



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITADEL APARTMENTS 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* (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's agents and their counsel attended. The tenant JH appeared.

Counsel for the landlord submits that they complied with the interim decision and served the tenant's listed in the application with the prehearing interim decision and notice of dispute resolution hearing between July 16 and 18, 2022, either by personal service or by posting to the door. Filed in evidence is a proof documents showing the tenants have been served. I find the tenants have been duly served in accordance with the interim decision.

Preliminary issue

Counsel for the landlord stated that the following ten rental units subject this application have vacated and are no longer parties to this application, unit 101, 104, 107, 201, 2016, 306, 307, 307, 310 and 312. Counsel submits that these rental units are still calculated as part of the rent increase.

Issue 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 landlord not all details of their submissions are reproduced here. The relevant and important evidence related to this application before me have been reviewed, and my findings are set out below in the analysis portion of this Decision..

The residential property was built in 1972 and consists of 42 dwelling units.

The landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property. Counsel submits that they are withdrawing item 2, as the expenditure was not made with 18 months of the landlord making their application. In addition, counsel confirmed that item 7 was claimed in error and should be removed, and that item 4 should be reduced by \$1,575.00 as they have determined that one particular invoice is for general maintenance.

The capital expenditure (the “Work”) incurred as follows: I have reduced the amount in item 4 to reflect the above change.

| Item | Description | Amount |
|------|---|---|
| 1 | Elevator modernization project | \$174,500.68 |
| 3 | Replacement of broken door operators for garage doors, reached end of useful life | \$7,415.65 |
| 4 | Replace mechanical systems for boilers and sump pumps which had reached end of useful life | \$11,109.49 -\$1,575.00 \$9,534.49 |
| 5 | Install new security cameras for security purposes | \$19,414.08 |
| 6 | Install weatherstripping for heat retention and sound attenuation in suites, install window screens | \$27,667.50 |
| 8 | Replace rotted wood posts on balconies to address safety concerns | \$2,520.00 |
| | | Revised Total \$241,052.40 |

In support of the landlord’s application, they have provided copies of invoices and other supporting documents.

Counsel for the landlord submits that the capital expenditures were incurred within 18 months preceding the additional rent increase application, and each expenditure relates to a project with an anticipated useful life of between 5 and 20 years.

Counsel for the landlord submits that the landlord took over ownership and operation of the building and made a number of capital expenditures to comply with its duty to provide and maintain the buildings in a state of decoration and repair that comply with the health, safety and housing standards required by law, as set out in section 32(1) of the Act. This also includes to repair and/or replace a number of major systems and/or major components of major systems in the building, or to improve the energy efficiency and/or safety and security of the building

Counsel submits the following at the hearing, and in their written submission, which I have reproduced as written.

Item 1- Elevator revitalization

| Reason for Capital Expenditure | Applicable Section of the Act/Regulations |
|--|--|
| <p>Details of Capital Expenditure: The controllers and cab fixtures in the elevator was replaced. Cylinder was also replaced. The elevator was constantly breaking down, there were continuous maintenance issues and it was difficult to find replacement parts. This was also a safety issue, as there was a possibility of residents getting trapped in a malfunctioning elevator. The upgrade significantly reduced this risk.</p> <p>The Capital Expenditure Complies with section 23.1(a) of the Regulations:</p> <ul style="list-style-type: none"> The elevator is a major system, since it is integral to providing access for tenants to their individual units, particularly those who are elderly or have mobility issues | <p>Section 23.1(a), Regulation: 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 the following:</p> <p>(a) The capital expenditures were incurred for one of the following:</p> <ol style="list-style-type: none"> The installation, repair or replacement of a major system or major component in order to maintain the residential |

| | |
|---|---|
| <ul style="list-style-type: none"> Major components of the elevator were at the end of their useful life and required replacing. This is confirmed by property condition assessment at Tab 6, Appendix II. Apex Elevator Consulting Inc. noted that the elevator was reviewed on March 22, 2017 and was over 45 years old at that time. It was recommended that the elevator be modernized over the next 3-5 years from the date of the report (or by March 2022) (page 50 of 67) The elevator modernization increased the safety and security of residents, as there was a chance the elevator could malfunction and trap residents The Landlord sought bids from multiple companies in order to ensure it was not overpaying for the elevator modernization project (see bid analysis at Tab 7) This work was done to replace major systems or major components in order to maintain the Buildings in compliance with s. 32(1) of the Act, to replace major systems or major components that are at the end of their useful life, and to improve the safety and security of the building <p>Evidence Supporting Capital Expenditure:</p> <ul style="list-style-type: none"> Draft Baseline Property Condition Assessment with Specialist Review of Elevator System prepared by Pinchin [Tab 6] Bid Analysis by Solucore for contractor bids to complete elevator modernization project [Tab 7] Ainsworth quote re elevator modernization project [Tab 8] | <p>property, of which the major system is 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);</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> A. a reduction in energy use or greenhouse gas emissions; B. an improvement |
|---|---|

| <ul style="list-style-type: none"> • Purchase order from Ainsworth re elevator modernization project [Tab 9] • Letter from Solucore re removing and replacing the hydraulic cylinder [Tab 10] | <p>in the security of the residential property.</p> |
|---|---|
| Incurred in 18-month period proceeding date on which the Landlord made the Application (September 23, 2020 to March 23, 2022) | Applicable Section of the Act/Regulations |
| <p>Dates Capital Expenditures Occurred: As set out in Tab 2, all capital expenditures were made in the 18-Month Period (from March 1, 2021 to November 15, 2021), with the exception of the one expenditure, noted above, that was made on November 1, 2019.</p> <p>The Landlord submits that because the work to modernize the elevator was part of a single, larger project to replace a major system (the elevator), and the last payment for this work was incurred after September 23, 2020 (on November 15, 2021), all capital expenditures made in relation to the elevator modernization as part of this same project should be considered as having been incurred during the 18 Month Period.</p> <p>The Landlord takes this position because the reality of construction projects, particularly ones involving extensive changes to major systems, inevitably occur over a period of time, with payments made at various stages. It would not make sense to require a Landlord to bring two separate applications for an additional rent increase relating to a single project, simply because the project can be broken down into various payments, some of which were made before the 18 Month Period.</p> | <p>Section 23.1(b), Regulation: 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 the following:</p> <p>(b) the capital expenditures were incurred in the 18-Month period preceding the date on which the landlord makes the application;</p> |

| Not expected to recur for at least 5 years | Applicable Section of the Act/Regulations |
|---|---|
| <p>Estimated Useful Life of Capital Expenditure: 20 years</p> <p>Basis for Estimate (RTPG 40 and Institutional Knowledge of Landlord):</p> <ul style="list-style-type: none"> • RTPG 40 sets out an elevators estimated useful life as being 20 years • The Landlord does not know when the elevator was last updated or replaced | <p>Section 23.1(c), Regulation: 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 the following:</p> <p>(c) the capital expenditures are not expected to be incurred again for at least 5 years</p> |

The tenant responded that they only have a couple of concerns relating to the elevator. The tenant stated that the invoice dated November 1, 2019, should not be permitted as it is outside the 18-month period. The tenant stated that they wonder what the purpose of the change order was as this was almost a \$68,000 increase, which did not apply to the other two buildings owned by the landlord.

The landlord responded by stating that during the repair, they were informed that the cylinder was not up to Code as it was only a single wall cylinder, and this was unknown to them and they were required to replace it with a double wall cylinder as per Code. The landlord stated that the other two buildings cylinders were double walled and that is why they did not incur this cost.

Item 3 - garage door motor replacement

| Reason for Capital Expenditure | Applicable Section of the Act/Regulations |
|---|---|
| <p>Details of Capital Expenditure: The door operators for the garage door were replaced. The old door operators were at the end of their useful life and had stopped working.</p> <p>The Capital Expenditure Complies with section 23.1(a) of the Regulations:</p> <ul style="list-style-type: none"> • The garage door operators are a major component of a major system (the parking garage) and needed to be replaced as they were no longer working • This increases the safety of the building, since it is a safety issue if the garage doors don't close behind residents • This work was done to replace major systems or major components in order to maintain the building in compliance with s. 32(1) of the Act, to replace major systems or major components that are at the end of their useful life, and to improve the health and safety of the residents of the building <p>Evidence Supporting Capital Expenditure: N/A</p> | <p>Section 23.1(a), Regulation: 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 the following:</p> <p>(a) The capital expenditures were incurred for one of the following:</p> <ol style="list-style-type: none"> 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 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); ii. the installation, repair or |

| | <p>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;</p> <p>iii. the installation, repair or replacement of a major system or major component that achieves one or more of the following:</p> <ul style="list-style-type: none"> A. a reduction in energy use or greenhouse gas emissions; B. an improvement in the security of the residential property. |
|--|--|
| Incurred in 18-month period proceeding date on which the Landlord made the Application (September 23, 2020 to March 23, 2022) | Applicable Section of the Act/Regulations |
| Dates Capital Expenditures Occurred: As set out in Tab 2, all capital expenditures were made in the 18-Month Period (from May 3, 2021 to July 15, 2021) | Section 23.1(b), Regulation: Subject to subsection (5), the director must grant an application under this section for that portion |

| | |
|---|---|
| | <p>of the capital expenditures in respect of which the landlord establishes the following:</p> <p>(b) the capital expenditures were incurred in the 18-Month period preceding the date on which the landlord makes the application;</p> |
| Not expected to recur for at least 5 years | Applicable Section of the Act/Regulations |
| <p>Estimated Useful Life of Capital Expenditure: 10 years</p> <p>Basis for Estimate (RTPG 40 and Institutional Knowledge of Landlord):</p> <ul style="list-style-type: none"> • RTPG 40 estimates the useful life for garage doors and garage door openers at 10 years • The Landlord does not know when the garage door operators were last replaced | <p>Section 23.1(c), Regulation: 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 the following:</p> <p>(c) the capital expenditures are not expected to be incurred again for at least 5 years</p> |

The tenant had no response to the particular issue.

Item 4 – replace water pipe to boiler, replace sump pump and replace pipe

| Reason for Capital Expenditure | Applicable Section of the Act/Regulations |
|--|--|
| <p>Details of Capital Expenditure: Various mechanical replacements were made to the boilers and sump pump as part of preventative maintenance. The mechanical systems are reviewed on a yearly basis and preventative maintenance is performed as needed.</p> <p>The Capital Expenditure Complies with section 23.1(a) of the Regulations:</p> <ul style="list-style-type: none"> • The mechanical, heating, and water systems are major systems in Citadel Apartments • The sump was cleaned out and all pumps and floats were checked, the old sump pump was removed and a hole in the bottom of the concrete sump was plugged and sealed, and a new sewage injector composite sump basin was installed. • Some preventative maintenance was also completed, including fixing a leak on the hot water main as well as various other leaks and cleaning out the catch drain basin • This work was done to replace major components of major systems in order to maintain the building in compliance with s. 32(1) of the Act and to replace major systems or major components that are at the end of their useful life <p>Evidence Supporting Capital Expenditure: N/A</p> | <p>Section 23.1(a), Regulation: 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 the following:</p> <p>(a) The capital expenditures were incurred for one of the following:</p> <ol style="list-style-type: none"> 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 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); ii. the installation, repair or replacement of a major system or |

| | <p>major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;</p> <p>iii. the installation, repair or replacement of a major system or major component that achieves one or more of the following:</p> <p>A. a reduction in energy use or greenhouse gas emissions;</p> <p>B. an improvement in the security of the residential property.</p> |
|--|--|
| Incurred in 18-month period proceeding date on which the Landlord made the Application (September 23, 2020 to March 23, 2022) | Applicable Section of the Act/Regulations |
| Dates Capital Expenditures Occurred: As set out in Tab 2, all capital expenditures were made in the 18-Month Period (from May 3, 2021 to December 15, 2021) | Section 23.1(b), Regulation: Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in |

| | |
|---|---|
| | <p>respect of which the landlord establishes the following:</p> <p>(b) the capital expenditures were incurred in the 18-Month period preceding the date on which the landlord makes the application;</p> |
| Not expected to recur for at least 5 years | Applicable Section of the Act/Regulations |
| <p>Estimated Useful Life of Capital Expenditure: 5 years</p> <p>Basis for Estimate (RTPG 40 and Institutional Knowledge of Landlord):</p> <ul style="list-style-type: none"> • RTPG 40 does not include an estimated useful life for the specific components that were repaired, but all sanitary, water, electrical, and heating systems have an estimated useful life of 10-25 years. • The Landlord does not know when individual components were last replaced, but the Landlord does preventative maintenance annually, and anticipates that individual replacement components and specific types of preventative maintenance shouldn't occur more than once every 5 years | <p>Section 23.1(c), Regulation: 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 the following:</p> <p>(c) the capital expenditures are not expected to be incurred again for at least 5 years</p> |

The tenant sought clarification on whether the pipe was repaired or replaced and what was the reasoning for that. The tenant also was concern with the general invoice in the amount of \$1,575.00 for maintenance to the sump pump; however, that is no longer an issue as it had been withdrawn by the landlord.

The landlord responded that the pipe to the boiler was deteriorating due to age and was leaking and could not been repaired and a section of the pipe had to be removed and replaced.

The landlord responded that the pipe on both sides of the sump pumps had to be replace due to their age.

Item 5 - New security system installation and fobs

| Reason for Capital Expenditure | Applicable Section of the Act/Regulations |
|---|--|
| <p>Details of Capital Expenditure: Installation of security system, including new cameras and fobs. There was no security system in place prior to the installation of this security system. This was done to improve the safety and security of building residents.</p> <p>The Capital Expenditure Complies with section 23.1(a) of the Regulations:</p> <ul style="list-style-type: none"> • A security system was installed, including new cameras and fobs for access • This work was done to improve the safety of building residents, as there was very little security at the building prior to the installation of the security system <p>Evidence Supporting Capital Expenditure: N/A</p> | <p>Section 23.1(a), Regulation: 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 the following:</p> <p>(a) The capital expenditures were incurred for one of the following:</p> <ol style="list-style-type: none"> 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 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); |

| | |
|---|--|
| | <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> A. a reduction in energy use or greenhouse gas emissions; B. an improvement in the security of the residential property. |
| <p>Incurred in 18-month period proceeding date on which the Landlord made the Application (September 23, 2020 to March 23, 2022)</p> | <p>Applicable Section of the Act/Regulations</p> |
| | <p>Section 23.1(b), Regulation: Subject to subsection (5), the</p> |

| | |
|---|---|
| <p>Dates Capital Expenditures Occurred: As set out in Tab 2, all capital expenditures were made in the 18-Month Period (on September 1, 2021)</p> | <p>director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes the following:</p> <p>(b) the capital expenditures were incurred in the 18-Month period preceding the date on which the landlord makes the application;</p> |
| <p>Not expected to recur for at least 5 years</p> | <p>Applicable Section of the Act/Regulations</p> |
| <p>Estimated Useful Life of Capital Expenditure: 5 years</p> <p>Basis for Estimate (RTPG 40 and Institutional Knowledge of Landlord):</p> <ul style="list-style-type: none"> • RTPG 40 does not include an estimated useful life for CCTV cameras, fobs, or other security equipment. • The security system is new, but the Landlord anticipates it should not require replacement for at least 5 years | <p>Section 23.1(c), Regulation: 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 the following:</p> <p>(c) the capital expenditures are not expected to be incurred again for at least 5 years</p> |

The tenant submits they do not have any issues with the expenditure, and they are appreciative of the security improvements to the building.

Item 6 – New weatherstripping to exterior windows

| Reason for Capital Expenditure | Applicable Section of the Act/Regulations |
|---|--|
| <p>Details of Capital Expenditure: New weatherstripping was installed on windows in all units. Weatherstripping improves heat retention in the individual units and keeps them cooler in the summer to improve energy and power efficiency in each unit and also helps with sound attenuation.</p> <p>The Capital Expenditure Complies with section 23.1(a) of the Regulations:</p> <ul style="list-style-type: none"> • New weatherstripping was installed on all windows in all units of the building • This work was done to replace major systems or major components (windows) in order to maintain the building in compliance with s. 32(1) of the Act and to replace major systems or major components that are at the end of their useful life, as well as to increase energy efficiency in the building <p>Evidence Supporting Capital Expenditure: N/A</p> | <p>Section 23.1(a), Regulation: 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 the following:</p> <p>(a) The capital expenditures were incurred for one of the following:</p> <ol style="list-style-type: none"> 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 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); ii. the installation, repair or replacement of a major system or |

| | <p>major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;</p> <p>iii. the installation, repair or replacement of a major system or major component that achieves one or more of the following:</p> <p>A. a reduction in energy use or greenhouse gas emissions;</p> <p>B. an improvement in the security of the residential property.</p> |
|---|--|
| Incurred in 18-month period proceeding date on which the Landlord made the Application (September 23, 2020 to March 23, 2022) | Applicable Section of the Act/Regulations |
| Dates Capital Expenditures Occurred: As set out in Tab 2, all capital expenditures were made in the 18-Month Period (on December 15, 2021) | Section 23.1(b), Regulation: Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in |

| | |
|--|--|
| | <p>respect of which the landlord establishes the following:</p> <p>(b) the capital expenditures were incurred in the 18-Month period preceding the date on which the landlord makes the application;</p> |
| Not expected to recur for at least 5 years | Applicable Section of the Act/Regulations |
| <p>Estimated Useful Life of Capital Expenditure: 20 years</p> <p>Basis for Estimate (RTPG 40 and Institutional Knowledge of Landlord):</p> <ul style="list-style-type: none"> • RTPG 40 does not include an estimated useful life for weatherstripping, but window components have an estimated useful life of between 15-20 years. • The Landlord understands that weatherstripping was last replaced when the building was constructed (1972), so the Landlord anticipates that the weatherstripping should last at least 20 years | <p>Section 23.1©, Regulation:</p> <p>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 the following:</p> <p>(c) the capital expenditures are not expected to be incurred again for at least 5 years</p> |

The tenant submits that the windows were not replaced, it was just the replacement of weatherstripping. The tenant stated they have not noticed any reduction in their energy consumption. At the hearing, the tenant realized that they do not pay to heat the rental unit and they would not notice a reduction in their energy consumption as their consumption would remain the same.

Item 8 – Wood posts of balcony replacement

| Reason for Capital Expenditure | Applicable Section of the Act/Regulations |
|---|--|
| <p>Details of Capital Expenditure: The wood posts on the balcony were replaced. The original wood posts were rotten and were causing a safety hazard.</p> <p>The Capital Expenditure Complies with section 23.1(a) of the Regulations:</p> <ul style="list-style-type: none"> • The wood posts on the balconies in all units of the building were replaced as the original wood posts were rotten and were causing a potential safety hazard for residents. • This work was done to replace major systems or major components in order to maintain the building in compliance with s. 32(1) of the Act and to replace major systems or major components that are at the end of their useful life, as well as to improve safety for residents <p>Evidence Supporting Capital Expenditure: N/A</p> | <p>Section 23.1(a), Regulation: 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 the following:</p> <p>(a) The capital expenditures were incurred for one of the following:</p> <ol style="list-style-type: none"> 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 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); ii. the installation, repair or replacement of a major system or |

| | |
|--|--|
| | <p>major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;</p> <p>iii. the installation, repair or replacement of a major system or major component that achieves one or more of the following:</p> <p>A. a reduction in energy use or greenhouse gas emissions;</p> <p>B. an improvement in the security of the residential property.</p> |
| Incurred in 18-month period proceeding date on which the Landlord made the Application (September 23, 2020 to March 23, 2022) | Applicable Section of the Act/Regulations |
| Dates Capital Expenditures Occurred: As set out in Tab 2, all capital expenditures were made in the 18-Month Period (on February 1, 2022) | Section 23.1(b), Regulation: Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in |

| | |
|--|--|
| | <p>respect of which the landlord establishes the following:</p> <p>(b) the capital expenditures were incurred in the 18-Month period preceding the date on which the landlord makes the application;</p> |
| Not expected to recur for at least 5 years | Applicable Section of the Act/Regulations |
| <p>Estimated Useful Life of Capital Expenditure: 10 years</p> <p>Basis for Estimate (RTPG 40 and Institutional Knowledge of Landlord):</p> <ul style="list-style-type: none"> • RTPG 40 estimates the useful life for wood balcony railings to be 10 years • The Landlord understands that the balcony posts were last replaced when the building was constructed (1972), so the Landlord anticipates that the balcony posts should last at least 10 years as set out in RTPG 40 | <p>Section 23.1(c), Regulation:</p> <p>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 the following:</p> <p>(c) the capital expenditures are not expected to be incurred again for at least 5 years</p> |

The tenant submits that if the post were rotten and a safety hazard, why were only six posts replaced as the building was constructed in 1972. The tenant questioned whether there was a full inspection completed to see if all the posts should have been replaced and why were these six posts not replaced earlier if their useful lifespan is 10 years.

The landlord responded by stating that they determined it was not necessary to have a full report completed as they did a visual inspection of the posts. The landlord stated that if any of the tenants have concerns with their posts on their balcony they can bring that to their attention.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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.

In this matter, there have been no prior application for an additional rent increase within the last 18 months before the application was filed. There are 42 specified dwelling units to be used for calculation of the additional rent increase. The landlord is claiming the total amount of **\$241,052.40** as outlined in the above table for capital expenditures.

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.

Item 1 – elevator revitalization

The elevator went through a significant revitalization because the system or components were past their useful lifespan as the elevator was approximately 45 years old. The landlord has provided receipts. The first receipt is dated August 28, 2019, and was paid on November 1, 2019, which was for the redesign and for tendering the

project. The remaining receipts are between March 1, 2021, to November 15, 2021, when the revitalization was completed.

I find that the “major components” replaced during the work were well past the end of their useful life. This is sufficient to satisfy the requirement of the Regulation that the work be undertaken because the component is “close” to the end of its useful life, and it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

However, I find I must exclude from the landlord the cost of the resign and for tendering the project because the cost of \$4,410.00 was incurred in 2019. While I accept that this was part of the process to make the repairs; however, the Regulations does not allow me to consider expenditures that were incurred outside of the 18 months prior prior to the application before me. As the total expenditure was \$174,500.68, less the invoice of \$4,410.00, I find the landlord is entitled tor recover the amount of **\$170,090.68**.

Item 3 – garage door motor replacement

The garage door motors were replaced as the motors were burnt out from use and nearing the end of their useful life. The capital expenditure was incurred between May 3, 201 and July 15, 2021.

I find that this is a major component to a major system as this gives tenants secured access to the parking area. The landlord provided the receipt for the replacement of the garage door motors, which the capital expenditure for the repair was incurred less than 18 months prior to making the application and it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

I find that the “major components” replaced during the work were close to the end of there useful life. This is sufficient to satisfy the requirement of the Regulation that the work be undertaken because the component is “close” to the end of its useful life and malfunctioning. I find the landlord is entitled tor recover the amount of **\$7,415.65**

Item 4 - boiler and sump pumps replacement repair

I accept the evidence that the waterline for the boiler was leaking, and a section of the pipe had to be removed and replaced, as a result of age. The sump pump which

removes water was no longer functional and had to be replaced along with the aging pipes. The capital expenditure incurred between May 3, 2021, and December 15, 2021

I find this is a major component to a major system as it provided heating and hot water to the tenants and ensure the building is kept dry. The landlord provided the receipts for the repairs, which the capital expenditure for the repair was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years

I find that the “major components” replaced during the work were past the end of their useful life. This is sufficient to satisfy the requirement of the Regulation that the work be undertaken because the component is “close” to the end of its useful life and falling. Therefore, I find the landlord is entitled to recover the cost of **\$9,534.49**

Item 5 installation security cameras, and new fobs

The security cameras were installed to the parking area and including doors that give access to the building. A new fob system was installed giving greater access , safety and security to the tenants. The capital expenditure incurred on September 1, 2021.

I find this is a major component of the building for security and safety of the residence. The landlord provided the receipts for the capital expenditure for the security cameras and fobs which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

I find that “major components” were installed to enhance security of the building. I find this is sufficient to satisfy the requirement of the Regulation that the work be undertaken to improve the security of the residential property. Therefore, I find the landlord is entitled to recover the amount of **\$19,414.08**.

Item 6 install weatherstripping

The weatherstripping on the exterior windows of the building were all replaced to achieve an energy reduction to the landlord as they pay to heat the building, which is included in the monthly rent. The capital expenditure incurred on December 15, 2021.

I find this is a major component of the building as they are part of the structure. The landlord provided the receipts for the capital expenditure for the weatherstripping which was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

I find that the “major components” replaced during the work were to achieve a reduction in energy use or greenhouse gas emissions. This is sufficient to satisfy the requirement of the Regulation that the work be undertaken because the component is to achieve a reduction in energy use or greenhouse gas emissions;. Therefore, I find the landlord is entitled to recover the amount of **\$27,667.50**.

Item 8 replace rotten wood posts on balconies

The replacement of some balcony wood post were necessary as they were rotting due to age and resulted in a safety hazard.

I find this is a major component to the structure of the building. The landlord provided the receipts for the capital expenditure to replace the wood post which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

I find that that the “major components” replaced during the work were well past the end of their useful life. This is sufficient to satisfy the requirement of the Regulation that the work be undertaken to comply with health, safety, and housing standards. Therefore, I find the landlord is entitled to recover the amount of **\$2,520.00**.

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 tenants did not provide any evidence to support either of these two arguments noted above. I note that the Regulation does not recognize the basis that the Work ought to have been done earlier as a reason for the landlord being unable to impose an additional rent increase. As such, I find that the tenants have failed to establish either of the two arguments on which they could defeat this application.

Outcome

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 42 specified dwelling unit and that the amount of the eligible capital expenditures total the amount of **\$236,642.40**.

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$46.95 ($\$236,642.40 \div 42 \div 120$)**.

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 **\$236,642.40**. The landlord must impose this increase in accordance with the Act and the Regulation.

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 06, 2022

Residential Tenancy Branch