Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ARI-C

Introduction

In this application, the landlord seeks a rent increase under sections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the "Act") and section 23.1 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 (the "Regulation") for an eligible capital expenditure, namely, an accessibility ramp.

The landlord filed their application on December 20, 2021 and a preliminary hearing was held on April 7, 2022. An Interim Decision in respect of the preliminary hearing was then issued on April 7, 2022. The preliminary hearing was adjourned to a written-submission-only hearing scheduled on August 25, 2022. Written submissions and evidence were reviewed and considered on this date.

While the landlord did not provide documentary proof that the respondents were served with a copy of the Interim Decision and the Notice of Dispute Resolution Proceeding, it is assumed (given that I ordered the applicant to serve these documents as outlined in the Interim Decision), in the absence of any respondent's evidence to the contrary, that the applicant followed my order and that the respondents were served.

Issue

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

Background and Evidence

The landlord provided the following documentary evidence and submissions in respect of its application (reproduced from counsel's written submission, with some minor formatting changes; counsel is thanked for his succinct yet comprehensive submission):

1. This is an application for an additional rent increase for a Capital Expenditure for creation of a ramp at the front door of the Premises for accessibility (the “Ramp Expenditures”) according to Sections 23.1 and 43(3) of the *Residential Tenancy Regulation,* BC Reg. 174/2021 [that is, B.C. Reg. 477/2003]

2. The Ramp Expenditures meet the criteria established in Section 23.1(4)(a)(i) because Landlord replaced the entrance ramp to maintain the Premises. In the Applicant’s submission, the design and construction of the original entrance ramp was poor and built under a much older building code. It had 1.5 steps in it, it did not have a handrail or recessed lighting and the landing just before the entrance door had an uneven surface and a large drain grate. It was difficult for all tenants to navigate, particularly those with mobility difficulties. The Premises does have a ground level entry for disabled access, but it is all the way around the back of the Premises and can only be accessed by walking on the north or south side of the Premises through its parking lot. That is a distance of about 80 metres. That is a considerable distance, particularly in poor weather or slippery conditions or when carrying groceries or other packages.

3. The Ramp Expenditures were “malfunctioning”. The plain meaning of “malfunctioning” is a “fail to function normally or satisfactorily”. The original ramp was not operating satisfactorily for the reasons set out in paragraph [2] above. Further, many Respondents continually expressed concern about the original ramp and said that it was difficult to navigate.

4. The Ramp Expenditures improve the security of the Premises. Its lighting, stepless ramp and gradual slope allows those with mobility difficulties to access the Premises from the front, rather than having to walk around through a less favourably lit parking lot with moving vehicles and an undefined pedestrian path.

5. The Applicant incurred the Ramp Expenditures in the 18 months preceding the application. The three invoices tendered in evidence from Garden City were dated late January, 2021 and the Applicant made its application less than 12 months later.

6. The Applicant did not fail to repair or maintain the original ramp. Quite to the contrary. It added landscape lighting and continually repainted the treads of the steps for visibility. Given that the original ramp was stepped, made of concrete, and had a drainage portal embedded in the landing, the Applicant could only replace it if it wanted to make meaningful change. The Applicant had to dig up the original ramp and completely changes its elevation and slope to meet current bylaw standards.

Nobody has reimbursed the Applicant for the Ramp Expenditures nor is the Landlord entitled to be paid for the Ramp Expenditures by any other source.

7. The Applicant is late in making its submissions according to the Interim Decision. The Applicant asked that this late submission be accepted because no new evidence is being tendered and no Respondents have taken part in any of the preliminary applications or voiced any objection thus far. The Applicants' founder and his wife both died a few weeks ago and created personal scheduling challenges for the Applicant to deliver these submissions in a timely manner. The Applicant says that weighing these factors, it is in the interests of justice that such an extension be granted.

No written submissions were made by the respondents.

Analysis

The landlord must establish on a balance of probabilities that the capital expenditures meet the requirements to be eligible for an additional rent increase.

At the outset, while the applicant was late in making its submissions, I find that in the circumstances, the respondents have not been prejudiced in respect of procedural fairness or natural justice. For this reason, the written submission and referenced evidence in support of the landlord's application are accepted and considered.

Subsection 43(1)(b) of the Act states that a landlord may impose a rent increase only up to the amount "ordered by the director on an application under subsection (3) of the Act. Subsection 43(3) of the Act, to which the above section refers, states that "

> 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.

Section 23.1 of the Regulation sets out the criteria by which this application is considered. I have also considered *Residential Tenancy Policy Guideline 37: Rent Increases*[1] in reviewing this application. The relevant sections of section 23.1 of the Regulation are reproduced as follows:

[1] www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl37.pdf

(1) Subject to subsection (2), a landlord may apply under section 43 (3) *[additional rent increase]* of the Act for an additional rent increase in respect of a rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.

(2) If the landlord made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.

(3) If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.

(4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:

(a) the capital expenditures were incurred for one of the following:

(i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) *[landlord and tenant obligations to repair and maintain]* of the Act; [...]

(b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;

(c) the capital expenditures are not expected to be incurred again for at least 5 years.

(5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred

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

In this application, based on the evidence before me, it is my finding on a balance of probabilities that the capital expenditures were incurred for the replacement of a major component—namely, an accessibility ramp—in order to maintain the residential property, of which the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law.

It is my finding that the capital expenditures were incurred in the 18-month period preceding the date on which the landlord made its application. I find that all of the capital expenditures are substantive and not minor. Nor do I find that any of the work completed is purely for aesthetic or cosmetic purposes.

Further, based on the evidence before me, I conclude that the capital expenditures are not expected to be incurred again for at least five years.

No submissions were made by the respondents opposing the application and as such I need not consider or apply section 23.1(5) of the Regulation.

Given the above, the landlord's application for an additional rent increase for eligible capital expenditures in the amount of $32,665.95 pursuant to section 23.1 of the Regulation and section 43(1)(b) of the Act is granted.

Section 23.2 of the Regulation sets out the formula to be applied when determining the amount of the additional rent increase.

(1) If the director grants an application under section 23.1, the amount of the additional rent increase that the landlord may impose for the eligible capital expenditures is determined in accordance with this section.
(2) The director must

(a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and

(b) divide the amount calculated under paragraph (a) by 120.

(3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43(1)(a) of the Act in that year by 3%.

(4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

In this application, the calculation is thus: (32665.95 ÷ 60 units) ÷ 120 = $4.54.

From there, the landlord must then apply subsections 23.2(3) and (4).

I leave it to the landlord to make the required calculations. The landlord may wish to refer to *Residential Tenancy Policy Guideline 37*, section 23.3 of the Regulation, section 42 of the Act, and the additional rent increase calculator on the Residential Tenancy Branch website for further guidance regarding how this rent increase made be imposed.

Conclusion

For the reasons set out above the landlord's application is hereby GRANTED.

A copy of this Decision **must** be served by the landlord upon each tenant within two weeks of the landlord receiving a copy of this Decision.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: August 25, 2022

Residential Tenancy Branch