



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUPERIOR LIVING UTILIZING MANAGED SUSTAINABILITIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on March 20, 2017 (the "Application"). The Landlord applied for an additional rent increase, pursuant to section 43(3) of the *Residential Tenancy Act* (the "Act").

The Landlord was represented at the hearing by H.D. The Tenants L.N., P.O., C.J., J.C., R.O., M.A., J.W., and C.L. were all in attendance at the hearing. The Tenants were capably assisted by B.K., a legal advocate. All parties giving oral testimony provided a solemn affirmation.

On behalf of the Landlord, H.D. confirmed the Landlord's Application package, which included a Notice of Dispute Resolution Hearing and documentary evidence, was served on most of the Tenants in person on or about March 21, 2017. The only exception was the Tenant C.L., who was served by registered mail. The Tenants acknowledged receipt of roughly 14 pages of documentary evidence, but claimed they did not receive some 60 pages of documentary evidence which included copies of tenancy agreements and notices of rent increases. I find that, having entered into these agreements, there was no prejudice in proceeding with the hearing.

The Tenants submitted documentary evidence in response to the Landlord's Application. According to B.K., it was served on the Landlord by ExpressPost. The Landlord acknowledged receipt on May 17, 2017, and noted that service was not effected in accordance with Rule of Procedure 3.15. However, after a brief discussion, and on behalf of the Landlord, H.D. confirmed she was prepared to proceed.

No other issues were raised with respect to service or receipt of the above documents during the hearing. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to an order permitting rent increases in amounts greater than the amount calculated under the regulations?

Background and Evidence

The Landlord sought rent increases in amounts greater than the amount calculated under the regulations. Specifically, for 1-bedroom units, the Landlord requested an increase to \$700.00 per month. For 2-bedroom units, the Landlord requested an increase to \$800.00 per month. For the single 3-bedroom unit, the Landlord sought a rent increase to \$1,000.00 per month.

The Landlord applied for the above increases on the basis that the rents are significantly lower than rent payable for other rental units similar to and in the same geographic area.

The 1-Bedroom Units (#4 and #7)

On behalf of the Landlord, H.D. testified that 1-bedroom units are each approximately 700 square feet in size. The units included in the Application currently rent for \$514.00 per month and \$552.00 per month. The rent includes heat, hot water, access to laundry facilities, and covered parking. The Landlord sought an increase to \$700.00 per month.

The Landlord relied on five comparable rental units between 850m and 1.8km away from the rental property in question. The units ranged in price from \$725.00 to \$750.00 per month. One of the units was advertised as having been refurbished, although H.D. testified that the comparable units have fewer amenities in that heat is not included, pets are not permitted, and do not include in-suite laundry or covered parking. H.D. also testified that she went to view the comparable rental units and spoke to the property managers in her efforts to provide accurate information regarding comparable units in the same geographic area.

In reply, B.K. noted that the Tenants' rental units have not been refurbished, and that access to the laundry facilities is inconvenient in that it is accessed from outside the building. B.K. referred me to two advertisements for rental units she submitted were comparable. The 2-bedroom units referred to were advertised at \$715.00 and \$750.00 per month. The first is not clear about what facilities or services are included in rent; the second indicates that it is an adult building, has shared laundry, and that utilities are not included.

The Tenants of these units also provided testimony. First, C.J. (#4) described his rental unit and noted it has not been renovated in the 2-3 years he has resided there. Second, D.O. (#7) testified he has lived in his rental unit for approximately 8 years. He stated that the flooring was replaced before he moved in but that everything else is the same. He described his rental unit as "very comfortable for a single person".

The 2-Bedroom Units (#1, #3, #8, #9, #10)

In support of a rent increase to \$800.00 per month, H.D. testified these units range in size from 800-900 square feet. Rents for these units range from \$639.00 to \$685.00. In support of rent increases for these units, H.D. provided evidence that other 2-bedroom units, all within 900 m of the Landlord's rental property, have advertised rents ranging from \$825.00 to \$875.00. One of the comparable rental properties, advertised for \$835.00 per month, is described as being "refurbished". Another comparable relied upon by the Landlord, advertised for \$875.000 per month, is described as being "recently updated...close to downtown". H.D. noted that the comparable units relied upon by the Landlord do not include electricity, do not allow pets, and do not have covered parking. On behalf of the Landlord, H.D. submitted that, even using the Tenants' evidence relating to 2-bedroom rental units, and adding the cost of heat and water, monthly rent would exceed the increases being sought by the Landlord. Finally, H.D. noted that the Landlord currently rents another 2-bedroom unit in the building for \$875.00 per month.

In reply, B.K. described the increases being sought as "exorbitant and unreasonable". Again, B.K. referred me to the two advertisements described above.

The Tenants of the 2-bedroom units were also given an opportunity to provide testimony and make submissions. First, L.N. (#1) testified has lived in the rental property since 1984. She described her current rental unit and advised there have been no recent upgrades or improvements. L.N. stated she would have “a hell of a time” paying the rent increase sought by the Landlord.

Second, P.O. (#3) testified that he has lived in his rental unit for approximately 4 years. He also described his rental unit and indicated that the floors were replaced before he moved in. He gave testimony indicating the snow removal was an issue this year.

Third, J.W. (#9) testified that her rental unit has single-pane windows that need to be replaced.

Fourth, M.A. (#8) testified she has lived in the rental unit since 2011, and that her rental unit is of roughly the same dimensions as that of P.O. Some flooring and a low-flow toilet were installed prior to moving. She said that no further improvements have been made to her rental unit, but acknowledged improvements have been made to the outside of the building and property. In addition, M.A. testified to her belief that the rental market has only 1% availability.

Fifth, C.L. (#10) testified she has been living in the rental unit since 2005. Rent was initially \$495.00 per month, although there have been several subsequent rent increases. C.L. stated she is disabled and on a fixed income. She also referred to mold that appears on the windows and that patios were not repaired as promised.

The 3-Bedroom Unit

With respect to the 3-bedroom unit, H.D. testified that the Landlord seeks a rent increase from \$823.00 per month to \$1,000.00 per month. The Landlord submitted advertisements from two comparable rental units, both of which are 1.1 km away from the rental property. One of the comparable rental properties is advertised for \$1,350.00 per month and is described as a “[s]pacious and bright newly built 3bdrm 1 bath SUITE...Located in a quite culdesac...[with] Insuite laundry, dw”. Another comparable relied upon by the Landlord, advertised for \$1,500.00 per month, is described as being “three bdrm two bath comes with a large deck Large yard, is a top floor of a house...shared utilities...spacious and bright, recently upgraded”. H.D. conceded she had some difficulty finding comparable rental units due to the limited availability of 3-bedroom units generally. H.D. also confirmed the rental units submitted are in “much better condition” than the 3-bedroom rental unit that is the subject of the Landlord’s

Application. H.D. noted that the Landlord currently rents another 3-bedroom unit in the building for \$1,100.00 per month.

In reply, B.K. repeated that advertised rental units submitted by the Landlord are not truly comparable in that they are spacious and have in-suite laundry. The Tenant J.C. (#5) described her rental unit and testified that it was renovated “quite well” in or about October 2015.

On behalf of the Landlord, H.D. made closing submissions before the hearing concluded. She confirmed the current rents are not sufficient to provide the Landlord with funds to make improvements such as replacing single-pane windows and repairing balconies. In addition, H.D. repeated that the current rents do not reflect the market value of similar units in the same geographic area.

In closing remarks, B.K. submitted that the Landlord failed to perform sufficient due diligence to determine the cost to operate the rental property, and that the cost to repair and maintain the rental property should not fall to the Tenants.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 43(3) of the *Act* and section 23 of the regulation permit a landlord to apply for a rent increase where 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. In this case, the Landlord’s Application has been made on this basis.

Section 23 of the regulation also provides specific guidance when considering an application made on this basis. The criteria are summarized in Policy Guideline #37, which states, in part:

In considering an Application for Additional Rent Increase, the arbitrator must consider the following factors. The arbitrator will determine which factors are relevant to the application before him or her:

- *the rent payable for similar rental units in the property immediately before the proposed increase is to come into effect;*
- *the rent history for the affected unit for the preceding 3 years;*
- *any change in a service or facility provided in the preceding 12 months;*

- *any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;*
- *a relevant submission from an affected tenant;*
- *a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation;*
- *whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;*
- *whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;*
- *whether an arbitrator has set aside a notice to end a tenancy within the preceding 6 months; and*
- *whether an arbitrator has found, in a previous application for an additional rent increase, that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.*

An arbitrator's examination and assessment of an AARI will be based significantly on the arbitrator's reasonable interpretation of:

- *the application and supporting material;*
- *evidence provided that substantiates the necessity for the proposed rent increase;*
- *the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation; and*
- *the tenant's relevant submission.*

Evidence regarding lack of repair or maintenance will be considered only where it is shown to be relevant to whether an expenditure was the result of previous inadequate repair or maintenance. A tenant's claim about what a landlord has not done to repair and maintain the residential property may be addressed in an application for dispute resolution about repair and maintenance.

[Reproduced as written.]

Policy Guideline #37 also elaborates on the meaning of "significantly lower rent", as follows:

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.

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. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. 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.

[Reproduced as written.]

After considering the above factors, I find that rents for the subject rental units are significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area. There are several reasons for this finding. First, the Landlord provided documentary evidence and oral testimony, which I accept, confirming other comparable units rent for more than what is currently being paid by the Tenants. I was particularly impressed by the efforts made by H.D. to meet with other property managers and view rental units to ensure comparable rental units were presented. Second, the units presented as comparable to the subject rental units were within close proximity – 400m to 1.8km – from the rental property. Third, H.D. provided testimony concerning amenities provided. Specifically, she advised that the comparable units presented by the Landlord do not include several amenities provided to the Tenants, such as underground parking and pets. Finally, I note that the Landlord has requested rent increases at the low end of the ranges as presented in the comparable units. With respect to the 3-bedroom unit (#5), I accept the testimony of H.D., who testified that the limited availability of 3-bedroom units on the market made presenting comparable difficult, but that she has put forward her best evidence on this matter. The comparable units presented by the Tenants consisted of only two 2-bedroom units, and the Tenants' submission did not provide sufficient information with respect to comparable rents in the community, geographic location, and amenities.

Based on the above, I find that rents for the subject rental units are significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area, as the subject rental units. Accordingly, I order that rents for the subject units be set as follows, and implemented in accordance with section 42 of the *Act*:

Units #4 and #7:	\$700.00 per month
Units #1, #3, #8, #9, and #10:	\$800.00 per month
Unit #5:	\$1,000.00 per month

Conclusion

I order that the rents for the subject units be set as follows, and implemented in accordance with section 42 of the *Act*:

Units #4 and #7:	\$700.00 per month
Units #1, #3, #8, #9, and #10:	\$800.00 per month
Unit #5:	\$1,000.00 per month

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: June 15, 2017

Residential Tenancy Branch