



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing was convened upon the application of the landlord seeking an additional rent increase for his double wide trailer with an addition and partial basement. Under the *Residential Tenancy Act* (the *Act*), the landlord is able to apply for a rent increase of 2.7% or \$34.50 per month raising the rent from \$750.00 to \$777.75. However, the landlord wishes to raise the rent to \$1,200.00 per month, an increase of 46% or \$350.00 per month.

Both parties appeared at the hearing. The tenant confirmed that the landlord posted the application for an additional rent increase on her mailbox on approximately February 16, 2017. Pursuant to sections 88 of the *Act*, the landlord is found to have been served with the landlord's application for an additional rent increase.

During the hearing the landlord explained that he served the tenant with his application for dispute resolution in a similar manner but could not recall the exact date that he had posted it on her mailbox. He also testified that he sent a copy of his application for dispute resolution by way of Registered Mail. The tenant explained that she had not received a copy of this landlord's dispute resolution package in the mail but was aware of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an additional rent increase for this property?

Background and Evidence

The landlord explained that this tenancy began on July 1, 2008. He stated that rent was \$750.00 per month and a security deposit of \$375.00 was collected at the outset of the tenancy.

The landlord described the property in detail, noting that it is a double wide trailer that contains an addition and a partial basement. The trailer also has a garage and a

workshop affixed to it. It is situated on 2 ½ acres of land and cannot be moved. He stated that he did not know the current square footage of the trailer but noted that it had three bedrooms.

The landlord testified that he is seeking this significant increase in rent because he has not raised the rent once since the tenant began living on the property in 2008. The landlord explained that the land is now used for commercial purposes by the boyfriend of the tenant who uses areas on the property to store items and to fix washers and dryers.

During the course of the hearing the landlord stated that his daughter was sent a list of properties in the municipality where the property is located by their real estate agent, J.K. This agent explained to the landlord that the properties she had sent to him were currently being rented for the amounts she had listed. The landlord acknowledged that he was not himself familiar with the properties that had been sent to him, that he had not personally seen them and that J.K. had not viewed the property at the centre of this dispute.

Analysis

Section 43 of the *Act* allows a landlord to apply to for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

The *Residential Tenancy Regulation* (the *Regulation*) pursuant to the *Act* sets out the limited grounds for applying for an Additional Rent Increase. In this case, the landlord has applied for additional rent under the following provisions of subsection 23(1)(a) of the *Regulation*:

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;...

I have attached Section 23 of the *Regulations* in its entirety at the bottom of this decision, following the conclusion.

Section 23(3) of the *Regulation* lists a number of factors that I must consider in deciding whether to approve an application for an additional rent increase pursuant to section 23(1) of the *Regulation*. In reaching my decision, I have considered these factors, and in particular, subsection (a) which reads as follows:

(a) *the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect...*

Residential Tenancy Policy Guideline # 37 provides the following guidance to the interpretation of **significantly lower rent**:

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...

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...

“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. 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 landlord must clearly set out all the sources from which the rent information was gathered...

Residential Tenancy Policy Guideline #37 allows the landlord to apply for dispute resolution only in “extraordinary” situations.

In this case, the landlord provided no evidence of any actual rentals in his list of comparable properties. He explained that a real estate agent in town had sent his daughter a list of three properties in town that were deemed by her to be similar in nature and which were currently being rented for rates above what his property was commanding. The landlord confirmed that he was unfamiliar with the three properties, he had not personally seen them, and was unaware of their location in town. In addition, he noted that the real estate agent had in fact not seen the property at the centre of this dispute, but was merely “familiar” with it.

I give very little weight to the landlord’s written evidence of the real estate information attributed to the realtor. This evidence is unsigned, contains vague descriptions and is third-hand information that the realtor provided to the landlord which she obtained from unknown sources. Without significant oral testimony to support this evidence to demonstrate that this information is based on actual rentals of similar properties, I attach little weight to it.

After considering all of the factors outlined in section 23(3) of the *Regulation* and Policy *Guideline 37*, I find that the landlord has not satisfied the requirement that he demonstrate that the tenant's rent is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic areas as the rental unit. I also find that the landlord has not demonstrated that there are exceptional circumstances that entitled him to an additional rent increase beyond the annual amount allowed under section 22 of the *Regulation*. As such, I find that the landlord has not established entitlement to an additional rent increase above the limit set by section 22 of the *Regulation* and I dismiss the landlord's application.

Conclusion

I dismiss the landlord's application for an additional rent increase for this rental unit pursuant to section 43(3) of the *Act*. The monthly rent for this rental unit remains \$750.00, until amended in accordance with the *Act*.

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 24, 2017

Residential Tenancy Branch

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.

(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.

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

(a) grant the application, in full or in part,

(b) refuse the application,

(c) order that the increase granted under subsection (1) be phased in over a period of time, or

(d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the residential property.

(5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).