



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMARGUE PROPERTIES INC.
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* (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.

The Landlord (agents of) attended the hearing. Only one Tenant was present at the hearing. All parties provided affirmed testimony. The Tenant confirmed receipt of the Landlord's application, Notice of Dispute Resolution Proceeding, and evidence packages. The Landlord explained that they initially applied against all 71 of the rental units earlier this year. However, since the time they filed the application, several people have moved out. As such, there are currently only 58 respondents remaining, as detailed in their proof of service document.

For the remaining 58 rental units, the Landlord provided a proof of service document showing that they served all rental units by posting the Notice of Dispute Resolution Proceeding to the front door of the respective units, with the exception of 2 rental units, which were served by registered mail. Pursuant to section 90 of the Act, I find the Tenants are deemed served with these packages 3 days after they were posted to the door, and 5 days after they were sent by registered mail.

The Landlord provided a second proof of service document showing that they served the Tenants with their evidence by posting it to the doors of the rental units on October 4, 2022. Pursuant to section 90 of the Act, I find the Tenants are deemed served with this package 3 days after it was posted.

The Tenants did not provide any documentary evidence.

I find the Landlord sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

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 Landlord explained that this rental building consists of 72 rental units, 1 of which is used as the "manager's unit" and is not rented out at market rent.

The Landlord further explained that this rental building was built around 1972, and many of the building components are original and are starting to break down (boiler, lighting, doors etc).

The Landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The Landlord initially applied for permission to impose an additional rent increase for capital expenditures that were incurred to pay for 4 different items, as follows:

- 1) \$140,326.95 – Replacement of heating system (boilers)
- 2) \$22,987.96 – Hallway lighting
- 3) \$22,795.08 – Door resurfacing
- 4) \$5,200.35 – Lockset replacements for individual rental unit doors

At the hearing, the Landlord withdrew item #3 above, and the Tenant took no issue with this request. The Landlord proceeded with their application based on the remaining 3 items. The Landlord submitted copies of invoices supporting these amounts. The Landlord and Tenant spoke to each of the above noted items, as follows:

1) \$140,326.95 – Replacement of heating system (boilers)

The Landlord stated that they bought this building in 2011, and at that time, they were informed that the boiler system was nearing end of life. Despite knowing that, the Landlord tried to replace a few parts, as needed to extend the life of the boiler system. However, parts were extremely difficult to find, given the boiler system was 50 years old. The Landlord provided a letter from the qualified contractor, explaining that the boiler system was at end of life, and was starting to have repair issues.

The Landlord explained that they installed 2 smaller boilers, rather than 1 large boiler, so that there is still some functionality in the event that one of the boilers has an issue. The Landlord also stated that they paid \$164,302.95 in total for the boiler replacement, but they received a Fortis BC rebate in the amount of \$23,976.00, which brought their overall cost to \$140,326.95, as noted above.

The work was completed on October 7, 2021.

The Tenant stated that he questions whether it was a necessity to replace the boiler, and he suspects the boiler could have been rebuilt and repaired for longer. The Tenant opined that it should be the Landlord who pays for such things, and they should have factored this cost in when they bought the building.

2) \$22,987.96 – Hallway lighting

The Landlord explained that this expense was incurred to replace aging and failing light fixtures in common hallways of the building. The Landlord stated that the light fixtures are more efficient, but that was not the primary reason for replacement. The Landlord stated that the primary reason was because several of the 50-year-old hallway lights were starting to blow up, and fail, which suggested that they were all near end of life. The Landlord explained that they tried to replace some of the ballasts around 10 years ago, but many of the lights are starting to fail again, which is why the all of the fixtures need to be replaced.

The Landlord also stated that these particular replacement lights were chosen because it allowed them to use existing wiring, in the same locations, which mitigated any drywall or re-wiring/relocation expenses. Photos of the lights were provided, as was an invoice. The work was completed on November 25, 2021.

The Tenant acknowledged that some of the lights were starting to fail in the hallways, but denies that it was any sort of security issue. The Tenant feels it was a cosmetic issue.

3) \$5,200.35 – Lockset replacements for individual rental unit doors

The Landlord stated that this expense was incurred to replace the door handle and lockset for main access doors into each rental unit. The Landlord explained that the existing door locks and handles were 50 years old, and were starting to become loose, and break on many different rental unit doors.

The Landlord completed this work on June 2, 2021. An invoice was provided.

The Tenant acknowledged that the new door lock sets are an improvement. The Tenant also noted that the units are safer now, and that he does not have much else to say on the matter.

Analysis

1. Statutory Framework

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. 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 successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- that the Work was an *eligible* capital expenditure, specifically that:
 - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
 - o the Work was undertaken for one of the following reasons:

- to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
- because the system or component:
 - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
 - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
- to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
- to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

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 (s. 23.1(5)(a)); or
- for which the Landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

If a Landlord discharges their evidentiary burden 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.

2. Prior Application for Additional Rent Increase

I am satisfied that the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months. This was not in dispute.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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;
[...]
"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.

The Landlord explained that there are 72 separate units in the building. 71 of these units are actively rented out as rental units, and 1 of these is used as a manager's unit. I accept that one of these units is not actively rented out at market rent. However, I am satisfied that all 72 of the separate units in the building are both dwelling units, and specified dwelling units, given they are all located in the same building, where all of the renovations were completed.

4. Amount of Capital Expenditure

The Landlord initially applied for the following 4 items:

- 1) \$140,326.95 – Replacement of heating system (boilers)
- 2) \$22,987.96 – Hallway lighting
- 3) \$22,795.08 – Door resurfacing
- 4) \$5,200.35 – Lockset replacements for individual rental unit doors

However, during the hearing, the Landlord requested to amend his application to removed item #3 above. As such, I have amended the Landlord's application accordingly, and will only consider the remaining 3 items (item 1,2,4 above). These remaining 3 items total \$168,515.26.

5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order for the Work to be considered an eligible capital expenditure, the Landlord must prove the following:

- 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
 - 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.

I will address each of these in turn.

a. Type of Capital Expenditure

Section 21.1 of the Regulation defines “major system” and “major component”:

"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;

"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;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

I will address each of the items in the same order they were laid out above:

1) \$140,326.95 – Replacement of heating system (boilers)

I am satisfied the boiler work completed is a considered a repair to a “major component”, of a “major system” as it is part of the core heating system, as laid out in the Guidelines above. This services the whole building.

2) \$22,987.96 – Hallway lighting

I am satisfied that the work completed on the hallway lighting was to replace a “major component” of a “major system”. The lights covered the entirety of the common hallways, and is an integral part of the electrical/lighting system for the building.

3) \$5,200.35 – Lockset replacements for individual rental unit doors

I note this work was completed to replace the door locks and levers on all rental unit entry doors. I am satisfied this work counts as work on a “major component” of a “major system” in the building.

Overall, I find all 3 items were undertaken to replace “major components” of a “major system” of the residential property.

b. Reason for Capital Expenditure

I am satisfied that the work was completed on all 3 items to replace aging building components. I am satisfied that all 3 items were approximately 50 years old, and were close to the end of their useful life expectancy. I am also satisfied that some of related components had already started malfunctioning and failing.

c. Timing of Capital Expenditure

I note the Landlord made the application on February 17, 2022, and I am satisfied that all work was completed and paid within the 18-month period preceding this application. Work for the boiler was completed and invoiced on or around December 8, 2021, work for the lighting was completed and invoiced on or around January 10, 2022, and work on the door locks was completed and invoiced on or around February 6, 2021.

All of these dates are within 18 months of the Landlord making this application.

d. Life expectancy of the Capital Expenditure

Policy Guidelines #40 sets out the useful life expectancy for typical building components. I note that the guideline indicates that heating systems are expected to last around 15 years, light fixtures are expected to last 15 years, and locks sets are 20 years.

I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the Landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to 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.

The Tenant spoke to each of the 3 items the Landlord applied for, and although he does not feel the Tenants, generally, ought to be responsible for paying for the work, I find he did not present any evidence to demonstrate that the capital expenditures were incurred due to inadequate repairs or maintenance, or that the Landlord was entitled to be paid from another source.

Outcome

I find the Landlord is successful. He has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure. 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, I have found that there are 72 specified dwelling units and that the amount of the eligible capital expenditure is \$168,515.26, for the 3 items sought.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$19.50 ($\$168,515.26 \div 72 \text{ units} \div 120$). 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.

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 made be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$168,515.26. 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: November 9, 2022

Residential Tenancy Branch