



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes O (ARI)

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an order permitting a rent increase in excess of the amount permitted by the regulations.

Both landlords and both tenants attended the hearing, and one of the landlords and both tenants gave affirmed testimony. The parties were also given the opportunity to question each other and give submissions.

During the course of the hearing it was determined that some of the landlords' evidentiary material had not been provided to the tenants. Therefore, I decline to consider that portion of the landlords' evidence.

Also, the tenants indicated that on October 20, 2017 evidentiary material of the tenants was provided to the landlords by handing it to the landlords' daughter, who is an agent of the landlords and resides on the same property as the rental unit. One of the tenants testified that the landlords' daughter told the tenants that issues could be raised with her rather than calling the landlords who reside in a different community than the rental property. I do not have the tenants' evidentiary material before me. The tenant attempted to submit the material on-line but the system created an application for dispute resolution, which was not the intent of the tenants, and is currently scheduled to be heard in December, 2017. The landlords deny that their daughter is an agent and have not received the tenants' evidentiary material. There is no written tenancy agreement.

The *Residential Tenancy Act* permits parties to appoint agents to act on their behalf. The Policy Guidelines also state:

"Agents

"An agent acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlord, and as such may have evidence to present at the hearing.

"Unlike advocates, agents have full authority to settle the claims and may be named as a party to the dispute."

The *Residential Tenancy Act* describes a "landlord" as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The Rules of Procedure require that evidence in response to an application for dispute resolution must be provided to the Residential Tenancy Branch and to the other party not less than 7 days before the hearing.

Residential Tenancy Policy Guideline #12 – Service Provisions describes methods for service, including, but not limited to:

“The methods permitted for service of documents generally are:

- **by personally serving an agent of the landlord**

The tenant should check the tenancy agreement for the name and address of the landlord's agent that is authorized to act on behalf of the landlord. The landlord's agent may be an individual, a firm, such as a sole proprietorship or a partnership, or an incorporated company or society. Before leaving a document with an agent, it may be advisable to make sure that the agent is in fact the landlord's agent and obtain the name of the person accepting the document.”

I accept that the tenants attempted to ensure the Residential Tenancy Branch had the evidentiary material, and that a systemic error occurred. However, in the absence of any authorization, I am not satisfied that the landlords' daughter would have authority to settle this claim, and offered assistance to the tenants as a courtesy only. I am not satisfied that the landlords' daughter is an agent of the landlords, and therefore I find that the tenants have not served the landlords with the evidentiary material in accordance with the *Act* or the Rules of Procedure.

Issue(s) to be Decided

Have the landlords established that rent should be increased by an amount greater than that provided by the *Residential Tenancy Act* and regulations because:

- 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; and/or
- the landlords have completed significant repairs or renovations to the residential property in which the rental unit is located that:
 - could not have been foreseen under reasonable circumstances, and
 - will not recur within a time period that is reasonable for the repair or renovation?

Background and Evidence

The landlord testified that this month-to-month tenancy began on ~~October 1, 2016~~ December 1, 2016 and the tenants still reside in the rental unit. There is no written tenancy agreement, however rent in the amount of \$1,500.00 per month is payable on the first day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental property is a single family dwelling on acreage with a second home which is currently rented to the landlords' daughter and other tenants for \$1,200.00 per month.

The landlord further testified that the landlords purchased the rental property, and knew at the beginning of this tenancy that the rental amount was low due to the work required. The rental amount was set before the landlords knew how much it would cost. The tenants were inconvenienced while repairs were being made, such as a new bathroom fan, dryer, fridge, laminate and repairs to the deck. It was a fair rate of rent but the landlords' costs have continued to increase, and most expenses were unexpected. Capital expenses exceeded \$74,000.00 and the landlords cannot continue to rent at a loss, including \$12,000.00 for the road and culvert. The sellers misrepresented the property and the landlords have sued for \$35,000.00 for work the sellers were supposed to do.

Also provided are lists of expenses. The first is a list from the start of the tenancy, December 1, 2016 to August 31, 2017 totaling \$19,345.75. The second describes expenses from the date of the Offer to Purchase, September 25, 2016 to the date the tenancy began, December 1, 2016 totaling \$16,004.25. The third is "Future Anticipated Expenses" of \$11, 500.00 to \$18,000.00, including replacement or repair to a bridge, gravel and repair to a deck.

The rental unit had never been rented previously.

It's a different property now than it was at the beginning of the tenancy, and considering comparable properties in the area, the landlord submits that rent should be at least \$1,800.00 per month. Copies of advertisements have been provided from various websites.

The other house, currently occupied by the landlords' daughter still needs a lot of repairs. It has no heat source and the front deck is rotten and unusable. Once repairs are completed, which will cost about \$20,000.00 the rent for that unit will also increase.

The landlords have also provided a chart showing similar properties for rent, including the size and rental amounts, as well as copies of advertisements. The landlords seek to increase rent 20% higher than the 3.7% allowable rate, for a total increase of 23.7%, to \$1,855.90 per month.

The first tenant (NZ) testified that the landlords' evidentiary material includes the mortgage payments for the 2 houses on the property, and monthly expenses incurred are to benefit both homes.

The landlords knew that the bridge needed to be repaired prior to this tenancy, and it was not a surprise, and the landlords had already planned to gravel the driveway and replace the bathtub. The landlords got in over their heads when they purchased and got ripped off. To expect tenants to pay for such expenses is not a tenant's responsibility. The landlords will benefit at the end of the day. The expenses are on financing and infrastructure, and should not be considered.

A lean-to exists at the end of the property, and the landlords now don't want the tenants to use it with no offer for other solutions. That storage has been taken away and now the landlords want to increase rent.

The second tenant (PZ) testified that the tenants are okay with a regular rent increase, but the tenants want the landlords to comply with the *Act*.

The landlords deny that the storage was ever included in the tenancy but was offered temporarily only.

Analysis

Firstly, I make no findings of fact or law with respect to the storage facility, and I find that its only relevance to this application is the tenant's testimony for comparison purposes.

The landlords' application is made under Section 23 (1) (a) and (b) of the *Regulation*:

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;

(b) the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

- (i) could not have been foreseen under reasonable circumstances, and
- (ii) will not recur within a time period that is reasonable for the repair or renovation.

I refer to Residential Tenancy Policy Guideline #37 – Rent Increases, which states, in part:

"In order for a capital expense for a significant repair or renovation to be allowed in an AARI (Application for Additional Rent Increase) for a conventional tenancy, the landlord must show that the repair or renovation could not have been foreseen under reasonable circumstances and will not reoccur within a time period that is reasonable for the repair or renovation. An example of work that could not have been foreseen under reasonable circumstances is repairs resulting from a ruptured water pipe or sewer backup even though adequate maintenance had been performed. Another example is capital work undertaken by a municipality, local board or public utility for which a landlord is obligated to pay (e.g., sewer system upgrade, water main installation), unless the work is undertaken because of the landlord's failure to do the work. An example of work that could have been foreseen under reasonable circumstances, and for which a rent increase would not be allowed, is a new roof."

The landlords have provided lists of expenses incurred and expected that were not reasonably foreseen when the rental amount was set at \$1,500.00 per month. The landlords have also sued the sellers in an attempt to recoup some of the expenses. I also note that some of the expenses incurred in the landlords' lists include mortgage payments, property taxes, legal fees, home inspections and insurance, which cannot be considered as unexpected expenses. Landscape fabric, mulch and shrubs cannot be considered as expenses that could not have been foreseen at the time rent was set at the beginning of the tenancy, and I find that the same applies to materials for building or re-building the deck.

I find that the expenses that might qualify as significant repairs or renovations under this Section of the *Act* from the first list provided by the landlords are:

DATE	DESCRIPTION	AMOUNT
Dec 2/16	Dryer	662.58
Dec 2/16	Dryer vent and clamps	20.00
Dec 21/16	Fridge	751.65
Dec 28/16	Paint for closet	5.00
Jan 5/17	Insulation for crawl space	1,575.00
Jan 18/17	Install bathroom roof vent	105.00
Feb 20/17	Electrical plugs	182.94
Mar 27/17	Garage door opener	294.75
Apr 29/17	Materials for downspout repair	14.98
Aug 26/17	Repairs to patio door	53.73
July 9/17	Baseboards	50.00
Dec – Aug	Rat traps, wood, hardware	25.00
Aug 30/17	Gutters and downspouts	1,683.15

The total is \$5,423.78.

I am not satisfied that the curved shower rod or the blinds were a necessary expense even though the tenants requested it.

From the second list of the landlords' evidence, all such expenses pre-dated the tenancy and cannot be considered because they were known by the landlords at the time the tenancy agreement was entered into.

With respect to anticipated expenses, the tenant testified that the bridge and gravel were contemplated by the landlords prior to the tenancy and the landlords did not dispute that. Therefore, I am not satisfied that

the landlords have established that the repairs were not reasonably expected when the rental amount was agreed to.

With respect to comparable units, the onus is on the landlords to establish that similar rental units within the same geographical area rent for a higher amount. I have reviewed the advertisements provided as evidence by the landlords. One is for \$1,800.00 per month for a 2 year old home, and 2 others are \$1,500.00 for a smaller home than the rental unit. Another does not specify a location and the balance are in a different community than the rental unit, mostly in larger centres. I am not satisfied that the landlords have established that after a regular rental increase, the rent for the rental unit will be significantly lower than the rental units within the same geographical location.

The landlords' application is hereby denied.

Conclusion

For the reasons set out above, the landlords' application is hereby denied.

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

Corrected: November 30, 2017

Residential Tenancy Branch