



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing was conducted by way of written submissions in response to an Application for Dispute Resolution filed by the Landlord April 22, 2022 (the "Application"). The Landlord states that they have eligible capital expenditures and are seeking an additional rent increase.

This matter came before me for an oral preliminary hearing September 06, 2022, and an Interim Decision was issued September 07, 2022. The Interim Decision should be read with this decision.

The Landlord was ordered to provide proof of service of the hearing package and their evidence in the Interim Decision. The Landlord provided documentary evidence of the packages being sent to the Tenants by registered mail May 13, 2022. The documentary evidence shows 39 packages sent. There are 41 units in the building. At the first hearing, the Landlord's representatives said the hearing package and evidence were served on all Tenants and therefore I accept this undisputed testimony and find the Tenants were served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). The Tenants are deemed to have received the hearing package and evidence May 18, 2022, pursuant to section 90(a) of the *Act*.

The Landlord provided written submissions and proof of service of these to the Tenants in person and by registered mail. I am satisfied the Tenants were served with the Landlord's written submissions in accordance with sections 88(a) and (c) of the *Act*.

The Tenants did not provide written submissions or evidence for this matter.

I have reviewed the Landlord's written submissions and evidence which are the basis for this Decision.

Issue to be Decided

1. Is the Landlord entitled to impose an additional rent increase due to eligible capital expenditures?

Background and Evidence

The Application sets out three capital expenditures the Landlord is applying for the additional rent increase in relation to:

1. Hallway Project (lighting upgrades, painting) \$17,426.81
2. Privacy screen planters \$10,253.26
3. Drain tie in and undermining \$5,834.33

The Landlord submits that the capital expenditures were incurred within 18 months of the Application being filed. The Landlord submits that capital expenditures are incurred on the date the last invoice for the underlying project is paid.

1. Hallway Project (lighting upgrades, painting) \$17,426.81

The Landlord states the hallway project was completed in 2021, to provide more energy efficient lighting in common areas. The Landlord states the original light fixtures on the ceiling were detaching, failing and at the end of their life.

The Landlord states the hallways and doors had to be painted after the light fixtures were changed. The Landlord acknowledges the painting was a cosmetic upgrade but submits that it is an eligible capital expenditure because it was part of the installation, repair or replacement of the light fixtures. The Landlord states the new light fixtures are smaller than the original ones and therefore did not cover the old paint which required the painting to be done.

The Landlord states this project cost \$17,426.81 and has provided a breakdown of the cost in their written submissions. The Landlord provided invoices and cheques for the work.

2. *Privacy screen planters \$10,253.26*

The Landlord states this work was completed in May of 2021. The Landlord states shrubs were planted to replace the previously existing hedge that was impacted by the drain tie in and undermining work. The Landlord states that additional planters were installed and states that:

Shrubs were planted to replace the previously existing hedge that was impacted by the repair of the large void...which was found beneath rear patios. While this repair was being carried out a number of planters were installed to improve the security of the area around the patios, to prevent public from being able to view potential targets for theft located in the patio areas and to prevent or limit access of the public to the patios, as well as privacy to the building and many of the ground floor residents at the rear of the property

The Landlord states the building backs onto a commercial lane so it was “important to ensure security is maintained from the alley side of the property – to continue to provide residents with a safe, private, and secure home.”

The Landlord states this work cost \$10,253.26. The Landlord submitted invoices and cheques for this work.

3. *Drain tie in and undermining \$5,834.33*

The Landlord states this work was completed in April of 2021 to correct deterioration of soil under some of the patios of the building. The Landlord states that, to prevent further erosion under the patios, a void had to be filled and drainage improved. Subsequently, the landscaping had to be repaired and the hedge replaced. The Landlord states the work was necessary to prevent leakage and deterioration as well as to eliminate a tripping hazard. The Landlord describes the work as follows:

The job to correct this would involve, digging at the perimeter of the patio, installing a drain body in the existing patio drain and run the piping towards the ramp. In

addition, a hole would be cored to allow the water to drain. The void would then be filled with drain rock and concrete poured to fill the core holes.

The Landlord states this work cost \$5,834.33. The Landlord submitted an invoice and cheque for this work.

Analysis

Section 43(3) of the *Act* states:

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

Sections 23.1 and 23.2 of the *Residential Tenancy Regulation* (the "*Regulation*") addresses additional rent increases for eligible capital expenditures and states:

23.1 (1) Subject to subsection (2), a landlord may apply under section 43 (3) [additional rent increase] of the Act for an additional rent increase in respect of a rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application...

(4) 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** all of the following:

(a) the capital expenditures were incurred for one of the following:

- (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 a 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) [landlord and tenant obligations to repair and maintain] of the Act

- (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:

- (A) a reduction in energy use or greenhouse gas emissions;

- (B) an improvement in the security of the residential property;

- (b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;

- (c) the capital expenditures are not expected to be incurred again for at least 5 years.

(5) The director must not grant an application under this section for that portion of capital expenditures in respect of which **a tenant establishes** that the capital expenditures were incurred

- (a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or

- (b) for which the landlord has been paid, or is entitled to be paid, from another source.

23.2 (1) If the director grants an application under section 23.1, the amount of the additional rent increase that the landlord may impose for the eligible capital expenditures is determined in accordance with this section.

(2) The director must

- (a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and

(b) divide the amount calculated under paragraph (a) by 120.

(3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43 (1) (a) of the Act in that year by 3%.

(4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

Section 23.3 of the *Regulation* addresses the implementation of additional rent increases for eligible capital expenditures.

RTB Policy Guideline 37 addresses additional rent increases for eligible capital expenditures. The most relevant portions of the guideline state:

The Residential Tenancy Regulation defines a “major system” as an electrical system, mechanical system, structural system or similar system that is integral to the residential property or to providing services to tenants and occupants. The term “major component” means a component of the residential property that is integral to the property or a significant component of a major system. The term “service or facility” is defined in the RTA. If agreed to be provided by the landlord, services include appliances and furnishings; utilities and related services; elevators; and intercom systems. Facilities such as parking, laundry, storage or common recreational areas are part of a residential property.

Major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. 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.

A major system or major component may need to be repaired, replaced or installed to comply with section 32(1)(a) of the RTA. This section requires a landlord to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by

law. Laws can include municipal bylaws and provincial and federal laws. For example, an elevator may need to be replaced to comply with required safety standards or a water-based fire protection system (like sprinklers) may need to be installed to comply with a new bylaw.

Installations, repairs or replacements of major systems or major components are also required if that system or component has failed, is malfunctioning or is inoperative. For instance, this would capture repairs to a roof that was damaged in a storm and is now leaking or the replacement of an elevator that no longer operates properly.

Additionally installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of its useful life. Policy Guideline 40: Useful Life of Building Elements establishes general timeframes for the life of various elements, including some major systems and major components. For instance, a domestic hot water tank generally has a useful life of 10 years and electrical wiring is typically expected to last for 25 years. In some instances, a landlord will need to provide sufficient evidence to establish the useful life of the major system or major component that was installed, repaired or replaced.

Generally, in order to qualify, the repairs should be substantive rather than minor. Cosmetic changes are also not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair or replacement that otherwise qualified. For instance, if the carpeting in the lobby of the residential property was at the end of its useful life, an additional rent increase can be granted for a cosmetic upgrade, such as porcelain tiles, even if this cost more than a new carpet.

The following is a non-exhaustive list of expenditures that would not be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:

- repairing a leaky faucet or pipe under a sink
- painting walls
- patching dents or holes in drywall
- fixing a broken window

An installation, repair or replacement of a major system or major component that was not required as described above will still be eligible for an additional rent increase if it:

1. reduced energy use or greenhouse gas emissions; or
2. improved the security of the residential property.

Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and any other substance prescribed in the regulations to the Climate Change Accountability Act.

Any reduction in energy use or greenhouse gas emissions established by the landlord will qualify the installation, repair or replacement for an additional rent increase.

Some examples may include:

- Replacing electric baseboard heating with a heat pump;
- Installing solar panels;
- Replacing single-pane windows with double-paned windows

If an installation, repair or replacement to a major system or major component better protects persons and property at the residential property, security of the residential property has been improved. There is no requirement for a landlord to establish additional or better security was necessary before the director must approve an additional rent increase. Some examples of installations, repairs or replacements of major systems or major components that may improve security include:

- installing CCTV cameras;
- replacing a keyed entry with a FOB system;
- repairing the lighting in the parking garage

To be eligible, the capital expenditure must not be expected to be incurred again for at least 5 years...

Routine repairs to or maintenance of a major system or major component are not eligible capital expenditures because they are expected to be incurred again within a 5-year period....

Regarding whether a capital expenditure reduces energy use or greenhouse gases, landlords may consider providing:

- Utility bills showing a difference in energy use before and after the installation, repair or replacement of the major system or major component;
- Manufacturer's documents showing the efficiency ratings of the new major system or major component compared to the old system or component;
- Expert reports...

If the director determines all or part of the claimed capital expenditure is eligible, the director must grant an additional rent increase unless the tenant establishes that the expenditure is ineligible...

A "specified dwelling unit" means the following:

- (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 capital expenditures were incurred.

A specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred or, if not located in the building, is affected by the capital expenditure at the residential property...

If the arbitrator approves an additional rent increase for capital expenditures, the arbitrator will set out in the decision the amount of eligible capital expenditures and the number of specified dwelling units. The arbitrator will calculate the "Total ARI"

and record it in the decision. The landlord must calculate ARI1, ARI2 and ARI3 themselves...

A capital expenditure is considered “incurred” when payment for it is made.

1. Hallway Project (lighting upgrades, painting) \$17,426.81

I accept that hallway lighting in common areas is a “major component” as that term is used and defined above. I note that the Tenants did not dispute the Application or this point. I find hallway lighting in common areas is integral to the building and use of the building by the Tenants. I accept that the lighting project was a significant project and not a minor project because it involved changing light fixtures, not just light bulbs. I note that the invoice shows 25 light fixtures were replaced with new LED fixtures, which supports that this was a significance project. Replacing light fixtures cannot be described as routine maintenance and I note that, pursuant to RTB Policy Guideline 40, the useful life of light fixtures is 15 years. I do not find the lighting project to be a cosmetic upgrade given the written submissions of the Landlord.

I accept that the light fixtures on the ceiling were detaching, failing and at the end of their life as stated by the Landlord. This was not disputed by the Tenants. I also accept that the Landlord installed more energy efficient lighting as stated. This was not disputed by the Tenants.

I accept that the light fixtures were purchased from Amre Supplies at a cost of **\$689.95** on November 17, 2020, based on the Landlord’s written submissions and the invoice in evidence. I accept that the light fixtures were installed by Active Electric Ltd. on November 24, 2020, at a cost of **\$1,132.95**, based on the invoice in evidence. I find the costs of the lighting project were incurred within 18 months prior to the Application being filed as required.

I find the lighting project should not reoccur within five years because the useful life of light fixtures is 15 years, as stated above.

I find the lighting project was done to replace a major component of the building to maintain the building in a state of repair that complies with section 32(1)(a) of the Act, to replace a major component that has failed, is malfunctioning and is close to the end of its useful life and to reduce energy use.

I find the Landlord has proven the lighting project is an eligible capital expenditure. The Tenants have not disputed the Application and have not proven that the capital expenditure was 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.

The Landlord is granted their request in relation to this work.

In relation to painting, the Landlord is not granted their request in relation to this work. I do not accept that hallways and doors had to be painted because light fixtures on the ceiling were smaller than the original light fixtures. The Landlord could have simply re-painted the ceiling due to this issue. Painting hallways and doors was not a necessary result of changing the light fixtures on the ceiling. Given the invoices submitted, I cannot separate out the cost of painting the ceiling and painting walls and doors. I find painting hallways and doors to be a cosmetic upgrade. Further, interior paint has a useful life of four years pursuant to RTB Policy Guideline 40 and therefore does not qualify as a capital expenditure.

2. *Privacy screen planters \$10,253.26*

Given the invoices submitted, I cannot separate out shrubs planted to replace the damaged hedge and additional privacy screen planters installed. Putting privacy screen planters around patios does not relate to a major system or component. Privacy screen planters are not integral to the residential property or to providing services to the Tenants and occupants. Privacy screen planters are not required pursuant to section 32(1)(a) of the *Act*. I do not find the addition of privacy screen planters around patios to be a substantial project considering the likely impact of this on the building as a whole. Further, I am not satisfied based on the evidence provided that privacy screen planters improve security in the ways contemplated by RTB Policy Guideline 37, which refers to cameras, FOB systems and lighting in a parking garage. RTB Policy Guideline 37 contemplates improvements that obviously have a real impact on security. I am not satisfied based on the evidence provided that privacy screen planters have an obvious or real impact on security. I find the planters are more of a cosmetic upgrade for the purpose of providing privacy, not for the purpose of providing security.

3. Drain tie in and undermining \$5,834.33

I accept based on the Landlord's written submissions that this work related to the foundation of part of the building and therefore is a repair of a major component. I note that the Tenants did not dispute this point. I accept that the work was done to repair the original foundation which was failing.

The Landlord provided the invoice for **\$5,834.33** and I accept the work cost this amount. The invoice for this work is dated April 30, 2021, and was paid June 15, 2021, both less than one year prior to the Application being filed and therefore within the 18-month requirement.

I accept that this work is not expected to reoccur within at least five years given the nature of the work which was to repair the foundation and prevent future issues with it.

I find the Landlord has proven this work is an eligible capital expenditure. The Tenants have not proven that the capital expenditure was 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.

The Landlord is granted their request in relation to this item.

Summary

The cost of the eligible capital expenditures totals \$7,657.23 (\$689.95 + \$1,132.95 + \$5,834.33). I accept that there are 41 specified dwelling units in the building based on the Landlord's written submissions. The relevant calculation pursuant to section 23.3 of the *Regulation* is:

$$\text{Total ARI} = \frac{\$7,657.23 \div 41}{120} = \$1.55$$

The Landlord must do the remainder of the calculations and must impose the additional rent increase in accordance with the *Act*, *Regulation* and RTB Policy Guideline 37.

Conclusion

The Landlord is entitled to impose an additional rent increase. The amount calculated pursuant to section 23.2(2) of the *Regulation* is \$1.55. The Landlord must do the remainder of the calculations and must impose this additional rent increase in accordance with the *Act*, *Regulation* and RTB Policy Guideline 37.

A copy of this Decision must be served by the Landlord on the Tenants within two weeks of the Landlord receiving this Decision from the RTB.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 15, 2022

Residential Tenancy Branch