



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOMUS MANAGEMENT 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 (Act) and the Residential Tenancy Regulation (Regulation) for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The landlord's agents (agent) attended the hearing. Tenants JG, SM, DA, BC, and PT were present at the hearing. JG represented approximately 56 other tenants by proxy.

The landlord submitted that the tenants in units 115, 204, 217, 301, 305 and 418 have now vacated the residential property.

The landlord said that all tenants were served the Proof of Service of Notices of Dispute Resolution Proceeding Package for this final hearing by personal service. The landlord submitted documentary evidence as to service of the dispute resolution proceeding package. I note that there was evidence that showed the tenants in units 118 and 216 were served by attaching the documents to the tenant's doors. I find that all tenants were served in accordance with the Act and the Interim Decision entered in this matter on March 16, 2022, relating to the preliminary hearing on February 22, 2022.

The parties were affirmed and the hearing proceeded. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

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

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The residential property is a 4 floor apartment building, that was built in 1998, and has 89 dwelling units.

The landlord testified that they have not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord testified that they were seeking to impose an additional rent increase for capital expenditures incurred to pay for expenses in connection to replacing the roof of the residential property. The landlord testified that the work was done as the roofing repairs were becoming more frequent and the costs of repairs were increasing. The roof replacement began on March 10, 2021 and was completed on August 26, 2021. The landlord referred to their written evidence to indicate the dates.

The landlord submitted that the roof was 23 years old, the age of the building, and was beyond its useful life. The landlord was not the original owner, and that the roof had an original warranty of 5 years for workmanship and materials and a 25-year limited warranty for shingle defect. The roof was a combination of a flat and sloped surface.

The landlord submitted that they replaced the entire roof to minimize disruptions to the tenants. The landlord submitted that they used a consultant to ensure the quality of the work done.

The landlord's capital expenditures claim was in the amount of \$466,044.86. The claim is comprised of \$15,435 for project inspection services and \$450,609.86 for the roof replacement.

Included in the evidence filed by the landlord were past repair invoices, the invoices for the roof replacement, the building inspectors invoices, and the 10 year warranty for the roof.

Tenants' response and submissions –

Tenant JG said they wanted to request an independent roof inspector, but were unaware they could ask for one. JG testified that the landlord purchased the property in 2000, but the repair invoices did not begin until 2013. JG questioned the quotes obtained by the landlord and suggested that the roof replacement should have been done years earlier. JG questioned that one page of the landlord's evidence was dated November 13, 2021, after the work was completed.

Tenant SM contended that the work should have been done in 15 years, due to the roof being sloped. The landlord was questioned as to whether this work was undertaken in response to the change in the legislation and Regulations allowing a landlord to apply for an additional rent increase.

Tenant PT questioned the landlord as to the timing of the work. PT pointed out that in 2013, the roof was decaying and these matters should have been dealt with earlier. PT submitted that there was no water barrier between the shingles and the surface of the sub-roof.

PT submitted that the landlord did not do their due diligence and were negligent. PT submitted that the landlord would have been compensated for the capital expenditure due to the increase in the property value. PT submitted the tenants were not provided invoices for permanent repairs. PT said that the landlord ought to have obtained 3-4 quotations.

Tenant BM pointed out that there was no water barrier under the shingles on the original roof.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application.

Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

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. I will not reproduce the sections here but to summarize, 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:
 - 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.

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 submitted sufficient and required evidence to support their application 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.

In this case, I find the landlord submitted sufficient evidence that they had not made a prior application for an additional rent increase for a roof replacement within the prior 18 months.

The landlord's undisputed evidence is that there are 89 dwelling units in the residential property and the evidence supports that all of the dwelling units are eligible.

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred for the replacement of the roof of the residential property and was therefore, I find, a major component. I find it reasonable that the landlord incur expenses for installation management services to ensure that the work was done properly as part of quality assurance measures.

Based on the landlord's history of repairs to the roof and other evidence before me, I find that the landlord incurred capital expenditures in order to maintain the residential property, as the roof had exceeded its useful life, per section 40 of the Tenancy Policy Guideline.

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred in the 18-month period preceding the date the landlord made their application.

Based upon the evidence before me, I find that the capital expenditures are not expected to be incurred for at least 5 years. I base this finding on the useful life of roofs under the Policy Guideline and the 10 year warranty for this current roof.

As mentioned, the onus is on the tenants to prove that the capital expenditures were due to inadequate repair or maintenance on the part of the landlord, or that the landlord has been paid or is entitled to be paid from another source. While the tenants made arguments and submissions at the hearing, I find this does not amount to evidence that would defeat the landlord's application. The tenants did not provide independent reports or any documents which would show the landlord failed to repair or maintain the roof. Rather, I find the landlord's evidence shows a consistent pattern of repairing the roof. There was only an allegation that the landlord was paid or is entitled to be paid, from another source. I do not find this is sufficient evidence.

For these reasons, I grant the landlord's application for the rent increase based on eligible capital expenditures of \$466,044.86, pursuant to section 43(1(b) of the Act and 23.1(4) of the Regulations referred to above.

Section 23.2 provides the formula for the calculating the additional 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 89 specified dwelling units and that the amount of the eligible capital expenditure is \$466,044.86 in total.

I find the landlord has established the basis for an additional rent increase for capital expenditures of \$43.64 per affected tenancy ($\$466,044.86 \div 89 \text{ units} \div 120$). This amount may not exceed 3% of a tenant's monthly rent, and if so, the landlord may not be permitted to impose a rent increase for the entire amount in a single year.

The landlord is directed to Policy Guideline 37, page 11 to properly calculate the rent increase in accordance with the Regulations, as this is the landlord's responsibility.

In addition to the above Policy Guideline, the parties are also directed to section 42 of the Act to learn about annual rent increases, for which the landlord is still entitled to apply, and the Residential Tenancy Branch website for further information on the additional rent increase calculator and how this increase may be imposed.

Conclusion

The landlord's application for an additional rent increase for eligible capital expenditures is granted.

The landlord is directed to serve this Decision on each affected tenant, individually, within two weeks of this Decision.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 24, 2022

Residential Tenancy Branch