



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: AARI

Introduction:

Both parties and witnesses attended the hearing. The landlord applies pursuant to section 43 of the *Residential Tenancy Act* (the Act) for an additional rent increase. He said he served the Application for Dispute Resolution on the tenant personally and she agreed she got it but only after some verbal argument about the 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 July 1, 2003, it is a month to month tenancy, rent is \$750 a month and there is no security deposit as the previous landlord refunded it before this owner took possession. In December 2015 the present landlord bought the property subject to this tenancy. Rent was said to be \$750 a month. The tenant confirmed that her rent had never been increased in the 14 years she has lived in the unit.

As evidence, the landlord provided advertisements for rent of several comparable units in the same geographical area as this unit. He discussed the various units and their amenities and the approximate cost. This tenant pays her own internet and cable and telephone at an approximate cost of \$160 a month. The tenant provided no evidence of the cost of rents in similar units. Her witness said they did not understand the process. However, they said she is on a small pension and simply cannot afford such an increase. She might be able to afford \$800 a month. The landlord said that was unacceptable and wanted to proceed with the hearing. The tenant said her unit is not really a 2 bedroom as 1 bedroom is more like a closet.

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:

“Each tenant named on the application must be served with a copy of the Application and hearing package. The landlord is required to provide affected tenants with copies of the evidence used in support of the Application for Additional Rent Increase, including relevant invoices, financing records, and financial statements if applicable. **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.

In considering an Application for Additional Rent Increase, the arbitrator must consider among others 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;

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. 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.

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.... 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.

I find the weight of the evidence is that the tenant has lived in the unit for 14 years without any rent increase and her rent is significantly lower than that in comparable units. I find that during that time, the legal rent increases varied from 2.2% (2014) to 4.6% (2004). If the landlord had increased her rent by the legal amount each year, I find the tenant would likely have been paying about 50% more at this point or approximately \$1125. I find this was an exceptional circumstance as her rent was kept low by her previous landlord. I find insufficient evidence that her unit is smaller in size than the unit comparables provided by the landlord.

The landlord has submitted advertisements for comparable units showing the following:

- A. \$1300 for a 2 bedroom in the same geographic area. Has free cable and air conditioning which the subject does not. The parties agreed cable and internet including phone cost approximately \$160 a month.
- B. \$1300 for a 2 bedroom in the same geographic area with no details of what it includes.
- C. \$1500 for a brand new 2 bedroom. Includes utilities, air conditioning, fire alarm and internet and dishwasher. The subject unit has no dishwasher.
- D. \$1200 for a 2 bedroom in the same geographic area. Does not include internet and no laundry in unit.
- E. \$1250 for a 2 bedroom in less central geographic area. It includes cable and internet but it is further out.

F. \$1200 for a 2 bedroom in less central area –same area as E. It includes laundry, cable, and internet and is close to major highways.

The tenant had no comments on the comparables provided by the landlord. She said she collected mail and watched the home when the landlord was away so that was why the previous landlord gave her a rent break for years. This landlord said he did not need her to do that but he needs rent that is comparable to the area.

In considering the comparable units, the fact that the tenant has had no rent increases for 14 years and all the amenities and other factors in the comparisons, I find that \$60 should be deducted for no free provision of cable and internet in the subject unit. I take notice that cable and internet may be obtained for less than \$160 a month which the parties said included telephone. I also find that the subject unit lacks some other amenities such as a dishwasher, alarm and air conditioning. I find it reasonable to allow an additional deduction of \$30 a month for these items. If using Comparable A, other items being equal, the rent would be \$1210 a month. If Comparable C is used, it would be \$1310 a month but comparable C is brand new and has added value of perhaps \$100 a month to some tenants making a comparable rent of \$1210 for the subject unit that is 17 years old. Comparable D has no laundry; if that were added at \$30 a month, the rent would be \$1230. Comparables E and F are not in the same geographic area so I will not consider them.

In considering all of the above factors, I find it reasonable to allow the landlord a rent increase over the legislated limit as the weight of the evidence is that the rent for the unit is significantly lower than the rent for similar units in the same geographic area. I find him entitled to an increase of \$450 a month or 60%. The new rent is established at \$1200. A Notice of Rent Increase must be served on the tenant in accordance with section 43 of the Act.

Conclusion:

Pursuant to my authority under section 43(3) of the Act, I HEREBY ORDER THAT the rent in the subject unit is increased by 60% for a total rent of \$1200 a month commencing 3 full months after service of a Notice of Rent Increase in accordance with section 42 of 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: August 08, 2017

Residential Tenancy Branch