Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ARI-C

Introduction

The landlord has made eligible capital expenditures and is seeking an additional rent increase pursuant to subsections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the "Act") and section 23.1 of the *Residential Tenancy Regulation* (the "Regulation").

A preliminary hearing conference occurred on March 15, 2022 and an Interim Decision of the same date was issued. A substantive hearing was convened by teleconference on August 22, 2022 at 9:30 AM. Attending the hearing were three representatives of the corporate landlord (hereafter the "landlord" for brevity) and four respondent tenants. The hearing ended at 10:14 AM.

Preliminary and Procedural Matters

The landlord testified, under oath, that they had served upon the respondents the *Notice of Dispute Resolution Proceeding* along with the Interim Decision between April 12-15, 2022 by way of mostly in-person service and a few by registered mail. A three-page *Proof of Service April 2022* PDF document was submitted into evidence, which showed the date and method of service.

It is my finding based on this evidence that the respondents were served with the appropriate documentation, in compliance with the Act, necessary for them to participate in the hearing.

From this list the names of the respondents were confirmed, including five tenants who have moved out since the landlord's application was filed. Those five tenants' names have been removed from the style of cause (the cover page of this decision).

Issue to be Decided

Is the landlord entitled to the additional rent increase being requested?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The landlord gave the following oral and documentary evidence:

1. this is the landlord's first application for a rent increase under subsection 23.1(1) of the Regulation;

2. the eligible capital expenditures were in the total amount of $133,034.89, separated as follows:

    a. $15,565.20 for elevator repairs (completed April 15, 2020);
    b. $90,994.45 for carpet and tile replacement and repairs (completed June 15, 2020);
    c. $18,463.74 for water main line repair (completed August 26, 2021); and,
    d. $8,011.50 for repairs on a municipal-ordered cross water connection system (completed August 31, 2021);

3. the application to increase rent for eligible capital expenditures, if granted, would result in a $14.98 per month rent increase for the affected tenants; there is not anticipated to be any future increases beyond this amount; the increase, if granted, would not occur in less than three months from the date of the application be granted (in this Decision) and would only occur when the tenants' (regular) annual rent increase goes into effect;

4. the capital expenditures were incurred for the repair and replacement of major components of the residential property, namely the elevator, the carpet and tiles, and water line systems; the carpet was very old, as depicted in the photographs;

5. the capital expenditures were made within the 18-month period preceding the date on which the landlord made its application (made on October 6, 2021); and

6. the capital expenditures are not expected to be incurred again for at least 5 years, though likely much longer.

Submitted into documentary evidence were proof of the capital expenditures (invoices and bills), proof of installations and replacement, and proof that the work was completed.

Documents titled *The_Hollies_-_Capital_Expenditures_Evidence.pdf*, *The_Hollies_-_Before_Photos.pdf*, *The_Hollies_-_Water_Main_Photos.pdf*, *The_Hollies_-_Water_Main.pdf*, and *The_Hollies_-_After_Photos.pdf*.

Included in the documentary evidence was a letter from the municipality asking the building owners to correct issues concerning cross-water pipes. This, the landlord briefly explained, involves issues whereby non-potable piped water can drain onto potable piped water. In this case, the water line had broken, and water was leaking under the building. (The landlord briefly mentioned “the large hole” on the north side of the building, to which the tenants would have been familiar; this hole is where the work was being undertaken.)

The respondent tenants were invited to speak after the landlord completed their submissions. One of the tenants asked the landlord whether the elevator was damaged when the laundry room in the building was renovated. The landlord responded that this was not the case.

A respondent tenant submitted that their tenancy agreement did not make or include any provisions for rent increases for capital expenditures. I briefly addressed this query by noting that the regulation and legislation permit additional rent increases for eligible capital expenditures, and that a landlord needs to make an application to do so.

The tenant also asked what the difference was between eligible capital expenditure and costs related to regular repairs. This question will be addressed below. It was also asked by the tenants how long the amortization of the rent increase would exist. This will also be addressed below.

Another tenant inquired whether the landlord maintained a capital expenditures account or investment fund to pay for these types of expenditures. The landlord replied that while they maintain an annual operating budget, there is no specific account or fund that is maintained to pay for these expenditures. Rather, the change in the legislation simply has the effect of the landlord being able to pass along the costs to the tenants. The landlord prepares for expenditures, he added, but no monies are specifically set aside.

Analysis

The landlord bears the evidentiary burden of establishing on a balance of probabilities (in other words that it is more likely than not) that the capital expenditures meet the requirements to be eligible for an additional rent increase.

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 an application for a rent increase is considered. I have also considered *Residential Tenancy Policy Guideline 37: Rent Increases* (available online at https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl37.pdf) in interpreting and applying the law to the facts of the landlord's application. Section 23.1 of the Regulation is reproduced in full, for the benefit of the reader, as follows:

(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;

(ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;

(iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:

(A) a reduction in energy use or greenhouse gas emissions;
(B) an improvement in the security of the residential property;

(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 repairs and replacement of a major system and a major component (that is, the elevator, the carpets, the tiles, and the water line problems) in order to maintain the residential property.

It is further my finding that the capital expenditures were incurred in the 18-month period preceding the date on which the landlord made its application; this is evidenced by the invoices and bills. 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 (which would ordinarily disqualify the claim).

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. (Indeed, most of the major systems and components for which the landlord seeks an additional rent increase will not require upgrades or replacement for a decade or more.)

While the respondent tenants asked a few questions, both of the landlord regarding its application, and a few directed at me in respect of how the legislation works, the respondents did not establish that the capital expenditures were incurred either 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. As such, I need not consider whether subsection 23.1(5) of the Regulation results in the landlord's application being denied.

Given the above, I grant the landlord's application for the rent increase based on eligible capital expenditures of $133,034.89 pursuant to section 23.1(4) of the Regulation and section 43(1)(b) of the Act.

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of 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, the amount of eligible capital expenditures results in a monthly amount of $14.98 per affected tenancy. If this amount exceeds 3% of a tenant's monthly rent, the landlord may not be permitted to impose a rent increase for the entire amount in a single year.

It is the landlord's responsibility and obligation to calculate the imposition of the amount as per page 11 of the *Residential Tenancy Policy Guideline 40* and sections 23.2 and 23.3 of the Regulation.

The parties should refer to *Residential Tenancy 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 Residential Tenancy Branch website for further guidance regarding how this rent increase made be imposed.

In respect of the difference between an eligible capital expenditure and regular repairs, while there is no definition for regular repairs under either the Act or the Regulation, an "eligible capital expenditure" has a precise meaning within the legislation. This is defined under section 23.1(4) of the Regulation, and which is reproduced above. A more in-depth policy definition may be found on pages 5-7 of the above-noted policy guideline.

Conclusion

The landlord's application is hereby granted.

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

This decision is final, binding, and 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 23, 2022

Residential Tenancy Branch