



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Camargue Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Issue Code ARI-C

Introduction

On February 18, 2022 (the “Application date”), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Regulation*.

The Landlord attended each hearing at the scheduled time. Two representatives for the tenants attended on July 5, 2022. Though they asked for a delayed reconvened hearing, the representative did not attend on either of those dates. The reconvened hearing on November 14 was essentially cancelled and rescheduled to December 5, 2022 to accommodate this.

Collectively, I refer to the “tenants” listed as Respondents for this hearing as the “Tenant” in this decision.

Preliminary Matter – timeline for this decision

While the *Act* s. 77(1)(d) sets a 30-day time limit for a decision of the delegated decision-maker, ss. (2) does not invalidate a decision that is given past the 30-day period. I reached this decision through review and evaluation of all the evidence submitted by both parties for this hearing. The parties’ right of due process, for a thorough consideration of all evidence, and my deliberation of the applicability of the law, outweighs the need for a 30-day time limit. Also, this was a matter of the Landlord’s right to compensation for capital expenditures and did not concern an eviction or end of tenancy that are matters of human consequence.

Preliminary Issue – service and disclosure of evidence

In the preliminary hearing on July 5, 2022 the Landlord arranged for service to the two tenant representatives who agreed to take on that task. The Landlord did so on September 23, 2022 and provided a copy of that outgoing email showing all attachments about the hearing. The Landlord sent a few emails with different attachments, one attachment of the Notice of Dispute Resolution for each of the rental units involved.

On September 25, 2022, one of the tenant representatives confirmed they received these emails from the Landlord. They noted that they distributed the attached Notice of Dispute Resolution by attaching it to the door of each rental unit.

I find the Landlord ensured, via the tenant representative, that service of the Notice of Dispute Resolution was completed as required.

The September 25, 2022 email also noted that the Tenant received the evidence package from the Landlord as well. I find the Landlord completed service of their evidence for this hearing in a timely manner as required.

One tenant in the building provided a written statement to the Residential Tenancy Branch on October 31, 2022. This particular tenant did not attend any of the hearings. Because the Landlord stated they did not receive this information via the tenant representative, or separately from this tenant, I cannot consider its contents in this hearing because it was not properly disclosed to the Landlord. I give this submission no consideration in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

The rental property consists of a single building. This rental property was constructed in 1968 and consists of 24 eligible units that are occupied by tenants.

The Landlord presented each set of capital expenses – that they submit are related to major systems or major components of the rental property. This was removal of rotting balcony decks and railings for each rental unit. Then, there was a removal of the original single-pane balcony slider doors and windows. The capital expenditure specifically was “supply and installation of new decking, metal railings and frosted glass panels” as the Landlord provided on their Application. These are “newer energy efficient glass doors and window sliders.”

The Landlord provided before-and-after photos of the work undertaken. The Landlord provided a letter in the evidence, dated September 26, 2022. This was from the contractor they hired for completion of the job, stating as follows:

Upon execution of the work, we observed significant deterioration of the balconies and envelope systems that posed significant risk to the occupants. An elaboration of our observations include, but are not limited to the following:

- sliding glass door seals had failed to approximately 10%; these doors have reached their life expectancy
- The existing guardrail are surface mounted penetrating the surface of the decks; If left further unattended, they would have eventually posed a significant risk to the occupants.
- The existing deck surfaces had significant evidence of decay; These deck surfaces were beyond their life expectancy.
- Deck fascia needed to be upgraded in order to fasten the railing to best practices

In the hearing, the Landlord described these 50-year-old balconies were requiring board replacement that act as guardrails. This was ongoing work. As well, some of the decks over time did not slope outwards, and this meant water was accumulating, increasing the risk of further damage from water.

The Landlord provided a document entitled ‘Summary of Invoicing for Balconies and Sliding Glass Doors Installation’, dated September 16, 2022. The Landlord provided a series of 7 invoices, paid as follows:

	Description	invoice date	paid date	paid
A.	deck renewal – progress #1	May 31, 2021		\$12,959.79
B.	deck renewal – progress #2	July 31, 2021		\$50,960.99
C.	deck renewal – progress #3	October 1, 2021		\$94,975.77
D.	deck renewal – progress #4	September 30, 2021		\$48,087.11
E.	deck renewal – progress #5	November 30, 2021		\$15,312.06
F.	deck renewal – progress #6	December 31, 2021		\$8,795.26
G.	release for builders lien holdback	January 6, 2022		\$24,406.87
			Total	\$255,497.85

An invoice summary, dated as “December 31/22”, and marked as “received in full” gives the amount of \$244,068.74. This is a summary document from the contractor to the Landlord. This is the amount the Landlord indicated on their Application.

The Landlord provided a document entitled ‘Summary of Invoicing for Balconies and Sliding Glass Doors Installation’, dated September 16, 2022. This indicates progress bill #4 was for an amount of \$36,658. This differs from line D set out above, in the 4th progress invoice the Landlord provided in their evidence; both the amount and date indicated conflict with the summary document dated September 16, 2022.

In the third scheduled hearing, one tenant made submissions on the basis of the precise location of their individual rental unit in the building. They live in one of three ground-level rental units that do not have balconies. They only received a replacement sliding door, and a replacement window. They questioned how the total amount of the capital expenditure that the Landlord is applying on can be apportioned the same for all of the rental property units, when they do have the same set of features in their rental unit.

Analysis

The *Residential Tenancy Regulation* (the “Regulation”), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
 - to repair, replace, or install a major system or a component of a major system; and
 - undertaken:
 - to comply with health, safety, and housing standards;
 - because the system/component was either:
 - close to the end of its' useful life, or
 - failed, malfunctioning, or inoperative
 - to achieve either:
 - a reduction in energy use or greenhouse gas emissions; or
 - an improvement in security at the residential property
- and
- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
- and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;
- or
- the landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase within the previous 18 months. The work was completed on May 31, 2021 , and the Landlord filed their Application at the Residential Tenancy Branch on February 18, 2022.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

“dwelling unit” means:

- (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 find there are 24 dwelling units, of which all 24 are eligible.

The Tenant who attended the third scheduled hearing raised the point that certain of the rental units do not have balconies. The fourth unit they mentioned belonged to the Landlord, who specified that this was reserved for one manager who occupies that rental unit.

I find the number of eligible rental units is 24. As specified in the Residential Tenancy Policy Guideline 37: Rent Increase on page 12, a specified dwelling unit must be included in the calculation “if it is located in the building for which the capital expenditure was incurred.”

Given that the ground-level units, as described by the Tenant, did receive doors and windows, I find this qualified that the ground-level units involved were “specified dwelling units.” As such, they are subject to the legislation allowance for capital expenditures.

On this singular point, any objection raised by a tenant, in response to the Landlord’s Application, is confined to what is set out in the *Regulation*, s. 23.1(5), that is either a) pointing to the Landlord’s inadequate repair or maintenance, or b) showing that the Landlord is entitled to paid from another source. The Tenant did not do so here; therefore, I find the ground-level units in question are specified dwelling units as defined in the *Regulation*.

Eligibility and Amount

For the Landlord's submitted expenditures, I address whether it was *eligible*, and then determine the expenditure *amount*.

As set out in s. 23.1(4), I find the replacement of balconies at the rental property is replacement of a major system. This is to comply with health, safety and housing standards required by law, in light of the evidence showing deterioration of the balconies which in all cases must be able to pass safety standards. As per the definition of "major system", I find the balconies are a structural system that is integral to the residential property.

Regarding windows and doors' installation, I find these are each a "major component" as defined in s. 21.1 of the *Regulation*, integral to the residential property.

The separate invoices provided by the Landlord add up to \$255,497.85, as set out in the table above. The Landlord provided the amount of \$244,068.74 in their summary document, and this is the amount they entered on their Application.

I grant this capital expenditure, as provided on the Landlord's Application, for the amount of \$244,068.74.

Timing of the Capital Expenditure

I accept the Landlord's evidence that the first payment for the work was incurred on May 31, 2021, and the final payment was incurred on January 6, 2022. Both of these dates are within 18 months of the Landlord's making this Application on February 18, 2022.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find that steel balcony railings are set out with a useful life of 15 years, doors are set at 20 years, and windows at 15 years.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years.

Outcome

The Landlord has proven all of the necessary elements for their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$244,068.74. This is pursuant of s. 43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation*, referred to above.

The *Regulation* s. 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of dwelling units, divided by 120. In this case, I found there are 24 specified dwelling units, and that the amount of the eligible capital expenditure is \$244,068.74.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$84.75 ($\$244,068.74 \div 24 \div 120$) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of any tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37, page 11, to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$244,068.74.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision.

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

Dated: January 6, 2023

Residential Tenancy Branch