



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS 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 agent (agent) attended the hearing. No tenants were present, which was also the case for the preliminary hearing on June 20, 2022.

The landlord submitted that the tenants in units 121, 207, 122, and 110 have now vacated the residential property. Those names have been removed as respondents on the covering pages of this Decision.

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 or registered mail. The landlord submitted documentary evidence as to service of the dispute resolution proceeding package.

The agent was affirmed, and the hearing proceeded. During the hearing the agent was given the opportunity to provide their evidence orally. 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

The residential property is a 3 floor apartment building, built in 1998, and has 75 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 aged stairwell railings and bring to height code requirements, to supply and install 6826 square feet of aged hallway and stairwell carpeting, with associated removal prep, materials, and labour costs. Additionally, the landlord claims for code required upgrade to electrical emergency shut-offs and pressure relief valves to all 3 building boilers.

The landlord testified that the work was done as the carpeting was old and fraying, presenting a safety risk, and the other work was done to comply with code requirements and for safety reasons.

The landlord's capital expenditures claim was in the amount of \$47,730.01. The claim is comprised of \$7,585.61 for stairwell railing replacement, \$36,036.47 to supply and install aged hallway and stairwell carpeting, and \$4,108.13 for upgrades of electrical emergency shut offs and pressure relief valves to all 3 building boilers.

Included in the evidence filed by the landlord were the invoices for the work done.

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.

No evidence was filed by the tenants and no tenants attended either hearing to contest the landlord's 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, there was no evidence that the landlord had made a prior application for an additional rent increase for the work done within the prior 18 months.

The landlord's undisputed evidence is that there are 75 dwelling units in the residential property and the evidence supports that all of the dwelling units are eligible.

I address each of the three part claims individually.

Stairwell railing replacement –

As to the claim for the stairwell replacement, I have reviewed the landlord's two invoices. The two invoices in total were larger than the landlord's actual claim, as the total was divided by 3, to account for the 3 buildings for which the cost of the same work was shared. The first invoice was for \$21,673.17, and the landlord's total claim was a third of that amount, or \$7,224.38. The first invoice was dated "10-7-2020", which I interpreted to be July 10, 2020, based upon other evidence supplied by the landlord. The second invoice for this work was \$1,083.66, and the total claim was a third of that amount, or \$361.22. That invoice was also dated "10-07-2020". The landlord's final payment on the project was August 30, 2020, according to their evidence.

The landlord's application was made on January 24, 2022, and 18 months prior to that date is July 24, 2020. In reviewing the landlord's invoices, I find the stairwell replacement work was completed and the costs were incurred on July 10, 2020, the dates on the invoices. I find this excludes their first claim. I place no weight on the payment date of August 30, 2020, as I find that is not when the costs were incurred.

I therefore dismiss the landlord's claim for stairwell railing replacement.

Hallway and stairwell carpet replacement –

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred for the hallway and stairwell replacement and was therefore a major component, as it was in the common area. The landlord submitted that the carpet was old and fraying and presented a safety hazard to the tenants.

I find that the landlord incurred capital expenditures in order to maintain the residential property, as the state of the carpet shows it had exceeded its useful life, per section 40 of the Tenancy Policy Guideline. I further find that the landlord incurred capital expenditures in order to comply with health, safety, and housing standards.

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 10 years. I base this finding on the useful life of carpets of 10 years under the Policy Guideline.

Upon review, the landlord submitted 3 invoices, totalling \$37,297.84. The landlord's claim in their application for this expense is listed as \$36,036.47. When questioned, the agent could not account for the difference in the invoices and claim on the application. The agent submitted they would like to waive the difference and go with the claimed amount of \$36,036.47.

I therefore find the landlord has submitted sufficient evidence to support their claim of \$36,036.47.

Code required upgrade to electrical emergency shut-offs and pressure relief valves to all 3 building boilers –

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred for code required upgrades to the boilers and was therefore a major component. The landlord presented that the upgrades were required to comply with the current required codes.

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 10 years. I base this finding on the useful life under the Policy Guideline.

I therefore find the landlord has submitted sufficient evidence to support their claim of \$4,108.13.

For these reasons, I grant the landlord's application for the additional rent increase, in part, based on eligible capital expenditures of \$36,036.47 and \$4,108.13, or a total of **\$40,144.60** 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 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 75 specified dwelling units and that the amount of the eligible capital expenditure is **\$40,144.60** in total.

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$4.46** per affected tenancy (**$\$40,144.60 \div 75 \text{ units} \div 120$**). 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, in part.

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: September 02, 2022

Residential Tenancy Branch