



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Re/Max Wine Capital Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RI

Introduction

This hearing was convened in response to an application by the Landlord for a greater increase in the rent than provided for under the Regulations pursuant to section 43(3) of the *Residential Tenancy Act* (the “Act”).

The Tenants did not attend the hearing. I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on August 16, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on August 21, 2017.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to a rental increase in an amount greater than allowed under the Regulations?

Background and Evidence

The Landlord seeks an increase of the current rent payable for three two-bedroom and one bathroom units in a four plex. All three units are essentially the same. The tenancy for unit one stated on May 1, 2011. The tenancy for unit two started on January 1, 2008. The tenancy for unit three stated on September 1, 2014. Each of the three tenancies started at a rental rate of \$650.00 and each received a first time rental increase to \$674.05 in accordance with the Regulations effective May 1, 2017. The fourth unit, again essentially identical to the other three, was advertised for rent in February 2017 at \$1,050.00. This unit did not rent at this amount and was eventually filled with new tenants over a month later for rent of \$895.00.

The Landlord provides examples of other units in the geographical area and agrees that the unit renting in July 2017 for \$900.00 as the most comparable unit although not in as good shape as the three units in the four plex. The other units at rental rates between \$1,100.00 and \$1,200.00 generally have additional features such as extra appliances, window coverings, in suite laundry or extra bathrooms or bedrooms. The Landlord seeks an increase to \$1,000.00 for all three units.

Analysis

Section 43 of the Act provides that in the circumstances prescribed in the regulations a landlord may request the approval for a rent increase in an amount that is greater than the amount calculated under the regulations. Section 23 of the Regulations provide that a landlord may request an additional rent increase where, inter alia, after the allowed 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. Section 23(3) provides that the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect must be considered in deciding whether to approve a rent increase. Given the required consideration of the recently rented unit in the four plex at \$895.00 I find that the

Tenants are paying rent at a significantly lower rate than the rent paid for a similar unit in the residential property.

RTB Policy Guideline #37 provides as follows:

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.

Given the undisputed evidence that the tenancies for the three units are between three and nine years old and have only received one rent increase for this duration I find that the circumstances are exceptional and that the Landlord is therefore entitled to a rent increase in an amount greater than allowed under the Regulations. Although the evidence of the unit renting for \$900.00 indicates that this unit is less valuable than the four plex units, there is no evidence of whether this tenancy started during a season when there was greater demand for rental units. I also consider that the other units provided as comparables all contain more features than provided in the four plex units. Given that the most comparable unit is that of the unit in the four-plex that was recently rented for \$895.00 and considering that the Tenants did not attend the hearing to provide evidence or arguments against any increase, I find that the Landlord has only substantiated an increase to **\$895.00**.

Section 42 of the Act provides that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement; or

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

This section further provides that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and that a notice of a rent increase must be in the approved form.

As the Landlord has been successful in obtaining a greater rental increase I find that the Landlord may obtain this amount from the current Tenants only if the Landlord gives notice of the increase to \$895.00 in accordance with the above section. As the Landlord gave its last rental increase to be effective May 1, 2017, I find that the Landlord may not increase the rent to \$895.00 before an effective date of May 1, 2018 and that the Landlord must use the three month notice period and the approved form.

Conclusion

The Landlord is granted a rental increase to \$895.00 to be effective no sooner than May 1, 2017 if the Landlord provides required notice of this rent increase amount.

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: November 02, 2017

Residential Tenancy Branch