Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order to obtain an additional rent increase, pursuant to section 43.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the leasing manager for the landlord company named in this application and that she had authority to speak on its behalf at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on December 5, 2017, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. She said that the tracking number indicated that the tenant received and signed for the package on December 10, 2017. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on December 10, 2017, five days after its registered mailing.

Issue to be Decided

Is the landlord entitled to an order to obtain an additional rent increase?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on September 15, 2005 with the same owner but a different former property manager. This tenancy was initially a fixed term of one year, after which it continued on a month-to-month basis. The former property manager and the tenant signed the original written tenancy agreement and a copy was provided for this hearing. The current property manager took control of this rental unit approximately 10 years ago but no date was given by the landlord during the hearing.

The landlord stated that monthly rent in the current amount of $1,420.00 is payable on the first day of each month. The landlord provided the last Notice of Rent increase, dated September 20, 2017, where she said the tenant was given at least three months' notice to raise her rent by the allowable amount of 4% for 2018 under the *Residential Tenancy Regulation* ("*Regulation*"), from $1,366.00 to $1,420.00 per month, effective on January 1, 2018. The landlord said that a security deposit of $500.00 was paid by the tenant and the landlord received this deposit from the former property manager and continues to retain this deposit. She stated that the tenant continues to reside in the rental unit.

The landlord testified that she personally is not the property manager for this unit and she did not prepare the landlord's application. She said that the property manager was out of town and she prepared the application. She claimed that she has not personally visited the rental unit. She claimed that inspections are done annually for the rental unit and no renovations have been done since the current property management company took over 10 years ago.

The landlord did not provide any photographs of the rental unit. The landlord was unsure of the age of the rental unit but looked online during the hearing and indicated it was 1996. She said that it was a one-bedroom loft-style apartment with one bathroom. When I asked her what "loft-style" meant, she was unsure. She said that it was not a studio or a bachelor apartment because otherwise it would have been described that way by the realtor. She said that it was an open floor plan but she was unsure if it was a separate one-bedroom with a door. The landlord claimed that the unit is 528 square feet in size, has an in-suite washer and dryer, one storage locker, and one parking space. She said the building has a gym and 24-hour concierge. She did not provide any testimony regarding the neighbourhood or the surrounding areas.

The landlord claims that after the allowable yearly rent increase amount of 4.0% for 2018 of $54.00 under section 22 of the *Regulation*, the current rent of $1,420.00 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. The landlord seeks an additional rent increase of $480.00 above the allowable *Regulation* amount, for a total rent of $1,900.00 per month.

The landlord said that the owner of the rental unit selected the price of $1,900.00 for the new rent. She said that she provided a chart of comparable properties and information to the owner, who "has the final say" and selected the new rent amount.

The landlord provided a chart of 19 other rental properties, which she said were comparable to the rental unit. In this chart, the landlord compared the location, number of bedrooms, the amount of rent, the age of the unit, and whether the units offered building amenities, parking and laundry. In the chart, the landlord provided a summary of 10 online advertisements, along with the partial advertisement printouts from a popular online rental website, which shows postings of different units at varying prices. In the chart, the landlord also provided a summary of 9 other properties that it currently manages in other buildings. One redacted tenancy agreement was provided by the landlord property management company for a different building in a similar area for rent of $1,750.00 per month. However, this information was not included in the landlord's chart. When I asked why the 9 tenancy agreements were not provided for the landlord's own managed properties, even in a redacted format, to confirm the details in the chart, she said she did not know because she did not prepare this application.

In the landlord's evidence, a monthly rent range between $1,650.00 to $1,985.00 was provided for the 19 units. The landlord stated that the tenant's rent of $1,420.00 was well below the current market value in the area. There was only one initial photograph on the first page of the 10 online advertisements provided, often of just the entire building, not the unit itself. Some postings are incomplete, where only the first page is printed out, and it is clear that information is missing about the unit. The age of the buildings was handwritten by the landlord on the postings, but it is unclear as to where this information was obtained. The landlord said that she could not confirm whether the units rented at all and if they did, whether they rented for the advertised amounts. She said this information was confidential.

Analysis

Legislation

Section 43 of the *Act* states that a landlord may impose a rent increase only up to the amount calculated in accordance with the *Regulation*, or as ordered by the director, or agreed to in writing by tenant. The annual rent increase currently permitted in the *Regulation* for 2018 is 4.0%.

Section 23(1) of the *Regulation* provides in part as follows:

> *Additional rent increase*
> *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;*

Section 23(3) of the *Regulation* reads in part as follows:

> *23(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):*
> (a) *the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;*
> (b) *the rent history for the affected rental unit in the 3 years preceding the date of the application;*
> (c) *a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;*
> (d) *a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;*
> (e) *the relationship between the change described in paragraph (d) and the rent increase applied for;*
> (f) *a relevant submission from an affected tenant;*
> (g) *a finding by the director that the landlord has contravened section 32 of the Act [obligation to repair and maintain];*

(h) *whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year;*
(i) *a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;*
(j) *whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;*
(k) *whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has*
(i) submitted false or misleading evidence, or
(ii) failed to comply with an order of the director for the disclosure of documents.

Residential Tenancy Policy Guideline 37 defines what "significantly lower rent" means:

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.*

Residential Tenancy Policy Guideline 37 allows the landlord to apply for dispute resolution only in "exceptional" situations. Guidance is provided with respect to exceptional situations:

> *…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 above legislation changed to disallow landlords from applying for geographic rent increases pursuant to section 23 of the *Regulation*, as of December 11, 2017. Since the landlord applied for this additional rent increase on December 4, 2017, prior to the legislation change on December 11, 2017, I am required to deal with this application. I informed the landlord about this during the hearing and she confirmed her understanding that she could not apply for another geographic rent increase in the future.

Findings

I note that, in considering the subsections of 23(3) of the *Regulation*, the landlord has increased the rent during the time that the property management company has taken over management of the rental unit. The landlord said that she was unsure but claimed it was increased probably every year by the allowable *Regulation* amount. The rent in 2005, at the beginning of this tenancy, was initially $1,000.00 per month, as noted on the original tenancy agreement, and it is now $1,420.00 per month. The landlord most recently increased the rent by 4% ($54.00) effective as of January 1, 2018 from $1,366.00 to $1,420.00 per month.

The landlord submitted that she seeks to raise the rent because the rental amount that the tenant is paying is well below other rents in the same area. There have been no renovations to the rental unit since the current property management company took

over 10 years ago. The landlord was not aware of any renovations prior to this time. This is an older building from 1996.

Of the 19 properties submitted by the landlord as “comparables,” 17 were newer in age than the tenant’s building, ranging from 1997 to 2000. All 19 units were bigger than the tenant’s rental unit, ranging from 530 to 802 square feet. Only 2 of the 19 units were from 1995 and 1996. 13 of the 19 properties had a pool as an additional amenity in the building, which the tenant’s building does not have, as confirmed by the landlord.

I note that only 6 of the 19 units provided in the landlord’s chart of comparables, were advertised at monthly rent of $1,900.00 or higher. All of these 6 units were larger in size than the tenant’s unit, ranging from 580 to 802 square feet. The tenant’s rental unit is 528 square feet. Furthermore, of the landlord’s own 3 managed units renting between $1,970.00 and $1,985.00, all units were between 738 and 802 square feet. The other 3 units that were advertised online for $1,900.00 were larger units between 580 and 600 square feet, without an indication as to whether the units actually rented and if so, for how much.

When I asked why the landlord had selected $1,900.00 as a new rent amount, given all of the above information, the landlord said that it was up to the owner who had the final say. This is not a sufficient explanation, given the above information.

The landlord did not provide photographs of the rental unit. The landlord did not provide redacted tenancy agreements or other documents for the properties managed by its company, despite the fact that she had it in front of her during the hearing. There was no way for me to confirm the information, including the location, address, size of units, amenities, or rent listed in the landlord’s chart for its own managed properties.

The landlord failed to confirm the information in the advertisements, as to whether the units rented for the advertised price, or a higher or lower amount. Therefore, I find that the advertised amounts do not accurately reflect the actual rental price, if these units were even rented out.

As indicated above, Residential Tenancy Policy Guideline 37 allows the landlord to apply for dispute resolution only in “extraordinary” situations. Extraordinary is defined as beyond what is usual, regular or customary. I find that the landlord failed to provide sufficient evidence that the current situation is extraordinary.

After considering all of the factors outlined in section 23(3) of the *Regulation* and Residential Tenancy Policy Guideline 37, I find that the landlord has not sufficiently satisfied the requirement that it demonstrate that the tenants' rent is significantly lower than the rent payable for other rental units that are sufficiently similar to, and in the same geographic areas as, the rental unit. I find that the landlord has not demonstrated that there are exceptional circumstances that entitle it to an additional rent increase beyond the annual amount allowed under section 22 of the *Regulation*.

I find that the landlord is not entitled to an additional rent increase beyond the current annual amount allowable under the *Act* and *Regulation*. The landlord has already increased the monthly rent by 4% for 2018. Therefore, the rent for this rental unit will remain at $1,420.00 per month, effective January 1, 2018. The landlord confirmed during the hearing that the tenant had been paying this amount since the effective date.

Given all of the evidence, and the requirements provided under the *Regulation*, I find that the landlord has not met the burden of proof in applying for an additional rent increase. Therefore, I dismiss the landlord's application without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: February 20, 2018

Residential Tenancy Branch