

Dispute Resolution Services

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

Decision

Dispute Codes: O

Introduction

This hearing dealt with an application by the landlord for a rent increase beyond that permitted by the Regulations. All parties were represented at the hearing and had opportunity to be heard.

Issue(s) to be Decided

Has the landlord established grounds on which to be granted an above-guideline rent increase?

Background and Evidence

The landlord seeks an increase between 6-9 percent on the basis that she has completed significant repairs or renovations to the residential property which could not have been foreseen under reasonable circumstances and which will not recur within a time period that is reasonable for the repair or renovation.

The residential property in question is a multi-storey apartment building with 10 rental units. The landlord applied to increase the rent above the 3.7% permitted by the Regulations on just 3 of the 10 units and landlord testified that she did not add the other units because the tenants in one of the units had just given notice to vacate, several units had new tenants and the rest of the units were, in her opinion, already at market rent. The landlord purchased the building in 2008 at which time she engaged a building inspector to perform an inspection and generate a report on the building's condition (the "Report"). The landlord entered a copy of the Report into evidence.

The landlord testified that she replaced the roof and a cracked skylight at a cost of \$28,500.00. The Report indicated that the roof was "about 20 years old and is reaching the end of its lifespan." The Report suggested that the glass in the skylight be replaced.

The landlord entered into evidence an invoice showing that \$29,925.00 was spent installing a new roof. The landlord seeks to recover only \$28,500 of this cost.

The landlord testified that she replaced the furnace and removed the boiler at a cost of \$31,456.92. The Report indicated that the boiler was original to the building and required servicing. The Report further stated that "Maintenance of this equipment in general is not kept reasonably up to date" and "Due to overall efficiency of this original heating equipment upgrading it with a modern high efficiency appliance should be reflected in your overall budget."

The landlord testified that she updated the electrical panels at a cost of \$3,832.50. The invoice submitted into evidence by the landlord shows that the hallway receptacles and lights were replaced, a timer for an exhaust fan was replaced, the outside box was repaired, wiring for an intercom system was installed, unused wiring in the boiler room was removed, a fuse panel was replaced with a breaker-type panel and a timer for the outside lights was replaced. The Report indicated that the main service was in good and operational condition and that the panels in the individual suites should eventually be upgraded to modern breaker panels. The Report further indicated that two prong non-grounded wall plugs needed to be upgraded in the future.

The landlord testified that a concrete walkway had to be repaired as cracks and raised areas presented a trip hazard and that trees had to be removed. The Report indicates that two cedars at the front corners of the building needed to be removed as their roots could affect the foundations. The landlord submitted into evidence an invoice showing that \$3,360.00 was spent replacing the sidewalk and a retaining wall.

The landlord testified that the sump pump inside the building created a smell and that she was told it could cause flooding, so she replaced the sump and located the new sump outside the building. The landlord submitted into evidence an invoice showing that \$8,000.00 was paid to install the new sump and cement over the old sump. The Report does not directly address the sump.

The landlord testified that she installed exhaust fans on the roof of the building. The landlord submitted into evidence an invoice showing that she paid \$1,486.80 for the

installation of fans. The Report stated that the landlord would have to maintain better control of the humidity levels inside the building and suggested that “This can best be accomplished by tying the bathroom exhaust vents into common extractor fans located on the roof and controlled by timers instead of having individual fans in every bathroom.”

The landlord testified that at the request of the tenants, she installed an Intercommunication system, known as an enterphone, between the front door and individual units. The landlord submitted into evidence an invoice showing that she paid \$4,015.20 to install the enterphone. The enterphone was not addressed in the Report.

The tenants took the position that the repairs addressed regular maintenance issues which could have been reasonably foreseen by the landlord. Specifically, the tenants argued that the roof and furnace needed to be replaced because their age and argued that these were reasonably foreseeable repairs. The tenants argued that they should not bear the burden of repairs which arise from normal wear and tear on the building.

Analysis

Residential Tenancy Regulation 23(1)(b) provides 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:

(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;

Regulation 23(2) provides as follows:

(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.

Although there are ten units in the building, the landlord has only applied to increase the rent for three of the units. However, because the landlord calculated the increase by

dividing the total spent by all of the rental units, I find that she complied with the spirit of the Regulation in that she did not purport to raise the rent of the respondents above 1/10 of the total cost of the project. Because the respondents will not bear more than their proportional share of the costs incurred, I find that the application was properly made even though all the rental units were not included as respondents.

Although I generally agree with the tenants that they are not responsible for the cost of general upkeep, the Act contemplates and provides for situations in which significant repairs are required and permits the landlord to apply for an additional rent increase when those repairs could not have been foreseen and will not recur within a reasonable time period.

In this case, the landlord has performed both repairs and renovations. I find that the replacement of the roof must be considered a repair that is reasonably foreseeable. The life expectancy of the roof would have been known at the time it was first installed and the landlord should have anticipated that it would need to be replaced when its life expired. Although this landlord has only recently purchased the building, it does not change the fact that the replacement of the roof should have been reasonably foreseeable. Although the replacement of the skylight may have been a repair which could not have been foreseen, the landlord did not submit an invoice showing the cost of the skylight repair. I find that the cost of the roof replacement and skylight repair cannot be considered.

I find that the furnace replacement and boiler removal should be characterized as a renovation. The Report stated that the furnace required servicing and suggested that for efficiency reasons it should be replaced but did not say that it was ending its useful life. I find that this is a significant expense which the landlord should be able to pass on to the tenants, who benefit from the increased efficiency of the furnace. For the same reason I find that the cost of updating the electrical panels should be passed on to the tenants.

I find that the activity of the tree roots against the sidewalks and foundation of the building could not have been foreseen under reasonable circumstances and I find that

the cost of the repairs should be passed on to the tenants.

I find that the relocation of the sump pump, the installation of fans and the installation of the enterphone were all renovations for which the landlord incurred a significant expense. I find that these expenses should be passed on to the tenants through an additional rent increase.

In summary, I find that \$52,151.00 of the claimed costs may be characterized as significant repairs or renovations and I find that these costs may be passed on to the tenants. I find it reasonable to permit the landlord to recover these costs over a period of 7 years and find that the landlord is entitled to a rent increase of \$62.00 per month.

I order that the landlord be permitted to raise the respondents' rent by \$62.00 per month. The landlord must serve the tenants with a 3-month notice of rent increase in the proper form and the effective date of the increase must not be less than one year from the effective date of the last rent increase.

Conclusion

The landlord's application has been allowed in part.

Dated June 23, 2009.
