



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes O, ARI, FF

Introduction

This hearing dealt with an Application for an Additional Rent Increase made by the Landlord. The matter was initially scheduled for hearing by telephone conference call, however, at the request of both parties, it was adjourned to be heard in a face to face hearing.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Eight Tenants appeared at the hearing, and were assisted by two Articled Students from the Law Centre. The Tenants gave affirmed testimony and along with their Advocates, were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written 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.

On the matter of jurisdiction to make determinations in this matter, I note that the rental units are contained in a building where the rents are apparently related to the income of the respective Tenants. The Landlord refers to this as affordable housing.

I enquired with the Agent for the Landlord at the outset of the hearing if the building was not one of the excluded accommodations as set out in section 4 of the Act and section 2 of the Regulation to the Act. The Agent testified that the Landlord had no contract with the exempted bodies under the Regulation and in any event the Landlord was ceding jurisdiction under the Act.

Based on the testimony of the Agent that the Landlord has no contract with the exempted bodies under the Act and Regulation, I found that I have jurisdiction in this matter and proceeded on the merits of the Application.

Issue(s) to be Decided

After the rent increase permitted by the Regulation, is the rent for the rental units significantly lower than the rent payable for other rental units similar to and in the same geographic area as the subject rental units?

Background and Evidence

Each year the Residential Tenancy Branch publishes the allowable percentage by which rent may be increased for rental units in the Province, based on calculations set out in the applicable legislation. For example, in 2011 the permitted increase is 2.3%.

So long as the property owner increases the rent by the percentage allowed, and follows the other requirements under the Act, then renters in that unit are precluded from disputing the allowed rent increase.

Under the Act and Regulation, a property owner may also make an Application to increase the rent beyond the allowable percentage, if they desire an increase beyond the legislated limit. Renters are provided notice of the Application and are allowed to make submissions setting out their position on the proposed additional increase.

In this instance, the Landlord is requesting rent increases as follows:

	Rent before Increase	No. of units	Rent Increase Permitted	Comparable Rent	Additional Increase Sought	% Increase Requested
Rent 1	326.00	11	7.50	794.00	70.00	21.4%
Rent 2	289.00	21	6.65	637.00	70.00	24.2%
Rent 3	280.00	2	4.44	637.00	70.00	25%

In support of the Landlord's Application, an appraisal dated November 15, 2010, performed by a real estate appraisal firm, was submitted in evidence.

The opening paragraph of the cover letter to the report states the following:

“... we have inspected the [subject property], and conducted the appropriate valuation research in order to provide an appraisal report to determine the current market value of the subject property...” [Reproduced as written.]

The Landlord relies heavily on the appraisal letter and the Agent testified that the appraisal letter is based on a professional opinion and should carry significant weight. The Agent testified that he is assuming that the appraiser looked at other rental units in the market place and would take his professional word that he looked at comparable units.

The Agent further testified that the Landlord is ensuring that the Tenants will not pay more than 30% of their income, despite the requested additional increases.

The Agent for the Landlord testified that the Landlord has 12 buildings with approximately 650 tenants. He testified the subject units' rents are well below the average rates for the other Units. He testified that the Landlord seeks to increase the rents for the subject units because they require upkeep and maintenance.

To compare the subject rental units with other buildings, the Landlord supplied specific information on one other building, and a CMHC printout comparing rental rates in Victoria with other cities across Canada.

The appraisal has a small table which compares rates of rent in Saanich and Oak Bay for bachelor and one bedroom units. There is information on other buildings, however, all the comparisons relate to sales of an entire building, not the rental rates and amenities of the buildings.

There was little evidence from the Landlord about the amenities of the subject building.

In reply to the Landlord's Application, the Tenants pointed out there is a large apartment building directly across the street from the subject building, which the Landlord provided no information on. The Tenants questioned the lack of comparable building information provided by the Landlord.

The Tenants submit the following in further reply to the Landlord's Application:

- the Landlord did not try to discuss with them a need to increase rents prior to making the Application;
- that the Landlord is simply trying to make a profit off the Tenants by increasing the rents;

- that the Landlord pays no taxes on the building due to their non-profit status;
- that the Landlord plans to demolish the building if they are unable to get a rent increase; and
- that the residents of the building are low income, or are seniors on a lower fixed income.

The Advocates for the Tenants made submissions at the end of the hearing. They submitted the following:

- the Landlord did not use any affordable housing rental units in the comparison, and has therefore compared “apples with oranges”;
- the appraisal was conducted for the purpose of evaluating the building for potential sale and not for the additional rent Application, and is therefore, not appropriate;
- there is inadequate evidence of comparable rental rates in other buildings; and
- there is no evidence to show the Landlord is suffering a loss operating the building.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I dismiss the Application of the Landlord.

Under the Act and policy guidelines, the Landlord has the burden of proving that the rent for the rental units is significantly lower than the current rent payable for similar units in the same geographic area.

I find the Landlord provided insufficient evidence to prove that the subject building has significantly lower rents than comparable buildings in the same geographic area. In particular, I find the Landlord provided insufficient evidence of comparable buildings in the same geographic area. I find the appraisal provided had little, if any, relevance to the Landlord’s application.

Policy guideline 37, provides information to parties regarding the evidence and information to be reviewed in this type of Application. The guideline explains as follows:

“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 dependant 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. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord’s recent success at renting out similar units in the residential property at a higher rate. However, if a landlord has kept the rent low in an individual one-bedroom apartment for a long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. To determine whether the circumstances are exceptional, the dispute resolution officer 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 landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and any additional separate charges for services or facilities (e.g.: parking, laundry) that are included in the rent of the comparable rental units in other properties. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographical area, it is **not** sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord.

Having made the above findings, I dismiss the Application for an Additional Rent Increase made by the Landlord. The rental rates will remain the same in the subject building until changed in accordance with the Act and regulation.

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: April 06, 2011.

Residential Tenancy Branch