Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: O

Introduction

This matter dealt with an application by the Landlord for an additional rent increase. In particular, the Landlord seeks to increase the rent by $200.00 per month which exceeds the amount of $33.30 permitted under the Regulations to the Act.

Issue(s) to be Decided

1. Is the Landlord entitled to increase the rent more than the amount permitted under the Regulations to the Act?

Background and Evidence

This month to tenancy started April 15, 1992. The rent was first increased from $800.00 to $830.00 effective October 1, 2005. It was then increased to $835.00 effective October 1, 2006 and to $900.00 effective March 1, 2008.

The Landlord argues that the rent for this rental unit is significantly lower than rent payable for other rental units similar to and in the same geographic area as the rental unit. In support of this, the Landlord provided newspaper advertisements for 4 rental units that show asking rents between $1,200.00 and $1,400.00 per month.

The Landlord also argues that she has 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. In particular, the Landlord claimed that she incurred the following expenses:

New Shingles (Sept. 2007):	$3,068.46
Sidewalk repair (Sept. 2008):	$1,624.09
Sewer hook up (Sept./Oct. 2007):	$3,955.80
Sewer Payment (March 2008):	$5,138.00
TOTAL:	$13,786.35

The Tenants argued that with the exception of the roof, the other upgrades and repairs to the rental property were foreseeable. The Tenants claim that the sidewalk repair was required because the contractor did not compact the soil property when the house was built and within a year or two started sagging. The Tenants also argued that the sewer hook up was foreseeable. In particular, they claim that the Landlord could have had the sewer hooked up as early as 2004 but waited until 2007. The Tenants also claim that the only other renovations made to the rental unit during their tenancy were to replace a water heater and partially paint the interior on one occasion. The Tenants argue that the Landlord will be able to deduct the expenses noted above from their income taxes and that they will also increase the value of their property.

The Tenants also took issue with at least one of the comparable rental properties relied on by the Landlord. In particular, the Tenants claim one of the comparable properties is owned by the Landlord (that rents for $1,270.00 per month) and is a larger 3 bedroom unit with a new deck. The Tenants claim the living space of their rental unit is significantly smaller than 1175 square feet when one deducts hallways, entrance ways and the stair well.

Analysis

Section 23(1) of the Regulations to the Act states as follows:

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;

(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.

I find that the Landlord cannot succeed on her application on the basis that she has completed significant repairs that could not be foreseen. The Landlord admitted that she knew when the rental property was built in 1992 that the sewer would be connected to it within approximately 10 years and that it could have been connected as early as 2004. The Landlord said she opted to leave the sewer connection until the latest time (2007) to avoid monthly utility fees and to spread out payments because the same sewer had in the previous year been connected to another rental property owned by her. The Landlord also admitted that approximately a year or two after the rental property was built that she knew the sidewalk would have to be repaired and could have been repaired at any time. As a result that part of her application is dismissed.

I have considered the evidence as it relates to the criteria under s. 23(3) above and find there is sufficient evidence to support the Landlord's application for an additional rent increase on the grounds that 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. The Landlord argued that the rent for the rental unit was significantly lower than market rents because they Tenants had been there for a long time and the incremental increases permitted under the Act did not keep up to the market increases.

She noted that for another rental property she owned (which she used as a comparable) the current rent reflects market rents because she was able to raise the rent with each new tenancy.

Most of the comparable properties provided by Landlord were not disputed by the Tenants who admitted that they had not followed up on them to see if they were truly comparable and had done little independent research of their own. The Tenants admitted they had seen a 2 bedroom duplex in the hospital area advertised for $1,100.00 per month but did not know if it was comparable. The Tenants argued that with respect to the other rental property owned by the Landlord and used by her as a comparable, it was larger in size and had an additional bedroom. In particular, the Tenants claimed their rental unit had a smaller "habitable living area" once the halls, entrances and stairwells were removed. The Landlord argued that both properties were similar in size (approximately 1175 square feet) and that it was unreasonable to suggest the Tenants' unit had a smaller "habitable living area" given that both rental properties contained halls, entrances and stairwells.

The Tenants also argued that a rent increase in the amount sought by the Landlord would be unfair as the Landlord would be entitled to increase the rent again in a year. However, this is not a criteria set out in s. 23 of the Regulations to the Act. Further, the Tenants admitted that the Landlord is entitled to regular increases provided by the Act to keep up with the rate of inflation.

I disagree with the Landlord insofar as she claims in her application that a comparable rent is $1,270.00 per month as that is a rental amount charged for a 3 bedroom unit which I find will realistically command a greater rent. Furthermore, I find that the only 2 bedroom comparable property provided by the Landlord (which asks a rent of $1,200.00 per month) is in a different geographic area (approximately 3.5 miles away) from the rental unit and there is no evidence as to what the amenities are in that area. The Landlord admitted she had not viewed the comparable properties but had instead contacted the respective advertisers to obtain some details.

I agree with the Landlord that it probably was difficult to find exact comparables in the same geographic area as the rental unit and that some deductive reasoning is required to determine what the rent for a 2 bedroom townhouse unit is based on rents for otherwise similar rental units with 3 bedrooms. I find that all else being equal (such as square footage, amenities, etc.) a 2 bedroom unit would command a rent of approximately $150.00 less per month than a 3 bedroom unit. Therefore, based on the evidence before me, I find that the amount sought by the Landlord ($1,100.00) reasonably falls within a range for current market rents for this type of rental unit. As a result, I conclude that the current rent for the rental unit after the addition of the allowable rental increase of $33.30 (ie. $933.30) is significantly lower than rent payable for other rental units similar to and in the same geographic area as the rental unit. As a result, the Landlord's application to increase rent to $1,100.00 is granted. The Landlord

must first give the Tenants a Notice of Rent Increase in the approved form indicating the rent will be increased to no more than $1,100.00 per month.

Conclusion

The Landlord's application is granted. The Landlord may increase the rent to no more than $1,100.00 per month after giving the Tenants a Notice of Rent Increase in the approved form that complies with the notice periods under the Act. The Landlord claimed she has already served the Tenants with a Notice of Rent Increase (to take effect March 1, 2009) for the allowable statutory amount in the event her application did not succeed. As the Act permits a rent increase only once every 12 months, I order the Landlord to advise the Tenants in writing that the earlier notice is withdrawn when she serves them with a new Notice of Rent Increase (for the additional rent increase). The previous notice must be withdrawn before March 1, 2009. The new rent increase will take effect no earlier than 3 clear months after it is served on the Tenants.