



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 attended the hearing, represented by property managers, EL and ND. The tenants ER and BW also attended the hearing. ER indicated she was acting as agent for 10 other tenants listed on the cover page of this decision, however she only had their names and not their unit numbers.

The landlord testified that he served each of the tenants with the Notice of Dispute Resolution Hearing by posting a copy to the door of their respective units on October 20, 2022 and provided a proof of service document indicating the same. I am satisfied that the tenants of each of the affected units were sufficiently served with the Notice of Dispute Resolution Hearing package pursuant to section 71 of the Act.

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 landlord's claim and my findings are set out below.

The parties attended an interim hearing on October 7, 2022 and an interim decision was issued. This decision should be read in conjunction with my interim decision issued on October 12, 2022.

The landlord testified that the building was built in 1972 and that there are 70 units in the building. The landlord's original application stated there were only 69 affected units, but the landlord has since revised the application to include a missed caretaker unit,

making the number of affected units 70. This caretaker unit is an affected unit for both capital expenditures. The landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord testified that he was seeking to impose an additional rent increase for 2 capital expenditures incurred to pay for a work done to the residential property's patios, balconies and sliding glass doors (capital expenditure 1) and to replace the main water lines and install a backflow device (capital expenditure 2). The tenants attending the hearing both testified they did not dispute capital expenditure 2.

At the interim hearing on October 7th, the landlord testified that only those units with balconies and sliding glass doors were affected by capital expenditure 1. All of the ground floor units and all of the 02 units were unaffected (units 103-118, 202, 302 and 402). This is reflected in the Notices of Dispute Resolution Hearing served upon the tenants. As a result, 51 of the 70 units are affected by capital expenditure 1, hereinafter referred to as the "Work".

The Work was done because the balconies were affected rot, becoming unsafe and requiring replacement. The original 49-year-old single paned sliding glass doors were replaced by double paned doors that are more energy-efficient and soundproof. The original doors didn't properly close as they were worn and had shrunk or shifted. The patio doors were at the end of their useful lives.

The landlord submitted copies of invoices supporting these amounts as well as a spreadsheet describing each of the invoices and the scope of the work done. The landlord testified that each of the invoices was paid in full.

Attached is a copy of the spreadsheet

<u>SC (Balconies renovations)</u>							
SC01	5/28/2021	\$	21,182.80	SC05	9/28/2021	\$	6,013.58
SC02	7/8/2021	\$	14,129.89	SC06	10/28/2021	\$	35,977.87
SC03	7/28/2021	\$	13,526.97	SC07	11/28/2021	\$	42,281.70
SC04	8/28/2021	\$	4,029.50				
Total:			\$	138,742.31			
<u>KC (Deck Repair: demo, rot repair, framing, strapping, sheeting, stucco cutting, door removal, scaffolding)</u>							
KC01	6/8/2021	\$	9,520.88	KC06	8/30/2021	\$	14,616.00
KC02	6/29/2021	\$	11,466.00	KC07	10/2/2021	\$	29,491.88
KC03	7/27/2021	\$	12,497.63	KC08	10/24/2021	\$	25,228.88
KC04	7/13/2021	\$	9,111.38	KC09	11/14/2021	\$	339.93
KC05	8/12/2021	\$	11,366.25	KC10	11/14/2021	\$	8,295.00
Total:			\$	131,833.83			
<u>MA (Supply and Install Aluminum Railings)</u>							
MA01	6/24/2021	\$	89,250.00				
Total:			\$	89,250.00			
<u>GF (Fencing rental)</u>							
GFL01	5/20/2021	\$	129.09	GFL05	8/14/2021	\$	87.36
GFL02	5/22/2021	\$	87.36	GFL06	9/11/2021	\$	87.36
GFL03	6/19/2021	\$	87.36	GFL07	10/14/2021	\$	122.85
GFL04	7/17/2021	\$	87.36				
Total:			\$	559.86			
<u>RTW window manufacturing (Supply and install sliding doors)</u>							
RTW01	1/20/2021	\$	1,764.00				
RTW02	9/15/2021	\$	62,272.00				
Total:			\$	64,036.00			
<u>ME Engineering (Balcony renewal: 33% of fixed fee & 1 field review /@ \$500/review)</u>							
ME01	3/17/2021	\$	1,050.00	ME06	9/30/2021	\$	1,021.30
ME02	5/31/2021	\$	1,050.00	ME07	10/31/2021	\$	525.00
ME03	6/30/2021	\$	2,505.56	ME08	11/30/2021	\$	92.04
ME04	7/30/2021	\$	2,625.00	ME09	1/31/2022	\$	266.44
ME05	8/31/2021	\$	1,254.75				
Total:			\$	10,390.00			
<u>FE (scaffold installation)</u>							
FE01	6/22/2021	\$	2,100.00	FE03	8/25/2021	\$	2,100.00
FE02	7/23/2021	\$	2,100.00	FE04	10/14/2021	\$	2,100.00
Total:			\$	8,400.00			
<u>SID (supplied and installed Deksmart smooth back vinyl)</u>							
SID001	6/25/2021	\$	13,282.50				
SID002	7/26/2021	\$	11,508.86				
SID003	9/24/2021	\$	20,358.64				
Total:			\$	45,150.00			
<u>TS(patch stucco at decks)</u>							
TS01	9/3/2021	\$	716.63				
TS02	2/16/2022	\$	2,283.75				
Total:			\$	3,000.38			
<u>VC (Soffit installation)</u>							
VCE01	9/23/2021	\$	20,008.65				
Total:			\$	20,008.65			
<u>City (Permits & Inspections)</u>							
CoV01	3/8/2021	\$	7,855.00				
Total:			\$	7,855.00			
Total Balconies repairs cost:				\$	518,385.91		

The tenants disputed the cost of the Work and stated 3 reasons for disputing.

1. the landlord did not provide proof of payment for each of the invoices presented.
2. Some of the expenses claimed are ineligible. For example, on invoice SC7, the landlord has included a \$2,900.00 + GST charge for food vouchers and hotel expenses of \$1,900.00. Other expenses claimed include things like drill kit

pieces, first aid kits, stucco blades and netting. On another invoice, the landlord seeks fuel costs which they argue are not eligible. The management fees charged by the contractor should be exempt because they represent “work done by the landlord”. Also, some invoices (ME6 and ME8) refer to “reimbursable expenses” that are not clearly defined and are ineligible because they may reflect capital expenditures for which the landlord has been paid, or entitled to be paid from another source.

3. The landlord failed to repair and maintain the building. When the landlord purchased the building in 2013, they knew the balconies were already at the end of their useful life and the scope of the repairs has grown since then, making it more expensive.

The landlord acknowledged the food vouchers and hotel invoice should not have been included in the claim for capital expenditures. The “tools” such as drill kits, stucco blades and netting are consumables that are used and disposed of after wearing out. Since purchasing the building, each unit was inspected upon turnover and each balcony was repaired as required on an individual basis.

Analysis

1. Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set 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 successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- 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 (S. 23.1(4));
 - o the Work was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
 - because the system or component:
 - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
 - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
 - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
 - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));

- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

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 (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

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 find the landlord has not made any prior applications for additional rent increases within the last 18 months.

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 find there are 70 dwelling units and all of them are eligible for capital expenditure 2, the main water line replacement and backflow preventer.

I find there are 51 specified dwelling units eligible for capital expenditure 1, the balcony and sliding glass door replacements. These specified dwelling units consist of all 70 units with the exception of units on the ground floor (103 – 118), and the “02” units, (202, 302, and 402).

4. Amount of Capital Expenditure

Capital expenditure 1:

\$16,448.25

Capital expenditure 2:

The landlord has acknowledged that specific items listed in their invoices should not have been included in the calculation, namely the food vouchers and hotel invoices. I find they are ineligible expenses and I reduce the landlord’s award by \$2,900.00 and \$1,900.83 respectively.

I find that the other items that the tenants submit are ineligible, namely the “tools” such as drill kits, stucco blades and netting are consumables and should be included in the calculation.

Consequently, the capital expenditure 2 amount is set at [\$518,585.91 - \$2,900.00 - \$1,900.83 = **\$513,785.08**].

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
 - 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

Section 21.1 of the Regulation defines “major system” and “major component”:

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

- (a) to the residential property, or
- (b) to providing services to the tenants and occupants of the residential property;

"major component", in relation to a residential property, means

- (a) a component of the residential property that is integral to the residential property, or
- (b) a significant component of a major system;

The Work amounted to replacement of 50 year old wooden balconies and 50 year old sliding glass doors. I find that the balconies were at the end of their useful lives and had to be replaced by the landlord to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Likewise, the single paned sliding glass doors were replaced by double paned sliding glass doors which reduces energy use and greenhouse gas emissions.

I find the balconies and the sliding glass doors are integral to the property and are essential to providing safe access to the outdoor space for the tenants. As such, I find that the Work was undertaken to replace “major components” of a “major system” of the residential property.

b. Reason for Capital Expenditure

As above, I find the work of replacing the balconies was undertaken to comply with health, safety and housing standards.

When reviewing applications for additional rent increases, the director may turn to Residential Tenancy Branch Policy Guideline 40 [Useful Life of Building Elements] to determine whether the landlord could have foreseen the repairs or renovations. According to the guideline, the useful life of balcony railings made of wood has a useful life of 10 years and the maximum useful life for a door or window is 20 years. I find the 50 year old balconies and sliding glass doors were well beyond their useful lives and required replacement. I am also satisfied that the new sliding glass doors reduced energy use and greenhouse gas emissions due to being double paned rather than single paned.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made.

I accept the landlords uncontroverted evidence that the first payment for the Work was incurred in March 2021 and the final payment was incurred in February, 2022. Both of these dates are within 18 months of the landlord making this application (May, 2022).

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:

1. 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
2. the landlord has been paid, or is entitled to be paid, from another source.

The tenants opposed the additional rent increase for both the reasons above.

1. With respect to the first reason, the tenants argued that the landlord was aware that the balconies required replacement since purchasing the building some 10 years prior and failed to replace them immediately, thereby allowing them to further degrade.

I accept the landlord’s testimony that the balconies were inspected on a case-by-case basis as each tenant moved out to determine whether to replace them or repair them individually. There is insufficient evidence before me that the landlord’s choice to do the entire building’s balcony and door replacements when they did represents inadequate maintenance. I find no fault in the landlord’s choice to perform the repairs when they determined it would be most expedient and convenient for them to do so. I have no evidence before me that the balconies or sliding glass door posed

any threat to the safety or security of the tenants prior to their replacement. While I accept that it would cost more to perform the repairs at a later date, the tenants have failed to satisfy me that this to be a case of the landlord failing to adequately maintain the balconies.

2. The tenants allege that some of the items on the landlord's invoices were for "management fees" charged by the contractors which the tenants argue are ineligible since they represent amounts charged for the landlord's own labour.

I accept the landlord's testimony that the "management fees" paid to their contractors are fees related to the work done by the contractors and do not constitute payment for labour done by the landlord. There is no evidence before me that any person employed by the landlord ever helped build the balconies or install the sliding glass doors and was compensated for it.

The tenants also argued that there are items on invoices ME#6 and ME #8 labelled "reimbursable expenses", making them capital expenditures that are entitled to be paid from another source. Turning to the landlord's expense summary, I note that both invoices ME#6 and ME#8 were paid by the landlord and I accept the landlord's testimony that all items on the expense summary were paid. As such I am satisfied that the landlord was not paid from another source.

7. Outcome

The landlord has been successful. He has proved, 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 for capital expenditure 01, the balcony/sliding glass door replacements, there are 51 specified dwelling unit and that the amount of the eligible capital expenditure is \$513,785.08. The landlord has established the basis for an additional rent increase for capital expenditure 01 of $(\$513,785.08 \div 51 \text{ units} \div 120 = \textbf{\$83.95})$.

I have found that for capital expenditure 02, to replace the main water lines and install a backflow device, there are 70 specified dwelling units and the amount of the eligible capital expenditure is \$16,448.25. The landlord has established the basis for an additional rent increase for capital expenditure 02 of $\$16,448.25 \div 70 \text{ units} \div 120 = \textbf{\$1.96})$

If these amounts exceed 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 37, 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 made be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure 01 of **\$83.95** and capital expenditure 02 of **\$1.96**. 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: March 15, 2023

Residential Tenancy Branch