



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding A.B. and Tim Holding Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

On September 9, 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. Collectively, I refer to the “tenants” listed as Respondents for this hearing as the “Tenant” in this decision. They did not attend the scheduled hearing.

Preliminary Issue – Landlord’s service and disclosure of evidence

In the scheduled hearing, the Landlord presented that they completed service of the Notice of Dispute Resolution Proceeding, as well as their prepared evidence for this hearing, to the Tenant. They described giving each Tenant a copy of a “1-inch thick” document package that was the disclosure of evidence and notification of this hearing. More informally through conversation, each Tenant in the rental unit property was aware of this hearing and the whole process undertaken by the Landlord in 2022.

I conclude the Landlord ensured that service of the Notice of Dispute Resolution was completed as required. This includes service of their evidence for this hearing in a timely manner as required.

Issue 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. The Landlord stated they were fairly certain the rental unit property was constructed in 1984. The rental unit property consists of 5 rental units on the 2nd and 3rd level of the building. The Landlord specified that they did not include a newer resident who did not move in until after completion of the Landlord's work in 2022.

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, as stated on their Application to the Residential Tenancy Branch:

Building Remediation of east and north elevations of [rental unit property] including: Preliminary investigation by contractors, structural and building envelope engineers [local municipality] permitting and Additional Review fees Hazardous materials testing as per WorkSafe BC Powerline to building coverup as per WorkSafe BC Demolition of existing building envelope Repair/Replacement of damaged structural components Addition of rainscreen Deck, post, door, window and awning replacement

The Landlord described the work that was necessitated by a break in one of the structure walls in July 2021, as shown in their picture evidence. This was stated to be a “east side wall breach”. The Landlord hired a firm that examined the surface issue. After that firm obtained the necessary permit, they hired an engineer who determined that the issue was not confined only to the breach area. This engineer recommended a more specialist engineer, who then summed up to say that the whole east side wall required replacement. They also identified the north side wall as being affected with “only a matter of time”, thereby necessitating work on that secondary wall.

As described by the Landlord in the hearing, one contractor reported to the Landlord that this was “one of the worst cases of water damage [they had] seen.” The Landlord referred to the comprehensive report by the building engineer, which set out “scope of work” as follows:

- existing face sealed stucco to be replaced with rainscreen stucco
- existing windows and siding door to be replaced with new vinyl windows
- existing swing doors to be replaced with new composite framing
- installation of new balconies waterproofing membrane & new aluminum guardrails

The Landlord provided 19 photos showing the need for work, various spots of the work in progress, and 2 photos showing completed east and north side completed walls.

The Landlord provided a document entitled 'Summary of Building Remediation Costs' submitted to the Residential Tenancy Branch on September 9, 2022. The Landlord provided corresponding invoices for each line item, dated as follows:

	Description	paid date	paid \$
1.	preliminary investigation	January 20, 2022	1,890.00
2.	prelim hazardous materials testing	November 18, 2021	94.50
3.	building permit fee	October 22, 2021	328.50
4.	structural engineering services	October 21, 2021	3,660.11
5.	structural engineering services	November 25, 2021	115.72
6.	structural engineering services	February 7, 2022	431.36
7.	structural engineering services	June 22, 2022	1,240.72
8.	structural engineering services	November 25, 2021	866.47
9.	Building Envelope Engineering Services	December 31, 2021	1,667.66
10.	Comp. Hazardous Materials Testing	March 17, 2022	1,168.30
11.	Powerline to Building Cover up	March 2, 2022	2,936.85
13.	Additional Plan Review Fee	March 21, 2022	436.00
14.	Deposit for Building Remediation	February 4, 2022	60,000.00
15.	Draw 1 for Building Remediation	June 8, 2022	29,937.45
16.	Draw 2 for Building Remediation	July 7, 2022	89,304.93
17.	Draw 3 for Building Remediation	August 9, 2022	50,090.96
18.	Draw 4 for Building Remediation	September 6, 2022	63,844.00
19.	holdback for building remediation	September 7, 2022	32,575.26
	Total		\$340,588.79

The invoice for line item 15 listed the deposit as subtracted from the amount of \$85,654.72.

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 in full on September 7, 2022, and the Landlord filed their Application at the Residential Tenancy Branch on September 9, 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 5 dwelling units, of which all 5 are eligible. As specified in the *Residential Tenancy Policy Guideline 37: Rent Increase*, a specified dwelling unit must be included in the calculation “if it is located in the building for which the capital expenditure was incurred.” Each unit is subject to the legislation allowance for capital expenditures.

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 work specified, in total, is a structural system that is integral to the residential property.

Regarding the line 14 deposit, I find that amount was subtracted from a total amount of \$85,654.72, invoiced as the amount in line 15. I find the deposit was retained by the contractor as a portion of a subsequent payment to them.

The separate invoices provided by the Landlord add up to \$340,588.79, as set out in the table above. The Landlord provided the amount of \$340,588.79 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 \$340,588.79.

Timing of the Capital Expenditure

I accept the Landlord’s evidence that the first payment for the work was incurred on October 22, 2021, and the final payment was incurred on September 7, 2022. Both of these dates are within 18 months of the Landlord’s making this Application on September 9, 2022.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find that all materials, concrete and masonry, as beyond the life cycle of 5 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 \$340,588.79. 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 5 specified dwelling units, and that the amount of the eligible capital expenditure is \$340,588.79.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures 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 37C, 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 all 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 \$340,588.79.

I order the Landlord to serve each Tenant with a copy of this decision in accordance with s. 88 of the *Act*.

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: March 9, 2023

Residential Tenancy Branch