



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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.

H.M. appeared as agent for the Landlord (the "Agent"). None of the named respondent tenants attended the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the respondent tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Agent confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Agent advised that all the named respondents were personally served with the notice of dispute resolution and the Landlord's evidence. Proof of service forms for all the named respondents were put into evidence. I find that the Landlord has served its application materials on each of the named respondents in accordance with s. 89 of the *Act*.

Issues to be Decided

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

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Agent testified that the residential property has 10 dwelling units, all of which are occupied. The Landlord's evidence includes a photograph of the property showing it is a single walk-up rental building.

The Agent testified that the Landlord has replaced the windows and patio doors for all 10 rental units. The Agent advised that the windows and patio doors were single pane glass and original to the building, which was built in 1964. The Agent further testified that the windows and doors were replaced in 2 batches:

- the first in June 2021 at a cost of \$10,185.53; and
- the second in April 2022 at a cost of \$35,680.90.

The Landlord's evidence includes invoices for the window and patio door replacements.

The Agent further testified that the railings and balconies for the building were replaced in September 2021 at a total cost of \$29,071.02. The Agent testified that these were also original to building, that they were made of wood, and that the wood had begun to rot away. The Agent further testified that the balcony height was not code compliant and that the replacements comply with code. The Landlords evidence includes a copy of the invoice for the replacement as well as photographs showing that the rental units are accessible via outdoor balconies. The photographs show their state before and after the replacement.

The Agent further advised that the subject residential property has 10 dwelling units, all of which are occupied by tenants. The Agent testified that prior to making this application, the Landlord circulated a letter with the tenants asking whether they consented to the rent increase. A copy of this letter was put into evidence by the Landlord. The Agent testified that the tenants for 5 rental units consented to the increase, while the tenants for the other 5 rental units did not. The Agent advised that only the tenants in those rental units that did not consent to the increase were named and given notice of this application.

Analysis

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. Landlords seeking an additional rent increase under s. 23.1 of the Regulations must prove, on a balance of probabilities, the following:

- The landlord has not successfully applied for an additional rent increase against the tenants within 18 months of applying.
- The capital expenditure was incurred for the repair, replacement, or installation of a major component or major system for the property.
- The capital expenditure was incurred for one of the following reasons:
 - to comply with health, safety, and housing standards required by law in accordance with the landlord's obligation to repair the property under s. 32(1) of the *Act*;

- the major component or system has failed, is malfunctioning or inoperative, or is close to the end of its useful life; or
 - the major component or system achieves one or more of either reducing greenhouse gas emissions and/or improves security at the residential property.
- The capital expenditures were incurred in the 18-month period preceding the date on which the landlord applies.
- The capital expenditures are not expected to be incurred again for at least 5 years.

Tenants may defeat a landlord's application for additional rent increases for capital expenditures if they can prove on a balance of probabilities that:

- the repairs or replacements were required because of 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.

Once the threshold question has been met, the Landlord must also demonstrate how many dwelling units are present in the residential property and the total cost of the capital expenditures are incurred.

Section 21.1(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;

[...]

"major component", in relation to a residential property, means

- (a) a component of the residential property that is integral to the residential property, or
- (b) a significant component of a major system;

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

- (a) to the residential property, or
- (b) to providing services to the tenants and occupants of the residential property;

"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.

Looking first at the windows and patio doors, I find that these fall within the definition of a major component of the residential property. The Agent testified that they were single pane and installed in 1964. I note that Policy Guideline #40, which provides guidance on the useful life of building elements, windows have an expected useful lifespan of 15 years and doors have an expected useful lifespan of 20 years. I find that both the doors and the windows have greatly exceeded their expected lifespan. I further find that the new windows and doors can be expected to decrease greenhouse gas emissions by improving on the heat loss from the former single pane windows and doors they replaced. Neither are expected to be replaced within the next 5 years and the projects were undertaken within 18 months of the Landlord's application. I find that the windows and doors are eligible capital expenditures.

Looking next at the balconies and railings, I would also find that these building elements fall within the definition of a major component of the residential property. Based on the undisputed evidence of the Agent, I accept that these components were original to building, were made of wood, and that the wood was rotting. I find that the cost of their replacement and repair was both necessary for the health and safety of the building's occupants and that the balcony and railings had exceeded their useful life, which Policy Guideline #40 considers to be between 10 and 20 years. The replacement of these components was made within 18 months of the application and are not expected to reoccur within 5 years. I find that the balconies and railings are eligible capital expenditures.

No tenant attended to raise argue that the replacement or repair of the building elements were caused by the Landlord's failure to properly maintain the property or that the Landlord has been pair or is entitled to be paid from another source.

I find that the Landlord has demonstrated that it is entitled to an additional rent increased under s. 23.1 of the Regulations.

I accept the Landlord's undisputed evidence that there are 10 dwelling units within the property. I further accept the Landlord's undisputed evidence, supported by invoices, that the total cost of the window and door replacements was \$45,866.43 (\$10,185.53 + \$35,680.90) and that the cost of the balcony and railing repair and replacement was \$29,071.02.

Section 23.2(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, I find that the Landlord has established total capital expenditures of \$74,937.45 for the 10 dwelling units.

The landlord has established the basis for a total additional rent increase for capital expenditures of \$62.45 ($\$74,937.45 \div 10 \text{ dwelling units} \div 120$) for each dwelling unit. If this amount exceeds 3% of a tenant's monthly rent, the landlord is not permitted to

impose a rent increase for the entire amount in a single year and must do so in accordance with ss. 23.2 and 23.3 of the Regulations.

The parties may refer to RTB Policy Guideline 37, 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 may be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$62.45. 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: September 09, 2022

Residential Tenancy Branch