



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") and the *Residential Tenancy Regulation* (the "Regulation") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The Landlord was represented at the hearing by 3 agents, collectively referred to as the Landlord. Two Tenants attended the hearing, L.N. and C.B. All parties provided affirmed testimony.

The Landlord stated they personally served the most recent Notice of Dispute Resolution Proceeding to as many Tenants as possible, in person, on April 7, 2022. When personal service was not possible, the Landlord stated they sent the remaining packages by registered mail.

The Landlord testified that they provided their evidence package to the Tenants last November when they served their first Notice of Dispute Resolution Proceeding for the first hearing. The Landlord stated that they personally served as many Tenants as possible, and when personal service was not possible, the Landlord sent the remaining packages by registered mail on November 9, 2021.

Neither of the Tenants submitted any documentary evidence.

L.N. confirmed receipt of the evidence package from last November, as well as the Notice of Dispute Resolution Proceeding package from April 2022. C.B. stated she did not receive the evidence package from last November, nor the Notice of Dispute Resolution Proceeding package from April 2022. The Landlord provided registered mail

tracking information showing the packages were sent to C.B. at her rental unit. Pursuant to section 90 of the Act, I find the C.B. is deemed to have received both packages 5 days after they were sent.

None of the tenants provided written submissions in advance of the hearing.

I find that the respondent tenants were sufficiently served with the required documents in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

The residential property is comprised of 61 rental units in a large apartment complex built around 1965. The Landlord stated that they are seeking an additional rent increase to pay for an upgrade and improvement to the buildings security system. The Landlord stated that the building used to be secured by traditional lock and key systems. The Landlord stated that they had several break and enters and theft incidents in and around the building, so they opted to install a digital key fob access system for doors and access points in the building. The Landlord stated that this upgrade allows them to actively monitor all access, in real time, and to be able to provide access information to police in the event of property crime.

The Landlord confirmed they have not imposed any other additional rent increase in the last 18 months. The Landlord stated that the work was completed on or around September 23, 2020, and the bill was paid on or around October 15, 2020. A copy of the invoice was provided into evidence which shows that the following was installed:

1 x Uninterruptible power supply
1 x Salto licensing
1 x Salto encoder
1 x Salto PPD
1 x Salto XS4 2.0 controller
1 x Salto XS4 2.0 expander
1 x Salto bluenet gateway
1 x Salto bluenet node
4 x Salto bluenet door license
3 x Salto mullion mount card readers
3 x T-rex exit sensor
2 x RCI RIM mount electric door strike
3 x Salto XS4 mini
1 x Salto GEO cylinder
1 x ICT RF receiver
120 x Keytag fob
25 x 4 button remote w/ fob
Parts and materials

Additionally, there were some rough-in, labour, and training costs associated with the installation and implementation of the system. The invoice total was for \$27,194.19, inclusive.

The Tenants both do not feel the new security system was necessary. The Tenants assert that the building is still not properly secured, and there are still issues with access, use, and security of side doors, and bike lockers, since many people just prop doors open and leave them that way. The Tenants feel inconvenienced by having to carry around multiple fobs and access cards, rather than a key. The Tenants also pointed out that the new door system has broken several times since it was installed. The Tenants also took issue with the invoice, and questioned why they should be responsible for such an expensive item, when this should be the Landlord's responsibility to pay for this. The Tenants also question why this bill should include training of property managers, so that they can use it.

Analysis

As per the Landlord's application, there are 61 rental units in this apartment complex, all of which are served by this security system installation, and are affected by this request for additional rent increase.

1. Statutory Framework

Sections 21 and 23.1 of the Regulations sets out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. Not all of these portions will be reproduced. However, in summary, the landlord must prove the following, on a balance of probabilities:

- the landlord has not made an application for an additional rent increase against these tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the Work was an *eligible* capital expenditure, specifically that:
 - o the Work was to repair, replace, or install a major system or a component of a major system
 - o the Work was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards;
 - because the system or component was
 - close to the end of its useful life; or
 - because it had failed, was malfunctioning, or was inoperative
 - to achieve a reduction in energy use or greenhouse gas emissions; or
 - to improve the security of the residential property;
 - o the capital expenditure was incurred less than 18 months prior to the making of the application
 - o the capital expenditure is not expected to be incurred again within five years.

The tenants may defeat an application for an additional rent increase for capital expenditure if they can prove on a balance of probabilities that the capital expenditures were incurred

- for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
- for which the landlord has been paid, or is entitled to be paid, from another source.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed (for the reasons set out above), the landlord may impose an additional rent increase pursuant to sections 23.2 and 23.3 of the Regulation.

2. Prior Application For Additional Rent Increase

Based on the evidence and testimony, I am satisfied the Landlord has not made a previous application for an additional rent increase (for capital expense) against the tenants.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Act contains the following definitions:

"dwelling unit" means the following:

- (a) living accommodation that is not rented and not intended to be rented;
- (b) a rental unit;

[...]

"specified dwelling unit" means

- (a) a dwelling unit that is a building, or is located in a building, in which an installation was made, or repairs or a replacement was carried out, for which eligible capital expenditures were incurred, or
- (b) a dwelling unit that is affected by an installation made, or repairs or a replacement carried out, in or on a residential property in which the dwelling unit is located, for which eligible capital expenditures were incurred.

As per the application, there are 61 rental dwelling units in the building. Furthermore, I find that these units are "specified dwelling units" as each is located in a building where the work was undertaken.

4. Amount of Capital Expenditure

I accept the landlord's evidence that the total cost of the work was \$27,194.19, as per the invoice provided. I am satisfied that all work on the invoice was related to the installation and implementation of the new security/fob system in the building. I find it is reasonable to expect some amount of labour/training costs, given the substantive change in the nature of the system.

5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order for the work to be considered an eligible capital expenditure, the landlord must prove the following:

- the Work was to repair, replace, or install a major system or a component of a major system
- the Work was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards;
 - because the system or component was

- close to the end of its useful life; or
- because it had failed, was malfunctioning, or was inoperative
- to achieve a reduction in energy use or greenhouse gas emissions; or
- to improve the security of the residential property;
- the capital expenditure was incurred less than 18 months prior to the making of the application;
- the capital expenditure is not expected to be incurred again within five years.

I will address each of these in turn.

a. Type of Capital Expenditure

The work amounted to upgrades to the buildings' security system. Major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property.

As per Policy Guidelines #37:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

I find the security fob installation is a major component of a major system.

b. Reason for Capital Expenditure

The Landlord explained that this capital expense was incurred to improve building security and replace an outdated fob/security system. Although the Tenants present at the hearing do not feel the building is any more secure, I did not find their explanation of this to be compelling. I note the Landlord now has the ability to track all access into common storage rooms, front and side doors, and garage doors, such that they can provide information to police in the event of a property crime. Although, the Tenants assert the doors are still left open at times, and some Tenants are not using the bike locker and other facilities properly, which causes security concerns, I am satisfied that there is an overall improvement to general building security, given the timely and

precise control over access cards. I accept that this expense was incurred to improve building security.

c. Timing of Capital Expenditure

The Landlord paid the invoice on October 15, 2020, and filed this application on October 13, 2021, which was within 18 months.

d. Life expectancy of the Capital Expenditure

I note the previous lock and key security system for the building was over 50 years old. This item is not explicitly listed in Policy Guidelines #40 – Useful Life of Building Elements. However, I am satisfied that it is more likely than not that this upgrade will likely not re-occur within the next 5 years.

As such, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

I note that the tenants may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or
- the landlord has been paid, or is entitled to be paid, from another source.

The tenants did not provide any evidence to support either of these items.

Overall, I find the landlord has been successful. I am satisfied of all the elements required in order to be able to impose an additional rent increase for capital expenditure. Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the addition rent increase as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there are 61 specified dwelling units and that the amount of the eligible capital expenditure is \$27,194.19.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$3.72 ($\$27,194.19 \div 61 \div 120$).

The parties may refer to RTB Policy Guideline 40, section 23.3 of the Regulation, section 42 of the Act (which requires that a landlord provide a tenant three months'

notice of a rent increase), and the additional rent increase calculator on the RTB website for further guidance regarding how this rent increase made be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$3.72. The landlord must impose this increase in accordance with the Act and the Regulation.

I order the landlord to serve the tenants with a copy of this decision in accordance with section 88 of the Act.

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 15, 2022

Residential Tenancy Branch