in an application for an additional rent increase (AARI). It states in part:

“The landlord has the burden of proving any claim for a rent increase of an amount that is greater than the prescribed amount. The tenants will have an opportunity to appear at the hearing of the application, question the landlord’s evidence, and submit their own evidence.

The landlord has applied for this additional increase because the current rent is significantly lower than similar units in the same geographic location. The Guideline states in part:

Significantly lower rent⁸

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.

I find the weight of the evidence is that the landlord has only increased the rent once since the tenancy commenced in 2013 at a rent of \$750. If she had increased it by the legal increase each year, I find it would be now \$838.35 based on 2.2% for 2014, 2.5% for 2015, 2.9% for 2016 and 3.7% for 2017. However, she chose not to increase it each year except in 2016 with the result that the rent is currently \$770 before application of the legislated 3.7% increase for 2017. In calculating her costs, I find the benefit to the tenant of included utilities is approximately \$2047 (half of the landlord’s total utilities) which equates to approximately \$170.58 benefit per month.

I find the parties did not know exactly the square ft. of the tenant's unit, the landlord estimating 700 to 750 sq. ft. for the one bedroom unit and the tenant estimating 600 sq. ft. I find the landlord's first two comparables to be much newer, # 1 -6 months old and #2 completely renovated. I find the age of the home affects the quality of the interior, the walls, woodwork and the appliances for example, so these two comparables are not sufficiently similar to be good comparables to the rental value of the suite in the landlord's 17 year old home. It is true they are smaller and the tenant's does have a bathtub which has some value. I find the landlord's third comparable also does not have similar features as it has items the tenant's suite lacks such as storage space, a private patio, driveway parking, a backyard and garden where guests may smoke. However, I find it does not include internet and Wi-Fi which is a costly benefit.

The tenant's comparable #1 is in an older home with shared laundry so not directly comparable. Her comparable #2 appears to be in a less convenient location and there is no smoking, no pets or laundry available. Comparable #3 again has shared laundry, shared utilities and no pets or smoking and comparable #4 has a shared laundry and in a busier location. I find all of these comparables have significant limitations in laundry and pets both of which the tenant values so they are not good comparables. I find the tenant's more expensive comparables at \$800 a month do not allow pets or smoking and she would be required to share utilities. Based on the calculation of the present utilities presented by the landlord, I find this would likely add \$170.58 to her monthly rent which would make the rent \$970.58 for a unit where she could not have her pet.

The landlord is claiming an additional rent increase of 24.7% to \$960 based on the fact that the rent in the tenant's unit is significantly lower than rent for similar units in the same geographic area. The onus is on the landlord to prove this. The criteria for gaining an additional rent increase are noted in the Guidelines.

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 significantly lower, for example, 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... Additional rent increases under this section will be granted only in exceptional circumstances.

I find a significant problem in this hearing is that neither of the parties has provided evidence of current rent payable for **similar units and the onus is on the landlord to provide this**. As noted above, all of the comparables have significant differences to the current unit. I find the landlord provided no comparables of a suite in a home of similar

age, size, interior and exterior ambience. In fact, she was unsure of the size of the tenant's suite which made it difficult to even compare it to the information she did provide. I find the landlord's three comparables to be too dissimilar in amenities to be considered in terms of whether there is a significant difference in rent. I find the best comparable may be the tenant's \$800 a month comparable with an additional unknown cost added for utilities which she would have to pay. Even then, she would not be able to have her dog. With the 3.7% approved increase for 2017, the tenant's rent for her current suite would be \$798.49. I find the landlord provided insufficient evidence that this amount is significantly lower than rent for units of comparable size, age, construction, interior and exterior ambience.

Therefore, I find insufficient evidence provided by the landlord to grant an additional increase in rent. I find insufficient evidence that her situation is an exceptional circumstance.

Conclusion:

I dismiss the Application of the landlord and find she is restricted to the increase allowed pursuant to section 43 of the Act for 2017 which is 3.7% as legislated.

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 10, 2017

Residential Tenancy Branch