Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LE GERS PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ARI-C**

Introduction

The Landlord seeks a rent increase pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act,* SBC 2002, c. 78 (the "Act") and section 23.1 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003.

The Landlord filed the application for an additional rent increase for capital expenditures on February 16, 2022 and a preliminary hearing was held on June 27, 2022.

The preliminary hearing was attended by the Landlord's Agent and eight Tenants. Tenant D.V. stated that she currently represents 16 Tenants, some of whom attended the preliminary hearing. The parties agreed that the rental property is a five-storey apartment building consisting of 73 units. The Application brought forward by the Landlord lists only 72 units, as the remaining unit is vacant.

During the preliminary hearing, the parties agreed to proceed via written submission only. The parties were provided a deadline for initial submissions by both parties will be **September 30, 2022.** The landlord and tenants will then have until **October 31, 2022** to review the evidence served upon them and to reply with any rebuttal evidence.

Each party provided confirmation of service of their respective documentary evidence packages. D.V. confirmed receipt of the following on May 31, 2022;

Statement from West Coast Elevator Services to Sand Dollar Manor, April 30, 2021, $6,380.00
Statement from West Coast Elevator Services to Sand Dollar Manor, June 30, 2021, $60,291.00
Elevating Devices Certificate of Inspection from Technical Safety BC, April 26, 2021

Email from B.S., West Coast Elevator, to Francois Denux, April 27, 2021

Invoice from Friske Electric to Sand Dollar Manor, April 26, 2021, $6,427.05

I note that D.V. submits that "it was only after the tenants served him their own document on October 24 titled **FINAL COMMUNICATION from the Organized Tenants** that he (the Landlord) served a document on October 25 titled **Landlord's Final Submission**. It is clear that the landlord's document is an initial submission and not a rebuttal submission given the fact that it is the first submission from the landlord and the fact that he did not use this submission to rebut in any way the tenants' initial submission."

In this case, I accept that the Landlord's evidence titled Landlord's Final Submission was their last submission of documentary evidence to the Tenants. As such, I can accept that it is their response to what had been previously served to the Landlord by the Tenants. I am satisfied that the Tenants received the Landlord's documentary evidence before the October 31, 2022 submission deadline. I can accept this evidence and find that the parties have been sufficiently served with each other's written submission pursuant to Section 71 of the *Act*.

Preliminary Matters

D.V. submits several corrections, including a change of name relating to the Tenant in unit 507, as well as to remove the Tenant who had belonged to unit 401. Lastly, D.V updated their list of Tenants that they are representing to include 20 units. These corrections have been permitted and this decision reflects the changes.

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.

During the preconference hearing, the parties agreed that there is one residential apartment building, comprised of 73 rental units.

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 provided an elevator evaluation document which outlined the following; "*The elevator located at Sand Dollar Manor, was manufactured and installed by Dover Elevator in approx. 1973. The power unit was upgraded in approx. 2010 by TKE. The remaining major components of the elevator have surpassed the generally recognized life cycle of 25-30 years. Consideration should be given to any potential upgrades that would improve reliability, safety, aesthetics and to meet the expectations of current elevator technology. It may be possible to continue maintaining the elevator for years to come, however it is prudent to begin to budget for future upgrades. As your elevator ages, the vintage components will wear and may eventually become obsolete. Performance and reliability will be affected and service interruptions will result. By planning and budgeting in advance, you will be able to ensure the efficient operation of the elevator and limit surprise expenditures and lengthy down times*."

The Landlord testified and submitted evidence in support of imposing an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's elevator. The Landlord submits the following; electrical work by Friske Electric, requested by West Coast Elevator Services Ltd. April 27, 2021 $6,427.05, replacement of mechanical components by West Coast Elevator Services Ltd. May 3, 2021 $6,380 and July 6 2021 $60,291.00 = $73,098.05 (collectively, the "**Work**").

Description	Date#	Amount
Elevator Electrical Work	April 27, 2021	$6,427.05
Replacement of Mechanical Components	May 3, 2021	$6,380.00
Replacement of Mechanical Components	July 6, 2021	$60,291.00
	Total	**73,098.05**

The landlord submitted copies of invoices supporting these amounts. The Landlord submits that the work was required because the components were: - at the end of their useful life (1973 install date – 49 years old elevator) - were failing (elevator was not operating properly) - threatening the security of the property (tenants could have become trapped inside) The expense was incurred from April 2021 to July 2021.

D.V. provided a substantial amount of written submissions and documentary evidence opposing the work and subsequent application for an additional rent increase made by the Landlord, which has been summarized below;

The Tenants believe that a portion of the Landlord's capital expenditures are not eligible for an ARI due to the availability of a tax treatment that would offset a portion of them. The Tenants requested 2021 tax information from the Landlord.

The Tenants argue that a claim for the Capital Cost Allowance would have served the landlord in three ways –

- to improve the landlord's profit margin and bottom line
- to reduce the declared value of capital assets in order to reflect their depreciation, and
- to reduce the landlord's revenue, taxable income, and tax liability – that is, to reduce the amount of income tax he would have to pay or to increase the amount of income tax that would be refunded to him.

The Tenants' argue that the relationship between a landlord's capital expenditures and the tax department's Capital Cost Allowance is existential: without capital expenditures, there would be no Capital Cost Allowance. The ultimate intent of the Capital Cost Allowance is to offset capital expenditures through reduced tax liability. The Tenants argue that the Residential Tenancy Branch must recognize the Capital Cost Allowance as one more way (in addition to grants, subsidies, rebates, etc.) of offsetting capital expenditures.

The Tenants argue that it's impossible to know what the "elevator modernization" in the building involved. The Tenant submit that the two financial statements from West Coast Elevator provide no details at all about materials, labour or intention. The Certificate of Inspection from Technical Safety BC indicates only that a stop switch should have been added or relocated, but it also indicates that this work was not completed.

The Tenants argue that because the Landlord has not shown that the elevator meets code, he has not shown that his capital expenditures were incurred for a job that was

completed.

The Tenants submit that the Certificate of Inspection from Technical Safety BC tells them something about what kind of work was *not* done. The Tenants submit that the power unit, cylinder and overspeed valve were previously completed under a different major alteration. The Tenants argue that the Landlord has also provided no evidence of the age of the mechanical components that were replaced.

The Tenants argue that the landlord has not provided any sworn or affirmed statements or documentary evidence that the elevator was not operating properly and was failing. Importantly, the landlord has not shown that an elevator modernization would have been needed if improper operations or impending failure did exist.

The Tenant dispute one of the Landlord's reasonings that the work was needed because the components were "threatening the security of the property (tenants could have become trapped inside)." The lead tenant argues that were tenants to ever become trapped in an elevator, it's their own security that would be compromised, not the security of the property.
The lead tenant argues that the elevator modernization does not relate in any way to the security of the residential property.

The lead tenant concludes that the landlord's statements that the work was needed because the replaced components were at the end of their useful life, were failing, and were threatening the security of the property are insufficient to satisfy the evidentiary burden he bears of establishing that the capital expenditures meet requirements to be eligible for an additional rent increase.

The Tenants submit that according to the industry standards code ASME, to expert (P.W.), to Technical Safety BC, and to the Safety Code for Elevators and Escalators, full compliance with the current code is not needed, legally or operationally, to make an elevator system work safely or work well**.** If the landlord *were* to establish that the elevator in our building had needed a repair or replacement – for example, a replaced hoist motor – in order to improve operations or address impending operational failure, this would not mean he was required to bring the elevator system into full compliance with current code to get there.

The Tenants argue that elevator modernization and full code compliance is not envisioned at the point where the Residential Tenancy Regulation says that capital

expenditures are eligible for an additional rent increase when incurred to maintain the residential property in a state of repair that complies with the health, safety and housing standards required by law. Elevator modernization and full code compliance is not demanded by any health, safety and housing standards or by any law that enforces such standards. The Tenants submit that elevator modernization may be a scam.

Analysis

1. Statutory Framework

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 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

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

3. Number of Specified Dwelling Units

Section 23.1(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;
> […]
> "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 parties agreed that there are 73 dwelling units at the rental property.

4. Amount of Capital Expenditure

I accept that the Landlord has incurred a Capital Expenditure in the amount of $73,098.05 for work conducted on the elevator at the rental property.

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
    - 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.

I will address each of these in turn.

a. Type of Capital Expenditure

The Landlord has incurred a Capital Expenditure relating to the repair of the elevator at the rental property. According to the Regulations, a “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;

I find that the elevator is a major mechanical system that provides an integral service to the Tenants of the residential property.

b. Reason for Capital Expenditure

According to the Residential Policy Guideline 40, Elevators have a useful life expectancy of 20 years.

The Landlord has incurred a Capital Expenditure with respect to repairing the elevator as it had been failing, was installed in 1973 (49 years old) and has surpassed its useful life. While the Tenants argued that some parts had been replaced, I'm satisfied that based on the assessment provided by the Landlord, that many components had exceeded their useful life.

c. Timing of Capital Expenditure

I accept the Landlord's evidence that the first payment for the work was incurred on April 27, 2021 and the final payment was incurred on July 6, 2021. Both of these dates are within 18 months of the landlord making this application on February 16, 2022.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components replaced is 20 years. I find that the work done to the elevator was necessary given the elevator has more than doubled its 20 year life expectancy. There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40. For this reason, 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.

6. Tenants' Rebuttals

The Tenants believe that a portion of the Landlord's capital expenditures are not eligible for an ARI due to the availability of a tax treatment that would offset a portion of them. The Tenants requested 2021 tax information from the Landlord.

In this case the Tenants rely on the section of Policy Guideline 37 that discusses a Landlord receiving payment from "another source." This section expands on the definition of "another source" provided in s. 21.1 (1) of the Regulation: "'another source' includes a grant scheme or similar scheme, an insurance plan and a settlement of a

claim." My reading is that the definition limits "another source" to a grant scheme, an insurance claim, or the settlement of a claim. I find that the Tenant's rebuttal regarding the Landlord's tax treatment does not constitute a payment from another source. As such, eligibility for the CCA program would not meet the ineligibility criteria under s.23.1(5)(b).

The Tenants argue that it's impossible to know what the "elevator modernization" in the building involved. The two financial statements from West Coast Elevator provide no details at all about materials, labour or intention. The Tenants argue that because the Landlord has not shown that the elevator meets code, he has not shown that his capital expenditures were incurred for a job that was completed.

The Tenants argue that the landlord has not provided any sworn or affirmed statements or documentary evidence that the elevator was not operating properly and was failing. The Tenant submit that the Landlord has not shown that an elevator modernization would have been needed if improper operations or impending failure did exist.

I find that the Landlord has provided a detailed Elevator Evaluation document outlining the suggested repairs, and also a Proposal for Modernization/Upgrade of the Elevator System at the rental property from the same company that conducted the work. I am satisfied based on the description of the proposal, the quote for the work being completed, and the invoices which lists modernization of the elevator on them as sufficient evidence to demonstrate that the Landlord had the elevator modernized as it had been suggested to ensure proper functionality.

The Tenants argue the Landlord's reasoning that the work was needed because the components were "threatening the security of the property (tenants could have become trapped inside)." The lead tenant argues that were tenants to ever become trapped in an elevator, it's their own security that would be compromised, not the security of the property. The lead tenant argues that the elevator modernization does not relate in any way to the security of the residential property.

I find that the Landlord was demonstrating a concern for the Tenants' safety relating to the possibility of being trapped inside a failing elevator. I accept that the Landlord has taken steps to mitigate this potential and to take action on the suggestions made to them in the Elevator Evaluation document. I find that the Landlord was adhering to their responsibility under Section 32 of the Act to repair and maintain the rental property.

The Tenants submit that according to the industry standards code ASME, to expert (P.W.), to Technical Safety BC, and to the Safety Code for Elevators and Escalators, full compliance with the current code is not needed, legally or operationally, to make an elevator system work safely or work well**.** The Tenants submit that if the landlord *were* to establish that the elevator in the building had needed a repair or replacement – for example, a replaced hoist motor – in order to improve operations or address impending operational failure, this would not mean that they were required to bring the elevator system into full compliance with current code to get there.

The Tenants argue that elevator modernization and full code compliance is not envisioned at the point where the Residential Tenancy Regulation says that capital expenditures are eligible for an additional rent increase when incurred to maintain the residential property in a state of repair that complies with the health, safety and housing standards required by law. The Tenants submit that elevator modernization and full code compliance is not demanded by any health, safety and housing standards or by any law that enforces such standards. The Tenants submit that elevator modernization may be a scam.

I find that whether or not the Landlord should have completed the full modernization of the elevator does not form basis to dispute the application. I am satisfied that the elevator had significantly surpassed its useful life. I am satisfied that the Landlord had acted on the recommendations to complete the work, and I find that the Landlord has had the recommended work completed on a major system, which constitutes a Capital Expenditure.

7. Outcome

The Landlord has been successful. They have proven, 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 Regulate sets out the formula to be applied when calculating the amount of the addition 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 73 specified dwelling unit and that the amount of the eligible capital expenditure is $73,098.05.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of $8.34 ($73,098.05 ÷ 73 units ÷ 120).

The parties may refer to RTB 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 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 $8.34. 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: December 22, 2022

Residential Tenancy Branch