



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RI

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested an additional rent increase pursuant to sections 43(3) of the *Residential Tenancy Act* and section 23(1)(a) of the *Residential Tenancy Regulation* from \$620.00 per month to \$1,200.00 per month.

The hearing was conducted by teleconference on February 20, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Additional rent increases pursuant to section 43(3) of the *Residential Tenancy Act* and section 23(1)(a) of the *Regulation* were repealed by operation of B.C. Reg. 225/2017, App. 2, s. 2.] effective December 11, 2017.

The Landlord applied for an additional rent increase on November 9, 2017.

Issue to be Decided

After a rent increase permitted by the *Residential Tenancy Act Regulations*, is the rent for the rental unit significantly lower than rent payable for other units similar to and in the same geographic area as the rental units?

Background and Evidence

The Landlord testified that the tenancy began February 2005. Monthly rent is payable in the amount of \$620.00 including some utilities. The Landlord has not raised rent during the tenancy. The rental unit is a basement suite in the Landlord's home.

The rental unit consists of one bedroom, a full kitchen and bathroom. The Landlord testified that everything was "new" when he moved in 13 years ago and that he has not done any renovations, repairs or upgrades to the rental unit since purchasing the property.

The Landlord stated that he compared the rental unit to those which are advertised nearby and discovered that they are charging \$1,200.00-\$1,400.00. He provided in evidence ads for various rental units which he submitted were comparable to the rental unit and in the same geographical area. He also claimed that the rental unit is located near shopping and banks.

The Tenant provided written submissions titled "Analysis of Ads Submitted by the Landlord" wherein he compared his unit to each rental unit featured in the ads provided by the Landlord. I asked the Landlord to respond to the Tenant's claims that the units were in fact not comparable for a variety of reasons. At this time the Landlord stated that he did not have anything further to add and stated he did not know how to compare the advertised rental units to the subject rental unit, only to say "even adults living in their parents' basements pay more than \$620.00".

The Landlord then submitted that the rental unit advertised as \$1,200.00 in the same area was the most comparable. The ad states that the rental unit is a: "newly built legal unfinished suite in a lower level of a split level family home". He noted that it was 550 square feet whereas the subject rental unit is 560. He confirmed however that the rental unit does not have a washer/dryer or dishwasher, unlike the advertised unit.

In response to the Landlord's submissions the Tenant testified as follows. He confirmed the contents of his written submissions and his "Analysis of Ads Submitted by the Landlord" as true to the best of his knowledge.

In his written submissions, the Tenant writes that in the fall of 2016 the Landlord informed him that he planned to sell the home. In the discussions between the Landlord and Tenant the Landlord asked the Tenant to move with his family if their new home had a basement suite; the Tenant stated that he and the Landlord had a good relationship at this time. The Landlord then left Canada for a three month period and when he returned he issued an informal notice to end tenancy. The Tenant submitted that this was done as the realtor wanted to list the property without a tenant.

The Tenant further submitted that in September of 2017 the Landlord asked the Tenant to agree to an \$80.00 per month increase to \$700.00 per month effective October 2017. The Tenant did not agree to an additional rent increase, but paid \$650.00 based on what he understood the allowable rent increase to be.

The Tenant submitted that his basement suite is very basic with no modern conveniences; he further stated that to his knowledge that the rental unit has not been updated since 1994 when the house was built. He also stated that he was not aware if the rental unit was a legal basement suite.

The Tenant stated that the location of the rental unit is considered remote as he is not close to any shopping, banking, laundry or movie theatres. He stated that it is not conveniently located as it is 3.2 kilometers to walk to the nearest shopping centre, which is a 45 minute walk; additionally, it is not walking distance to the local University as it is approximately 7-8 kilometres away. He also confirmed there is no sense of community where he lives. He noted that if he didn't have a vehicle he wouldn't be able to go anywhere as transit is limited and stops at 9:30 p.m. and on weekends it stops at 7:00 p.m. He stated that a cab ride to downtown is cost prohibitive. He also stated that he can't even walk to the beach.

The Tenant confirmed that he went through all the ads submitted by the Landlord and doesn't find any of them comparable to his unit; in fact he stated the comparables are "absurd" in terms of the quality of the units and the location. In his written submissions the Tenant compares the rental unit to each of the ads provided by the Landlord to show they are not in fact comparable.

The Tenant also noted that he pays \$117.60 per month for a storage unit and has done so since he moved in in 2005 because the unit lacks storage. He noted that some of the ads provided by the Landlord boasted of ample storage.

The Tenant stated that some of the rental units featured in the ads provided by the Landlord include utilities whereas his phone and internet are not provided.

The Tenant also stated that his rental unit is heated by forced air natural gas and that he does not have control over the temperature of his unit. He said that this has been an issue over the years as he has to close the vents or open the windows to try to manage the temperature. He said when it gets too cold there is a little ceramic heater he can plug in.

The Tenant stated that he does not have access to the electrical panel and to his knowledge he is not aware if there is a separate panel.

The Tenant further testified that he has very small windows, which does not allow for natural light; he said there is no ambience whatsoever in his unit as when he looks out his window he sees a rhododendron bush.

The Tenant submitted that it should not be his burden that the Landlord didn't raise the rent annually (as was his right) and that he should not be able to now raise the rent by 86%. The Tenant stated that the Landlord made no effort to increase the rent yearly which, had he done so, would have been more manageable to pay. He stated that he believes that this application is trying to bypass the rent controls. He said in light of the previous attempts by the Landlord to end the tenancy, he feels this application is merely an attempt by the Landlord to effectively hand down an eviction notice by making the rent unmanageable.

In reply the Landlord confirmed that he asked the Tenant to increase his rent to \$700.00 in September of 2017. The Landlord confirmed that he didn't agree to the \$650.00.

The Landlord stated that his rental agreement is month by month, there is no smoking and no pets. The Landlord also stated that the Tenant has had a dog at the rental unit for a "long time".

The Tenant replied that he has had the dog for four years.

Analysis

The Landlord applies for an additional rent increase pursuant to section 43(3) of the *Residential Tenancy Act* (the “Act”) which provides as follows:

After the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites similar to and in the same geographical area, as the rental unit or site.

Section 23 (3) of the *Regulation* requires an Arbitrator to consider the following factors, when relevant to the particular circumstances, in deciding whether to approve an application for an additional rent increase:

- (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.

The Tenant aptly notes that the Landlord could have raised the rent annually during his tenancy; had the Landlord done so the rent payable at the time of the hearing could be as high as \$958.00. As an illustration, I provide the following table setting out the annual allowable rent increases based on the original rent of \$620.00.

2005	Original rent	\$620.00
2006	4.0%	\$644.80
2007	4.0%	\$670.59
2008	3.7%	\$695.40
2009	3.7%	\$721.13
2010	3.2%	\$744.21
2011	2.3%	\$761.33
2012	4.3%	\$794.06
2013	3.8%	\$824.24
2014	2.2%	\$842.37
2015	2.5%	\$863.43
2016	2.9%	\$888.47
2017	3.7%	\$921.34
2018	4.0%	\$958.20

The Tenant is correct in that he should not be penalized because the Landlord failed to annually raise the rent. I also agree that an annual increase would have been more manageable for the Tenant.

As the Applicant, the Landlord bears the burden of proving his claim on a balance of probabilities. It is not the Tenant's responsibility to disprove the Landlord's claim, although in this case, I find the Tenant has done precisely that.

The Tenant provided a comprehensive analysis of the advertised rental units which I find persuasive in dismissing the Landlord's claim. In this analysis he notes the following discrepancies between his rental unit and the advertised units:

- The subject rental unit is in a remote location and is not near the local university, or within walking distance to major shopping areas.
- There is no in-suite laundry.

- The subject rental unit has not been newly renovated or painted as most of the advertised units are.
- The appliances in the rental unit are not brand new, or stainless steel.
- The Tenant does not have a storage room.
- There is no extra insulation or sound proofing between the subject rental unit and the Landlord's unit.
- There was no evidence that the rental unit is legal.
- The Tenant has no control over his heat, and the rental unit does not have high efficiency heating, heated tile floors or a separate electrical panel.
- The rental unit lacks natural light.

The Landlord did not provide a substantive reply to the Tenant's submissions in this regard.

Pursuant to section 23(4) of the *Residential Tenancy Regulation* in considering the application I may:

- (a) grant the application, in full or in part,
- (b) refuse the application,
- (c) order that the increase granted under subsection (1) be phased in over a period of time, or
- (d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the residential property.

I find, based on the submissions of the parties, the evidence before me, and on a balance of probabilities, that the application should be refused. I therefore find the Landlord may only raise the rent by the amount permitted by the *Regulation* only. As a Landlord may raise rent by 4% in 2018, I find the rent may be increased to \$644.80 effective March 1, 2018. Any amount previously paid by the Tenant over the \$620.00 amount provided for in the tenancy agreement shall credited to him. The Tenant shall have until April 1, 2018 in which to pay any additional amounts, should such amounts be owing.

As *Residential Tenancy Branch Policy Guideline 7* provides:

A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. The tenant's rent can only be increased once every 12 months. A rent increase that falls

within the maximum amount permitted by the applicable Regulation² cannot be disputed at a dispute resolution proceeding.

The Landlord was also reminded that he may be unsuccessful in seeking an end to the tenancy based on the Tenant's pet, if he has allowed the Tenant to have a pet for a number of years based on the legal principle estoppel.

Conclusion

The Landlord's Application for an additional rent increase is refused. The rent shall be increased by the prescribed amount to \$644.80 effective March 1, 2018. The Tenant shall be credited any amounts he paid over the \$620.00 amount provided for in the 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: March 19, 2018

Residential Tenancy Branch