



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ARI

Introduction

This hearing was convened in response to the Landlord's Application for an Additional Rent Increase.

The Agent for the Landlord stated that she does not know how the Application was served to the Tenants. The Agent for the Tenants does not dispute that the Application was served to the Tenants in a timely manner.

On July 20, 2017 the Tenants submitted 10 pages of evidence to the Residential Tenancy Branch. The Agent for the Tenants stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord as evidence for these proceedings, it was not accepted as evidence for these proceedings.

The Agent for the Landlord stated that on July 27, 2017 the Landlord submitted evidence to the Residential Tenancy Branch. She stated she is not certain, but she believes 2 pages of evidence were submitted, which she could not describe. She stated she is not certain how this evidence was served to the Tenant and she does not know why it was served at such a late date.

The Agent for the Tenants stated that on July 27, 2017 two pages of evidence were placed in the Tenants' mail slot.

The parties were advised that I was not in possession of the Landlord's evidence package; that I would therefore be unable to consider those documents during the hearing; and that they would not be accepted as evidence for the proceedings.

In determining that the Landlord's evidence package would not be accepted as evidence for these proceedings I was heavily influenced by the fact the evidence was not served in accordance with the Residential Tenancy Branch Rules of Procedure, which require that a respondent's evidence be received by the Residential Tenancy Branch and the applicant at least seven days prior to the hearing. This allows an applicant a reasonable time to consider the evidence and it allows the Residential Tenancy Branch time to forward the evidence to arbitrators.

In determining that the Landlord's evidence package would not be accepted as evidence for these proceedings I was further influenced by the fact the Landlord filed this Application for an Additional Rent Increase in February of 2017 and had, in my view, ample time to serve evidence in a timelier manner.

The parties were advised that during the hearing they would be permitted to discuss any relevant document that had been submitted to the Residential Tenancy Branch.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Has the Landlord established a right to an additional rent increase?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began over ten years ago and that the current monthly rent is \$990.00.

The Agent for the Tenants stated that the rent was last increased in September of 2012. The Agent for the Landlord stated that the rent has not been increased in the past five years.

The Landlord and the Tenant agree that the kitchen and bathroom in the rental unit were renovated in 2016.

The Agent for the Landlord stated that there have been extensive renovations to the rental unit and common areas of the building. She stated that the other rental units in the residential complex are paying between \$1,500.00 and \$1,600.00 in rent. She

stated that other one bedroom suites in the general vicinity are renting for at least \$1,400.00.

The Landlord has applied to increase the rent by 24%. The Landlord has made the application on the basis that after the rent increase permitted by the Regulation, the rent for the rental unit is significantly lower than the rent payable for other rental units similar to and in the same geographic area as the rental unit.

The Agent for the Tenants argued that the Landlord has submitted insufficient proof that the rent for the rental unit is significantly lower than the rent payable for other rental units similar to and in the same geographic area as the rental unit.

Analysis

Section 37 of the Residential Tenancy Branch Policy Guideline reads, in part:

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 dependant 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.

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 charges for services or facilities (e.g.: parking, laundry) that are included in the rent of the comparable rental 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 geographical area, it is **not** sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord.

The amount of a rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessarily with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range. For example, an arbitrator may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added.

I find that the Landlord has submitted insufficient evidence to establish that the rent for this rental unit is significantly lower than similar units in the same area. In reaching this conclusion I was heavily influenced by the lack of any documentary evidence that establishes there are similar units in the same geographic area that are currently rented for more than \$900.00 per month.

I find that the Agent for the Landlord's testimony that the other rental units in the residential complex are paying between \$1,500.00 and \$1,600.00 in rent and that other

one bedroom suites in the general vicinity are renting for at least \$1,400.00 is simply insufficient. When making a claim of this magnitude I find that it must be supported by documentary evidence that can be viewed by the Tenants, thereby giving them the opportunity to respond or refute that evidence.

As the Landlord has submitted insufficient evidence to establish that the rent for this rental unit is significantly lower than similar units in the same area, I dismiss the Landlord's claim for an additional rent increase.

Conclusion

The Landlord's claim for an additional rent increase 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 *Act*.

Dated: July 31, 2017

Residential Tenancy Branch