



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS TENANT_INFO
[and tenant name is suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the landlord's applications 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.

Preliminary hearings were held on July 18, 2022, and December 13, 2022, and an Interim Decisions was made after each hearing. The Interim Decisions are incorporated by reference and should be read in conjunction with this Decision.

The landlord's agent (agent) attended the final hearing. Tenants YF, and JT, along with an assistant for JT were present at the hearing.

The landlord submitted that the tenants in unit 146 in property 2 have now vacated the residential property.

The landlord said that all tenants were served the Proof of Service of Notices of Dispute Resolution Proceeding Package for this final hearing by personal service or attaching the documents to the tenants' doors. The landlord submitted documentary evidence as to service of the dispute resolution proceeding package. Based on this evidence, I find all tenants were sufficiently served the Notice of the Hearing, the applications, and relevant materials.

The parties were affirmed and the hearing proceeded. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in

this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

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

The residential property regarding this dispute has two, similar apartment buildings. Each building has 3 floors, were both built in 1972, and each building has 69 dwelling units.

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

The landlord's evidence showed they were seeking to impose an additional rent increase for capital expenditures incurred to pay for expenses in connection to the following:

Property 1 (CC):

- to replace the aged stairwell and lobby railings to height code requirement,
- to replace the rotting plywood sub floor,
- to replace the subfloor and flooring, and
- materials and labour to remove and replace 4 exterior steel doors equipped with safety panic bars and anti-pry locks.

Property 2 (CL):

- to replace the aged stairwell and lobby railings to height code requirement,
- plywood to replace worn and rotted subfloor,
- materials and labour to remove and replace rotting plywood and carpet, and

- materials and labour to remove and replace 4 exterior steel doors equipped with safety panic bars and anti pry locks.

The landlord submitted that the work on the two properties was done to comply with building codes, health, safety, and housing standards, because some were at the end of their useful life, and to improve the security of the residential properties.

The landlord indicated that all building components were the age of the buildings, built in 1972.

Payments were made within the 18 months prior to the landlord making the two applications, as shown by their documentary evidence.

Summary of the work

	File CC	File CL
Stairwell and lobby railings	\$15,225.00	\$15,225.00
Replace plywood subfloor	\$13,422.84	\$13,422.84
Replace subfloor/flooring	\$33,185.26	\$33,395.26
Exterior steel doors	\$9,122.79	\$9,122.79
Total	\$70,955.89	\$71,165.89

Tenants' response and submissions –

Tenant JT filed a written response, in which they argued that they object to the application for various reasons. JT submitted as follows: The capital expenditures benefit the owner, not the tenants, as they have no ownership. The tenants should not be responsible for paying for the property to be brought to code. The building is not a co-op or strata building and the upgrades seem to be aesthetic, and the rents are high enough already. They are on a fixed income and despite inflation, they do not get more money and this whole situation is affecting their health and life tremendously. At the hearing, JT said they might become homeless.

Tenant AKC filed a written response and submitted as follows: 30% of the tenants are seniors over the age of 70 and cannot read English. Since being the owner of the building, the landlord has done nothing until 2021. Their rent was increased every year and last year the increase was \$30. Their apartment has not been painted for the past 15 years and it took the owner more than 6 months to replace the sink in their

bathroom, and the building is not a co-op and the tenants should not have to pay for updating it.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application.

Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

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:
 - o the Work was to repair, replace, or install a major system or a component of a major system
 - o 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;
 - o the capital expenditure was incurred less than 18 months prior to the making of the application
 - o 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 submitted sufficient and required evidence to support their application 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 case, I find the landlord submitted sufficient evidence that they had not made a prior application for an additional rent increase for the stairs, railings, flooring, and exterior doors within the prior 18 months for either building.

The landlord's undisputed evidence is that there are 69 dwelling units in each building of the residential property and the evidence supports that all of the dwelling units are eligible.

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred for the stairs, railings, flooring and exterior doors of the residential properties and were therefore, I find, to be major components.

Based on the landlord's testimony and other evidence before me, I find that the landlord incurred capital expenditures in order to maintain the residential properties and/or bring the properties up to building code requirements, as the major components had exceeded their useful life, per section 40 of the Tenancy Policy Guideline and were not up to current building codes.

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred in the 18-month period preceding the date the landlord made their application.

Based upon the evidence before me, I find that the capital expenditures are not expected to be incurred for at least 5 years. I base this finding on the useful life of building elements under the Policy Guideline.

As mentioned, the onus is on the tenants to prove that the capital expenditures were 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. While some of the tenants made arguments and submissions at the preliminary and final hearings on this matter, I find this does not amount to evidence that would defeat the landlord's application. The tenants did not provide independent reports or any documents which would show the landlord failed to repair or maintain the building components. There was no evidence that the landlord was paid or is entitled to be paid, from another source.

For these reasons, **I grant the landlord's application for the rent increase based on eligible capital expenditures of \$70,955.89 for the building CC**, pursuant to section 43(1(b) of the Act and 23.1(4) of the Regulations referred to above.

For these reasons, **I grant the landlord's application for the rent increase based on eligible capital expenditures of \$71,165.89 for the building CL**, pursuant to section 43(1(b) of the Act and 23.1(4) of the Regulations referred to above.

Section 23.2 provides the formula for the calculating the additional rent increase as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120.

Calculation for additional rent increase for building CC

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$8.57** per affected tenancy ($\$70,955.89 \div 69 \text{ units} \div 120$). This amount may not exceed 3% of a 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.

Calculation for additional rent increase for building CL

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$8.59** per affected tenancy ($\$71,165.89 \div 69 \text{ units} \div 120$). This amount may not exceed 3% of a 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.

The landlord is directed to Policy Guideline 37, page 11 to properly calculate the rent increase in accordance with the Regulations, as this is the landlord's responsibility.

In addition to the above Policy Guideline, the parties are also directed to section 42 of the Act to learn about annual rent increases, for which the landlord is still entitled to apply, and the Residential Tenancy Branch website for further information on the additional rent increase calculator and how this increase may be imposed.

Conclusion

The landlord's application for an additional rent increase for eligible capital expenditures is granted.

The landlord is directed to serve this Decision on each affected tenant, individually, within two weeks of this Decision.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 11, 2023

Residential Tenancy Branch