



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LUNKA HOLDING INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's application for an additional rent increase over and above the amount provided for in the Residential Tenancy Regulation. The landlord participated in this hearing, the tenant did not. The landlord gave sworn testimony that the tenant was served the Notice of Hearing documents on February 23, 2017 in the presence of a witness. Based on the above, I am satisfied that the tenant was made aware of today's hearing and accordingly; the hearing proceeded and completed in the tenants absence. The landlord gave affirmed testimony and was given full opportunity to submit evidence, make submissions and call witnesses.

Issue to be Decided

- Whether the landlord is entitled to a rent increase beyond the amount permitted by the legislation?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about sometime in the year 2000 but the landlord wasn't sure of the actual start date. Rent in the amount of \$950.00 is payable in advance on the first day of each month. The landlord stated that he is seeking an additional rent increase beyond the 3.7% as per the regulations in the amount of 110 %. The landlord testified that he is seeking to have the rent increased to \$2200.00. The landlord testified that this is three bedroom home that is approximately

1200 square feet and that the market for such a suite is much higher. The landlord testified that the home is 25 years old.

Analysis

Section 23 of the Regulation addresses **Additional rent increase**, and provides in part as follows:

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;

Following from the above, the matter before me is limited to an application for an additional rent increase on the basis of “rent lower than comparable units.”

Section 43 of the Act addresses **Amount of rent increase**, and provides in part as follows:

43(1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director’s approval of a rent increase in an amount that is

greater than the amount calculated under the regulations referred to in subsection (1)(a) by making an application for dispute resolution.

In the landlord's application, it is documented that the permitted increase is 3.7%. Residential Tenancy Policy Guideline # 37 speaks to "Rent Increases" and under the heading - **Significantly lower rent**, provides 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 other landlord's recent success at renting out similar units in the area at a higher rate or those of surrounding buildings.

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 geographic area, it is **not** sufficient for the landlord to solely or primarily reference craigslist advertisements as fair comparable 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. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

The landlord testified that during the tenants 17 year tenancy there have not been any rent increases or renovations or upgrades. The landlord testified it was difficult

communicating with the tenant so “I didn’t bother with the increases”. I am unable to conclude that this unit can be considered to be “similar units” as defined above in the Guideline. In addition, I find that the craigslist advertisements submitted by the landlord were not fair comparables as they were either new construction, fully renovated, on the either side of the city or lack the details in the advertisements to make an appropriate analysis and comparison. I find that the documentary evidence provided by the landlord to be insufficient and lacking the detailed information required for an application of this nature.

Finally, even if I were to conclude that the subject units were similar to other units in the building where higher rents are being paid, the Guideline further provides:

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 other landlord’s recent success at renting out similar units in the same area at a higher rate.

The general increase in market rent is already factored into the allowable annual increase under the Act. Clearly, market rent is not the critical factor in determining significantly lower rent.

Section 23(4) of the Regulation provides, in part:

23(4) In considering an application under subsection (1), the director may

- (a) grant the application, in full or in part,
- (b) refuse the application,...

Conclusion

The landlord has failed to meet the burden of proving that he is entitled to an order permitting an above guideline rent increase and, accordingly, the landlord's application 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 *Residential Tenancy Act*.

Dated: August 3, 2017

Residential Tenancy Branch