



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, ARI

Introduction

This hearing dealt with the landlord's application for an additional rent increase over and above the amount provided for in the Residential Tenancy Regulation. Both parties gave affirmed evidence.

Issue to be Decided

- Whether the landlord is entitled to a rent increase beyond the amount permitted by the legislation?

Background and Evidence

The tenancy began on or about November 1, 2002. Rent in the amount of \$920.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$372.50.

The landlord gave the following testimony:

The landlord stated that he is seeking an additional rent increase beyond the 2.2% as per the regulations in the amount of 4.8% for a total increase of 7%. The landlord stated that other tenants in the building have all agreed to an increase of approx \$60.00 per month more. The landlord stated that this unit is significantly lower than others in the building and in the area. The landlord stated the unit is a highly desirable area with many charming character attributes to the unit. The landlord stated that in addition to the significantly lower rent he has incurred considerable costs to maintain and upgrade

many aspects of the building. The landlord stated that he has provided more than enough evidence to support his position.

The tenant gave the following testimony:

The tenant stated that she adamantly opposes the landlords' position. The tenant stated that although the landlord referred to many costs and upgrades, none of those upgrades have taken place in her suite. The tenant stated that she overlooks a dumpster on busy street. The tenant stated that her window overlooks a very busy bus stop and is disturbed every ten to fifteen minutes. The tenant stated that her suite is in disrepair and requires the bathroom and kitchen to be renovated. The tenant stated that she feels the 2.2% is already more than enough of an increase and feels that based on the standard of her unit she is already paying a premium.

Analysis

Section 23 of the Regulation addresses **Additional rent increase**, and provides in part 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;
- (c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;
- (d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;
- (e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

(2) If the landlord applies for an increase under paragraph (1)(b), (c), or (d), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage.

As earlier stated, grounds for an additional rent increase identified by the landlord in the application are “rent lower than comparable units,” and “location”

Following from the above, the matter before me is limited to an application for an additional rent increase on the basis of “rent lower than comparable units.”

Section 43 of the Act addresses **Amount of rent increase**, and provides in part as follows:

43(1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1)(a) by making an application for dispute resolution.

In the landlord's application, it is documented that the permitted increase is 2.2%. Residential Tenancy Policy Guideline # 37 speaks to "Rent Increases" and under the heading - **Significantly lower rent**, provides as follows:

The landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

The rent for the rental unit may be considered "significantly lower" when (i) the rent for the rental unit is considerably below the current rent payable for similar units in the same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit. In the former, \$50 may not be considered a significantly lower rent for a unit renting at \$600 and a comparative unit renting at \$650. In the latter, \$50 may be considered a significantly lower rent for a unit renting at \$200 and a comparative unit renting at \$250.

"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 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.

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 or those of surrounding buildings.

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 geographic 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.

The amount of a rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessarily with the highest rent charged for such a unit. Where there are a number of comparable units with a range of rents, an arbitrator can approve an additional rent increase that brings the subject unit(s) into that range. For example, an arbitrator may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

Section 23(4) of the Regulation provides, in part:

23(4) In considering an application under subsection (1), the director may

(a) grant the application, in full or in part,

(b) refuse the application,...

The landlord has been successful at renting out similar units in the same residential property at a higher rate. However, these units have undergone some renovation / upgrading and brand new tenants have commenced their tenancies at raised levels of rent. There have been no upgrades in the subject units where the tenant has resided for since 2002. In the result, I am unable to conclude that these units can be considered to be “similar units” as defined above in the Guideline.

Further, as rents have been raised in the subject units in each of the four previous years, I do not consider there are any exceptional circumstances that would support an increase which is beyond what is provided for in the Regulation.

Finally, even if I were to conclude that the subject units were similar to other units in the building where higher rents are being paid, the Guideline further provides:

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.

The general increase in market rent is already factored into the allowable annual increase under the *Act*. Clearly, market rent is not the critical factor in determining significantly lower rent.

Conclusion

The landlord has failed to meet the burden of proving that he is entitled to an order permitting an above guideline rent increase and, accordingly, the landlord's application is dismissed.

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: May 20, 2014

Residential Tenancy Branch

