



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on July 26, 2017 (the "Application"). The Landlord applied for an additional rent increase, pursuant to section 43(3) of the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing on her own behalf, as did the Tenant. Both parties provided a solemn affirmation at the beginning of the hearing.

The Landlord testified the Application package, which included a Notice of Dispute Resolution Hearing and documentary evidence, was served on the Tenant by registered mail on July 27, 2017. The Tenant acknowledged receipt. In addition, the Landlord submitted a further documentary evidence package to the Residential Tenancy Branch on November 22, 2017. The documentary evidence consisted of a Notice of Rent Increase, dated August 5, 2016, and a copy of the tenancy agreement between the parties, dated March 30, 2017. Although not served with the subsequent documentary evidence package, the Tenant did not object to its inclusion in the hearing.

No other issues were raised with respect to service or receipt of the above documents during the hearing. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to an order permitting rent increases in amounts greater than the amount calculated under the regulations?

Background and Evidence

The Landlord sought a rent increase in an amount greater than the amount calculated under the Regulations. She testified that she purchased the rental unit in March 2017. The Landlord added that the previous landlord did not increase rent regularly and that she is losing money on her investment. Specifically, the Landlord requested a 33.7% increase. The Landlord indicated that a 33.7% increase results in new rent in the amount of \$1,664.62. However, this appears to be an error. Rather, a rent increase of 33.7% amounts to new rent in the amount of \$1,650.93, and I have considered this to be the increase sought by the Landlord.

The Tenant's rental unit is a 985 square foot, top floor, 2 bedroom, 2 bathroom condominium. The unit features include granite countertops, maple hardwood flooring, stainless steel appliances, in-suite laundry, large walk-in closets, and designer decorating. The rental unit also includes secure underground parking.

In support of the additional rent increase sought, the Landlord provided six comparable rental properties, all of which are within blocks of the Tenant's rental unit. The first was a 1054 square foot, 2 bedroom, 2 bathroom condominium. According to the description provided the unit included stainless steel appliances, washer, dryer, deep freeze, gas fireplace, and one parking stall. The unit was described as being "close to shops, grocery, post office, and buses." Pets and smoking was not permitted. The unit was offered for \$1,800.00 per month.

The second comparable rental unit was a 900 square foot, 2 bedroom, 2 bathroom condominium. According to the description provided, it has an "open concept living room, kitchen and dining area...tons of natural light with floor to ceiling windows in the living area, and in each bedroom." The unit also features granite countertops, maple cabinets, in suite washer and dryer, secure underground parking, and an electric fireplace. It is also noted to be close to bus routes to local educational institutions. The unit was offered for \$1,800.00 per month.

The third comparable rental unit is a 1,000 square foot, 2 bedroom, 2 bathroom condominium. According to the description provided, the unit has a patio that looks over forested area and is within walking distance to various amenities including golf courses, hiking, lakes, and a recreation centre. The unit also has an open concept kitchen and living room area. It has in suite laundry and a large kitchen with cupboard space. The unit comes with secure underground parking and a personal storage space. The unit was offered at \$2,300.00 per month.

The fourth comparable rental unit was a 917 square foot, 2 bedroom, 2 bathroom condominium. According to the description provided, the unit is "open concept with 9' ceilings." The unit featured stainless steel appliances, double sinks, a breakfast bar, a pantry, a walk-in closet in the master bedroom, in-suite laundry, secure underground parking and storage. This unit is noted to be close to shops, restaurants, public transit, and "big box stores." The unit is offered at \$1,600.00 per month.

The fifth comparable rental unit was a top floor, 869 square foot, 2 bedroom, 2 bathroom condominium. The unit is close to “many new restaurants, shopping and recreation”. The kitchen has stainless steel appliances, and contains in suite laundry and an electric fireplace. A storage locker and a parking stall were included in the rent. Smoking and pets were not permitted. The unit was offered for \$1,550.00 per month.

The sixth comparable rental unit was a 2 bedroom, 1 bathroom, ground level unit. Utilities were included in rent. The suite featured in suite laundry, a dishwasher, a covered patio, and parking. Smoking and pets were not permitted. The unit was offered at \$1,500.00 per month.

In reply, the Tenant testified to her belief that a rent increase as proposed by the Landlord is unreasonable. She submitted the Landlord was aware of the amount of rent being paid by the Tenant when she purchased the condominium in March 2017, and that it is not fair for the Landlord to increase rent because she is losing money on her investment.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 43(3) of the *Act* and section 23 of the Regulations permit a landlord to apply for a rent increase where 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. In this case, the Application has been made on this basis.

Section 23 of the regulation provides specific guidance when considering an application made on this basis. The criteria are paraphrased in Policy Guideline #37, which states, in part:

In considering an Application for Additional Rent Increase, the arbitrator must consider 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;*
- *any relevant and reasonable change in operating expenses and capital expenditures in the preceding 3 years, and the relationship of such a change to the additional rent increase applied for;*
- *a relevant submission from an affected tenant;*
- *a finding by an arbitrator that the landlord has failed to maintain or repair the property in accordance with the Legislation;*
- *whether and to what extent an increase in costs, with respect to repair or maintenance of the property, results from inadequate repair or maintenance in the past;*

- *whether a previously approved rent increase, or portion of a rent increase, was reasonably attributable to a landlord's obligation under the Legislation that was not fulfilled;*
- *whether an arbitrator has set aside a notice to end a tenancy within the preceding 6 months; and*
- *whether an arbitrator has found, in a previous application for an additional rent increase, that the landlord has submitted false or misleading evidence, or failed to comply with an arbitrator's order for the disclosure of documents.*

An arbitrator's examination and assessment of an AARI will be based significantly on the arbitrator's reasonable interpretation of:

- *the application and supporting material;*
- *evidence provided that substantiates the necessity for the proposed rent increase;*
- *the landlord's disclosure of additional information relevant to the arbitrator's considerations under the applicable Regulation; and*
- *the tenant's relevant submission.*

Evidence regarding lack of repair or maintenance will be considered only where it is shown to be relevant to whether an expenditure was the result of previous inadequate repair or maintenance. A tenant's claim about what a landlord has not done to repair and maintain the residential property may be addressed in an application for dispute resolution about repair and maintenance.

...

The rent for the rental unit may be considered "significantly lower" when (i) the rent for the rental unit is considerable 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...

"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... 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.

[Reproduced as written.]

In this case, the Landlord provided documentary evidence and oral testimony suggesting rent for similar units in the same geographic area are in a range from \$1,550.00 per month to \$2,300.00 per month. The comparable rental units offered by the Landlord included similar amenities and were located in the same geographic area. They differed primarily in square footage. I find that the evidence provided by the Landlord supports a rent increase in the amount sought.

Conclusion

The Landlord is granted an order that rent be increased by 33.7%, from \$1,234.80 per month to \$1,650.93 per month. The Landlord must provide the Tenant with a Notice of Rent Increase in the approved form, providing the required three month notice period, and must serve the Tenant with a copy of this entire Decision along with the Notice of Rent Increase.

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: December 4, 2017

Residential Tenancy Branch