



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution on or about October 5, 2017. The landlord confirmed receipt of the tenant's evidentiary materials served on or about December 22, 2017.

Preliminary Matter

The tenant submitted a monetary order however she did not make an application to the Residential Tenancy Branch. Without an application, the landlord cannot be expected to know that the tenant intended to seek a monetary award. Further, I do not have jurisdiction to provide monetary compensation to the tenant from the landlord without an application upon which to rely. Therefore, I advised the tenant that I cannot consider her request for monetary compensation.

Issue(s) to be Decided

Is the landlord entitled to increase the rent by an amount greater than the annual standard rent increase?

Background and Evidence

This tenancy began in February 2014 with an agreed-upon monthly rental amount of \$735.00. The landlord applied for an additional rent increase to \$900.00 in his application dated October 5, 2017. The tenant opposes the landlord's application for an additional rent increase.

The tenant testified that, when she moved into the rental unit (2014), the landlord agreed to reduce her rent from \$750.00 as advertised to \$735.00. The landlord confirms this testimony and the residential tenancy agreement supports this rental amount at the outset of the tenancy. The tenant testified that in September 2017, the landlord told her (verbal communication) that the rent would be increased soon. She testified that she requested that the landlord put the rent increase in writing and that the amount fall within Residential Tenancy's allowable annual amount. She testified that, with these conditions, she would agree to accept the rental increase.

The tenant testified that she provided the allowable annual rental increase notice/form to the landlord. She testified that when the landlord returned the rental increase notice/form, he had indicated a rent increase from \$735.00 to \$860.00. The rental increase form submitted for this hearing indicates a rental increase from \$735.00 to \$800.00 dated September 1, 2017 to be effective December 1, 2017. The tenant testified that she received rental increase forms and was provided with several different increase amounts by form and verbally from the landlord prior to his application for an additional rent increase.

The tenant submitted comparable rental units in the area – basement suites and main floor units with 2 bedrooms: those units ranged from \$650.00 to 800.00. The landlord testified that these online advertisements were not comparable to the tenant's rental unit although when asked, he estimated the square footage of the rental unit at 1400 square feet, similar to the advertisements submitted by the tenant. The landlord did not identify any other distinctions between the tenant's comparable submissions and her own rental unit.

The tenant testified that she paid an increased rental amount as issued in the landlord's notice briefly until she realized that this amount was beyond the allowable annual rent increase. At that point, she reverted to paying the \$735.00 rental amount. As a result of the tenant's non-payment of the amount the landlord requested, the landlord, without issuing a formal Notice to End Tenancy, has asked the tenant to vacate the rental unit.

The tenant testified that a family of 5 live in the other rental unit within the premises: a unit similar in size and layout. She testified that she asked her neighbours how much they pay in rent and she was told that they pay \$820.00 per month. The landlord did not dispute this testimony. The tenant argued that she is one individual living in a rental unit and therefore would have much less impact on the landlord's resources (utility use, laundry use, etc.). The tenant argued that she should not be required to pay more than her neighbours.

The landlord's rent increase is described as required for the tenant's basement suite unit because *"after the rent increase permitted by the [Residential Tenancy Branch] 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..."*. The landlord did not fill out the portion of the application that indicates the percentage of the rent increase requested. The landlord wrote that the rent for this unit is \$735.00; that the rent increase permitted is \$762.00; and that the comparable rent is \$1200.00. Therefore, the landlord sought to increase the rent to

\$900.00 – a 22.5% increase.

Within his application, the landlord did not submit evidence of the comparables in his unit. After this hearing, the landlord submitted 3 online rental advertisements. In his testimony, the landlord stated that the tenant's rent has not been increased since the outset of the tenancy (over 3 years) and therefore the rental amount that she pays is disproportionate to the other units in the area.

The comparable units that the landlord submitted had rental amounts of \$1250.00; \$1550.00; and \$1150.00. Those advertisements were above-ground suites with free utilities and a separate outdoor entrance. One of the advertisements included 2 full baths and all of the units were 2 bedrooms. The landlord's comparables submitted had large footprints of approximately 1400 square feet. The landlord testified that the rental unit is approximately 1400 square feet. The tenant testified that the rental unit is approximately 700 square feet and that the second room could not be used as a bedroom as it is too small. The landlord did not submit any evidence of the actual square footage of the rental unit.

The tenant also submitted text message correspondence with the landlord for this hearing. Most of those messages relate to the provision of facilities including heat and the tenant's request for a *reduction* in rent. The landlord responded denying that the tenant has an issue with heat however in the text correspondence, the landlord refers to bringing in someone for repairs as well as acknowledges the length of time (months) to address the issue.

Analysis

With respect to the landlord's application for an additional rent increase, I refer to the relevant provisions of the *Act*.

- 42** (1) 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;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Pursuant to section 43 of the *Act*, the amount of a rent increase must be calculated in accordance with the Residential Tenancy Regulations, by order of a Residential Tenancy

Branch arbitrator or by written agreement with the tenant. The rental increase form with a new rental amount of \$800.00 provided to the tenant on or about September 2017 and dated September 1, 2017 with a written effective date of December 1, 2017 was not within the allowable amounts pursuant to the regulations for 2017. The allowable amount of an increase in 2017 was 3.7% of the existing rent, or an amount of \$27.19. The new rental amount should have been \$762.19. The correct effective date (3 whole months after the notice) should have been January 1, 2018.

Residential Tenancy Policy Guideline No. 37 provides a practical framework with respect to rent increases. While the basic annual rent increase under the Residential Tenancy Branch Regulations ("Regulations") is set by the Residential Tenancy Branch each year, section 43(3) of the *Act* allows a landlord to apply to the Residential Tenancy Branch for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase (an "additional rent increase") in certain circumstances. The guideline includes the caution that a landlord may not carry forward any unused portion of an allowable rent increase from year to year.

When making an application for an additional rent increase, the landlord has the burden to show that rent should be increased beyond the annual allowable amount. In his application, the landlord has applied for permission to increase the tenant's rent beyond the allowable amount as laid out in the Regulations. In his submissions at this hearing, the landlord testified that he just wanted to get things straightened out regarding the correct amount of the increase and he feels that the tenant is paying an unreasonably low rent, stating that comparable rents in the area are above \$1000.00 per month.

The rent increase policy guideline suggests consideration of a variety of factors in determining whether a rent should be increased beyond the allowable annual amount including but not limited to;

- The rent amount of other units on the same residential property;
- The rent history for the affected unit;
- Any change in service or facility;
- The level of maintenance and care for the property by the landlord;
- Relevant submissions from the tenant; and
- Submissions and evidence from the landlord.

The landlord provided 3 online advertisements as evidence to support his claim. I find that this evidence is insufficient to support his application for an additional rent increase. The landlord sought to increase the tenant's rent by 22% based on the details of these 3 advertisements however the landlord did not provide sufficient submissions to explain how these advertisements were similar and comparable to his own rental property. Further, the landlord testified that the amount paid by the tenant is significantly less than other rentals in the neighborhood but the landlord did not address the amount of rent paid by the other tenants in the same property. He dismissed this consideration as irrelevant.

The landlord also took minimal responsibility to address the problems with the provision of services raised by the tenant during her tenancy to date and dismissed the tenant's concerns at this hearing. I find that the failure to provide certain services including heat and laundry (broken but provided at start of tenancy) are considerations as to whether it is appropriate to impose a rent increase on the tenant.

The landlord also testified that, because the tenant paid the rental increase for a period of time, she is considered to have agreed to that increase. Policy Guideline No. 37 clearly indicates that a tenant might agree to an additional rent increase in writing when the landlord provides sufficient notice of the rent, clearly set out in the appropriate form. However, the guideline also indicates that, "Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount."

At this hearing, the landlord acknowledged that he did not provide 3 months' notice of a rent increase to the tenant in accordance with the Act. He also acknowledged that he did not provide the tenant with a rental increase that is within the allowable annual rental increase amount in accordance with the Residential Tenancy Regulations. Finally, based on the documentary evidence provided as well as the landlord's concession that the tenant's neighbours in a similar rental unit are paying \$820.00 per month, I find that the landlord was not entitled to raise the rent in 2017.

I find that the landlord has not provided sufficient evidence of comparable rents in the area in a higher amount. I find that the landlord must provide more relevant and verifiable evidence to increase the rent beyond the annual allowable amount and that he has not done so for this application. I find that the rent for this area, with a basement unit with one bedroom and a second storage or small bedroom ranges from \$700.00 to 850.00 per month. Subsequently, I find that the landlord is not entitled to an additional rent increase.

The landlord was not entitled to raise the rent as of December 1, 2017 or any time prior to that date as he had not provided sufficient notice to do so. According to the notice that he issued to the tenant for an annual rent increase, he increased the rent from \$735.00 to \$800.00. However, accurate amount for the increase would have been **\$762.19** and it would have taken effect on January 1, 2018. If the landlord had issued a rent increase after January 1, 2018, he would have been entitled to an increase in rent to **\$764.40**.

In consideration of both parties willingness to be assessed with a reasonable rent increase that reflects the allowance in 2017 and now in 2018, the tenant is provided with notice that, as of the date of receipt of this decision, the rental amount of \$764.40 will be payable in accordance with section 26 of the Act and the residential tenancy agreement. The landlord will be entitled to raise the rent by the annual allowable amount next as of January 9, 2019.

Conclusion

I dismiss the landlord's application to allow an additional rent increase.

The tenant is notified, as of receipt of this decision, that the new monthly rental amount of **\$764.40** is payable in accordance with the residential tenancy agreement.

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 8, 2018

Residential Tenancy Branch