Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GLR PROPERTIES LTD 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, under section 23.1 of the Regulation.

The following parties attended the hearing on February 09, 2023: the landlord, represented by manager CHR, and tenants: NAC and RIP (unit 306), DON (406), SHM (206), STP (104) and LAG (207). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This decision should be read in conjunction with the interim decision dated May 26, 2022 (the interim decision).

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00."

Preliminary Issue – Service

The interim decision states:

> I note that the deadlines, methods of service and proof of service in this decision differ from those in the Rules of Procedure. These orders in this decision regarding deadlines, methods of service and proof of service are made in light of the number of parties to this application. Where the deadlines, methods of service and proof of

> service in this decision and the Rules of Procedure differ, the ones in this decision prevail.
> […]
> 1. The landlord must serve, no later than 45 days before the adjudicative hearing, all the tenants the Notice of Hearing, the evidence, a copy of this decision and written submissions explaining clearly how this application meets all the requirements of the legislation and referencing the evidence. The landlord must also provide the written submissions and the evidence to the RTB.
> 2. The tenants must serve, no later than 14 days before the adjudicative hearing, the landlord, their response evidence and written submissions. The tenants must also provide their written submissions and the evidence to the RTB.
> […]
> 6. All the written submissions must be typed, with a font size 12 or bigger and use clear and concise language. If any evidence document is submitted, it must be submitted in the same package as the written submissions, all the pages must be numbered and there must be an index. The parties are allowed to submit handwritten submissions if they do not have access to a computer.

The landlord received the interim decision in early June 2022.

The landlord affirmed that he did not notice that he had to serve the notice of hearing and the evidence (the materials) 45 days before the adjudicative hearing. The landlord received an email from the Residential Tenancy Branch (RTB) on January 19, 2023 indicating that the deadline to submit evidence for the application was approaching. The landlord served the materials on January 19, 2023 and the adjudicative hearing was on February 09, 2023.

The landlord's evidence consists of 41 pages in 9 documents not sequentially numbered and without an index.

All the attending tenants except SHM stated they did not have enough time to review the materials, as they work full time. SHM testified he had enough time to review the documents but did not have time to organize his response evidence.

As the landlord did not serve the materials no later than 45 days before the adjudicative hearing, as required by the interim decision, and the attending tenants explained that they did not have enough time to review the materials, I did not accept the landlord's evidence.

The landlord confirmed receipt of the tenants' response evidence and that he had enough time to review it.

I accepted the tenants' response evidence.

Issue to be Decided

Is the landlord entitled to impose an additional rent increase for capital expenditure?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord said that he started a major renovation of the rental building in mid-2020 and spent a total amount of $2,168,701.00 to replace the exterior building envelope, repair and replace the decks and aluminum railings, replace windows and doors, replace the roof, waterproof the parking garage, landscaping and a new entrance. The landlord affirmed that he provided the tenants with a quote that lists all the prices for all the services and that the landlord paid all the quoted prices, as contractors do not work for free.

Tenant RIP stated he does not believe the landlord spent the amount claimed, as there is no document in evidence. RIP believes the landlord may have provided a budget, but it is impossible to know the amount paid by the landlord for the renovation or if the landlord ever paid any amount for the renovation.

Tenant DON testified the numbers provided by the landlord seem to be an estimate and that there is no receipt.

Tenant SHM said he does not know how much the landlord spent for each renovation project and that he did not receive information about the renovation project, just a table.

Tenant LAG affirmed that she does not understand what the estimate submitted by the landlord is for.

Tenant STP stated that the landlord claims the renovation included changes to the interior of the building not listed in the quote.

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. The onus to prove the case is on the person making the claim.

Section 23.1 of the Regulation sets out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures:

> (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.
>
> (2)If the landlord made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.
>
> (3)If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.
>
> (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.

Per section 23.1(5) of the Regulation, the tenant may defeat an application for an additional rent increase for capital expenditure if the tenant can prove, on a balance of probabilities, that the capital expenditure was incurred:

(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.

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 in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

The parties offered conflicting testimony about the expenditures claimed by the landlord. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The applicant did not provide any accepted documentary evidence to support his claim. The applicant did not call any witnesses.

I find the landlord failed to prove, on a balance of probabilities, that he incurred expenditures in the amount of $2,168,701.00.

Per Regulation 23.2(2) the landlord must prove the amount of the capital expenditures.

Furthermore, the landlord did not provide accepted evidence explaining the renovation project and the tenants inquired about the renovation project.

Considering the above, I find the landlord is not allowed to impose an additional rent increase for the expenditures claimed.

The RTB is not required to email the parties about deadlines to submit evidence. However, as the RTB emailed the landlord in error about the deadline to submit evidence, and the landlord's evidence was not considered during the hearing, upon further and careful reflection, I find it is fair to grant the landlord leave to reapply. Leave to reapply is not an extension of timeline to apply.

Conclusion

I dismiss the landlord's application with leave to reapply.

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: February 13, 2023

Residential Tenancy Branch