



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding a
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 KM and BM and their lawyer MM attended the Pre-Conference Hearing, several tenants attended. During the Pre-Conference Hearing the Landlord's Agents and counsel elected to proceed via written submissions only.

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 landlords' claims, and my findings are set out below.

The Landlord submits the rental property consists of one residential apartment building containing 45 rental units.

The landlord submits that they have not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord submits that they are seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property. The Landlord submits that they have conducted the following as noted on their application:

“The capital expenditure of \$141577.80 was used for the repair of all 45 decks. The repair consisted of a comprehensive inspection of all decks performed by qualified professionals, followed by remedial works on all decks to enhance their integrity and improve tenant safety., and The capital expenditure of \$77849.46 was used for building boilers replacement. The replacement consisted of replacing four outdated and problematic boilers with brand new boilers and piping systems. The replacement resulted in higher reliability and increased efficiency in providing both hot water and a source of heat for all rental units”(Collectively, the “Work”).

The Landlord submits that the Work was done because the residential apartment building needed those items to ensure safe and reliable service while also providing long term benefit in reducing costs. No tenant submitted any evidence in response to the Landlord’s Application. The Landlord submitted copies of all invoices for the work which amounts to \$219,427.26. The Landlord’s total expenditure amounts were paid by December 23, 2021. The actual amount spent was higher than submitted by the landlord received rebates which he has deducted from the total.

The Landlord submits that they have not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Analysis

Based on the oral testimony during the pre-conference hearing and documentary evidence, and on a balance of probabilities, I find:

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

I accept that the Landlord has not submitted a prior application for additional rent increase.

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.

I accept that the rental building is one structure which consists of 45 rental units.

4. Amount of Capital Expenditure

I accept that the cost of having the Work completed amounted to \$219,427.26 based on the invoices provided.

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 work amounted to the replacement of the buildings boiler and upgrading the piping system, along with upgrading all 45 decks for safety.

b. Reason for Capital Expenditure

I accept that the Landlord was required to replace the boilers as they had reached the end of their useful life. The Landlord has satisfied me that sewer re-piping was required as it had failed and become aged. The landlord has also satisfied me of the safety benefits to improve the integrity of all of the decks. Such reasons fall under the category set out in the regulation for eligible capital expenditures.

c. Timing of Capital Expenditure

I accept the landlord incurred the expenses on March 16, 2021 and December 23, 2021 which is within 18 months from the date of the Application being made.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components replaced all exceed five years. 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

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.

In this case, the Tenants did not respond to the Landlord's Application.

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 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 45 specified dwelling units and that the amount of the eligible capital expenditure is \$219,427.26.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$40.63 ($\$219,427.26 \div 45 \text{ units} \div 120$). 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 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 may be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase

for capital expenditure of \$40.63. 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: January 27, 2023

Residential Tenancy Branch