



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

A hearing was convened on September 13, 2022 to consider the Landlords' application pursuant to the *Residential Tenancy Act* ("Act") and the *Residential Tenancy Regulation* ("Regulation") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

Service of documents to all Tenants, with the exception of the Tenants in Unit 8, was address in my interim decision of September 13, 2022 and will not be revisited here.

The hearing on September 13, 2022 was adjourned to provide the Landlords with the opportunity to serve hearing documents to both Tenants in Unit 8. At the hearing on February 27, 2023, the female Landlord stated that the Dispute Resolution Package, evidence submitted to the Residential Tenancy Branch in August of 2022, and notice of this hearing was served to those Tenants, via registered mail, on October 12, 2022. The Landlords submitted documentation from Canada Post that corroborates this testimony. On the basis of this undisputed evidence, I find that those documents are considered served to those Tenants pursuant to sections 89 of the *Act*.

The female Landlord stated that all the other Tenants were served with notice of these proceedings, via registered mail, on October 12, 2022. The Landlords submitted documentation from Canada Post that corroborates this testimony. On the basis of this undisputed evidence, I find that those documents are considered served to those Tenants pursuant to sections 89 of the *Act*.

As all Tenants have been properly served with notice of these proceedings and evidence submitted to the Residential Tenancy Branch, the hearing proceeded in the

absence of the Tenants and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issues to be Decided

Are the Landlords entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

The female Landlord stated that this is a residential complex with 12 rental units.

The female Landlord testified that the Landlord has not applied for an additional rent increase for capital expenditure against any of the Tenants prior to this application and that an additional rent increase has not been imposed in the last 18 months.

The female Landlord testified that 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. She stated that all of the windows and glass doors in the residential complex were replaced. This testimony is corroborated by photographs submitted in evidence.

The Landlords submitted an engineering report, dated February 23, 2015, which declares that the windows and sliding glass doors have exceeded their useful life and that they were replaced because they had exceeded their useful service life. The male Landlord stated that the windows and glass doors were installed in 1990. He stated that replacing the windows were a condition of refinancing the residential complex.

The Landlords submitted invoices to show the Landlords paid the following amounts to replace the windows/doors:

August 03, 2021 - \$28,359.92 (Down Payment)

February 25, 2022 - \$29,330.85

March 29, 2022 - \$1,025.92

Analysis

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.

1. Prior Application for Additional Rent Increase

On the basis of the undisputed evidence, I find that the Landlord has not previously applied for an additional rent increase for capital expenditure against any of the Tenants named in this Application for Dispute Resolution and that an additional rent increase has not been imposed in the last 18 months.

2. 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.

On the basis of the undisputed evidence, I find there are 12 dwelling units in this residential complex.

3. Amount of Capital Expenditure

On the basis of the undisputed evidence, I find that the Landlords spent \$58,716.69 to replace the windows and glass doors in the residential complex.

4. 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

I find that windows and glass doors are part of the building envelope, which is clearly a major component of a residential complex. I therefore find that replacing the window/s glass doors was undertaken to repair a major component.

b. Reason for Capital Expenditure

On the basis of the testimony of the Landlords and the engineering report submitted in evidence, I find that the windows/glass doors were replaced because they had exceeded their life useful service life.

c. Timing of Capital Expenditure

I accept the Landlords' undisputed evidence that the first payment for the work was made on August 03, 2021 and the final payment was made on March 29, 2022. Both of these dates are within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

Residential Tenancy Branch Policy Guideline #40, with which I concur, suggests that the useful life of windows is 15 years and the useful life of doors is 20 years. I therefore find that the life expectancy of the items 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 replace the windows/doors is an eligible capital expenditure, as defined by the Regulation.

5. Tenants' Rebuttals

The Tenants submitted no evidence to suggest that the replacements were required due to inadequate repair or maintenance on the part of the Landlord, or that the Landlord has been paid, or is entitled to be paid, from another source.

6. Outcome

The Landlords have been successful. The Landlords have proven, on a balance of probabilities, all of the elements required 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 12 specified dwelling units and that the amount of the eligible capital expenditure is \$58,716.69.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$40.77 ($\$58,716.69 \div 12 \text{ units} \div 120$).

The parties may refer to Residential Tenancy Branch 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 Landlords have been successful. I grant the application for an additional rent increase for capital expenditure of \$40.77. 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 *Act*.

Dated: February 27, 2023

Residential Tenancy Branch