Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order to allow an additional rent increase.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted an Order to allow an additional rent increase above the legislated amount?

Background and Evidence

The parties agreed the Tenant has occupied the rental unit since September 2004 which is when she began employment with the previous owner, as the resident manager of the building. Rent is payable on the first of each month in the amount of $600.00 and there was no deposits required. A new tenancy agreement was signed for a month to month tenancy that became effective January 1, 2010.

The current property owner affirmed that his father owned the property at the time the Tenant was hired on to be the resident manager. He stated that after his father passed away the property was operated under his father's estate from January 2005 to December 2009. He then became owner and the Tenant continued to be employed by him from January 1, 2010 to October 31, 2011 when he decided to end the Tenant's employment and hire a professional property manager. He stated that the rent has always been $600.00 per month from September 2004 onward and there have been no notices of rent increase issued to date.

The Landlord submitted a coiled package into evidence which included numerous, un-numbered pages of documents. This submission included among other things a written submission; photos of the Tenant's unit and of unit # 7 of the same building, some internet advertisements of units in the same municipality, the tenancy agreement, and a brief description of the size and current rents being charged from the 8 units in the building.

The Tenant submitted eight pages of documents which included copies of: her written statement, a receipt, the October 15, 2011 termination letter, a reference letter dated July 26, 2011, and her contract for employment dated December 19, 2009.

The property manager affirmed that the Tenant's unit is a two bedroom unit approximately 800 square feet and is the largest unit located in a heritage home which has eight self contained units. Her unit was fully renovated prior to his employment as property manager and he noted that the finishes used were of a higher end product as they knew it would be occupied by the manager. The tenancy agreement currently includes all utilities, free laundry separate from the paid laundry room, storage separate from the other unit's storage areas, a newly constructed 8' x8' deck, and full use of a sun room.

The owner confirmed the Tenant's unit was renovated in the spring of 2004 with high end finishing. He stated that his family had decided to put more money into unit # 1 because if they ever decided to sell the building unit #1 would be suited for an owner to occupy it. The owner advised the previous deck had been removed prior to 2004 and it was always their intention to build a replacement; however that work did not happen until recently. The washer and dryer were pre-existing and located in the utility room with the electric panel and hot water tank. Now that the Tenant is no longer the manger they are no longer wanting to grant her access to the utility room and want her to use the coin operated washer and dryer which are located in the newly constructed laundry room which the other tenants now use. He also noted that the electricity for the Tenant's unit is currently on the same meter as all of the common area electricity such as outside lights. The power meter is currently in the process of getting changed so that a separate electricity meter will be installed to cover only unit #1's power usage.

The property manager pointed to their evidence and photographs to support his testimony that the unit which is most comparable to unit # 1 in this building is unit # 7. He noted that unit # 7 was rented in January 1, 2010 for the monthly rent of $785.00 which is $250.00 less than the Tenant currently pays in unit # 1. He also pointed to the remaining six units which range in size from 280 sq feet up to 400 sq ft with rents from $525.00 to $700.00. The length of these tenancies was not provided. He also noted that the calculations of rent charged in this building based on square footage range from the Tenant's unit at $0.75 per sq foot to up to $2.00 per sq foot.

The property manager turned to the internet advertisements provided in their evidence and spoke to four of the listings. He noted how they were all in the same municipality.

He stated that several were located inside heritage houses, such as the Tenant's unit, and were all charging a higher rent. He noted the square footage of these advertised units and pointed to certain characteristics noted in each one.

I asked how the property manager determined these units advertised on the internet were similar to the Tenant's unit. He stated that he saw the photos which were posted on the internet and they appeared similar to him. I then asked which specific geographic areas he was looking at and he confirmed he was considering the entire municipality. He noted that they all were located in a residential section, close to shopping malls; major city venues, transportation, and some were in heritage buildings. He confirmed that they did not provide a map of the location and did not submit evidence to support which amenities were close to the sample units and the unit in question.

The Tenant argued that her unit was not recently renovated as the renovations were done in 2004. She also stated that her unit was renovated using the same quality of materials as the other units, just different colors or patterns. She confirmed that while the bathtubs are similar the one in her unit has powered jets while the other units do not. She advised that the building does not have heritage status and is categorized as a six unit building but actually has been split off into eight units.

The Tenant submitted that her unit is not a two bedroom unit as the second room does not have a closet and therefore it must be considered a one bedroom plus a den. She has lived in the unit with the danger of not having a deck with the patio doors leading to a six foot drop for eight years. The doors were never sealed off because there was the promise that the deck would be built one day. She stated that she does not know the square footage of her unit and thinks it may only be around 700 square feet.

The Tenant asserted that the recent renovations never included or involved her unit. She noted that the new storage area includes only 7 storage spaces as her unit utilizes the crawl space for storage. She is of the opinion that the crawl space cannot be considered proper storage because she cannot stand erect in the crawl space as is provided in other storage units. She noted that her unit was not taken into consideration when they installed the laundry room as they only installed one washer and two dryers for seven units to use. She has had access to the private washer and dryer from the beginning of her tenancy and does not see any reason why this should change.

The Tenant argued that unit # 7 is not comparable to her unit. She confirmed that after being resident manager for eight years she has full knowledge of the other units and she would consider unit #6 as a closer comparable to her unit than # 7. She noted how unit # 6 is larger than # 7, has been fully renovated, has hardwood floors, and was updated in 2004 with the same quality of materials, just different colors.

In closing the Tenant stated that she believes her current rent of $600.00 is a fare rent considering she managed this property for eight years having her rent as a taxable allowable benefit. Now she is faced with being unemployed and having to pay the

monthly rent. She questioned where the Landlord would have to draw the line and said she believes her rent should remain at $600.00 with the legislated rent increase which is being imposed on other units.

The owner confirmed they have not applied for additional rent increases for any of the other units. The owner and property manager confirmed that although their testimony included a lot of information about current renovations to the building they are seeking the additional rent increase based on the Tenant's rent being below market value and not recovery of renovation costs.

Analysis

The Landlord has attempted to seek Orders to allow them to reduce services (laundry, electricity, storage) provided to the Tenant with their application for an additional rent increase. I explained to the Landlord that these items cannot be combined and I pointed them to section 27 of the Act for further information. I have copied section 27 of the Act to the end of this decision and I encourage the parties to seek further guidance through the *Residential Tenancy Branch* if need.

The Landlord has made application for an additional rent increase pursuant to Section 43(3) of the Act and section 23(1) of the regulation. Section 23 (1) (a) of the regulation provides that a landlord may apply under section 43 (3) of the Act *[additional rent increase]* if 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.

The burden of proof of the market value rent lies with the Landlord who has to meet the **high statutory requirement** of proving that rent being charge for similar units in the same geographic area are significantly higher than the Tenant's rent. Section 37 of the *Residential Tenancy Policy Guideline* # 37 stipulates that:

- An application must be based on the projected rent after the allowable rent increase is added; and
- Additional rent increases under this section will be granted only in **exceptional circumstances**; and
- "Similar units" means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community; and
- 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.

In this case the current monthly rent is $600.00 and after the 2012 rent increase of 4.3% allowed under the Regulation is applied the monthly rent would be **$625.80**.

When determining the existence of exceptional circumstances it is not sufficient for a landlord to base their claim that the rental unit has a significantly lower rent that results simply from the landlord's recent success at renting out similar units at a higher rate. To determine the exceptional circumstances I must consider the relevant circumstances of the tenancy, the duration of the tenancy, and the frequency and amount of rent increases given during the tenancy. It is not exceptional circumstances if a landlord fails to implement an allowable rent increase.

In this case the Tenant has never been issued a rent increase in this eight year tenancy from 2004 to 2012 because rent was previously considered a taxable allowable benefit because the Tenant was employed by the Landlord. Therefore, I accept that in this case rent has been kept artificially low and there is evidence to prove that the circumstances in this case are exceptional.

For examples of similar units the Landlord relies on unit # 7 as a similar unit to the Tenant. The Tenant refuted unit # 7 being similar to hers and noted that unit #6 was much more similar to her unit in decoration and style however it was still much smaller than her unit.

The Landlord has relied on computer advertisements to establish that the Tenant's rent is below market value. The Landlord could not provide testimony as to the exact location of each comparable unit submitted in evidence. The Landlord noted that he was looking for examples anywhere in the municipality.

As noted above, *Residential Tenancy Policy Guideline* # 37 indicates that when determining what a similar unit is, I must consider units of comparable: size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

Notwithstanding the Landlord's submission that some of the comparable units are located in heritage homes, there is insufficient evidence to support that these units are units in the same geographic area; of similar construction; similar interior and exterior ambiance (including view); similar sense of community; and similar size and age (of unit and building).

Conclusion

The Landlord has not met the high standard of proof required to prove what the current market value rent is of similar units that are located in the same geographic area as the Tenant's unit. Therefore I DISMISS the Landlord's application.

The Landlord is at liberty to issue the required 3 month notice, on the prescribed form, if he wishes to increase the Tenant's rent in accordance with the legislated amount for 2012 at 4.3 %.

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: August 02, 2012.

Residential Tenancy Branch

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.