Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding KELSON GROUP PROPERTY MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

Landlord Kelson Group Property Management applied for an additional rent increase for capital expenditures (expenditures), under section 43(3) of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

On May 5, 2023 landlord Kelson Group Property Management was represented by agents JAF (the landlord), ROM, KEF, DAM, LIS and BRL. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I left the conference line open until 11:11 AM to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing.

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. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

This decision should be read in conjunction with the interim decision dated January 03, 2023.

The landlord registered mailed the notice of hearing, interim decision and written submissions (the documents) to all the respondents on March 01, 2023. The landlord submitted the tracking numbers for the packages.

Based on the landlord's convincing testimony and the tracking numbers, I find the landlord served the documents in accordance with the interim decision and section 89(1) of the Act.

I deem the tenants received the documents on March 06, 2023, per section 90(a) of the Act.

The landlord affirmed the tenants did not ask for a printed copy of the evidence and the landlord did not receive response evidence.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord submitted this application on October 24, 2022 and did not submit a prior application for an additional rent increase.

The rental building was built in the 1960s and contains 42 rental units occupied by the 50 respondents when the landlord submitted this application. All the rental units benefit from the expenditures.

The landlord repaved the parking lot built in the 1960s in 2022, as it had potholes and inadequate drainage, and it was beyond its useful life. The landlord improved the drainage system in the parking lot and replaced the original asphalt. The landlord submitted four invoices into evidence:

- $192,252.89, issued on June 15, 2022
- $1,618.40, issued on July 26, 2022
- $3,071.25, issued on June 05, 2022
- $3,906.00, issued on June 22, 2022

The landlord stated that he paid for all the invoices by the 30th calendar day after they were issued.

The landlord submitted photographs showing the original parking lot and the new parking lot, a construction permit application dated June 28, 2021 and a construction memorandum.

The landlord testified the new parking lot is expected to last more than 30 years. The expenditure was not needed because of inadequate maintenance or repair and the landlord is not entitled to be paid from another source for the expenditure.

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.

Regulation 21.1 defines major component and major system:

> "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;
> "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;

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.

I will address each of the legal requirements.

Prior application for additional rent increase

Based on the landlord's undisputed convincing testimony, I find that the landlord has not submitted a prior application for an additional rent increase in the 18 months preceding the date on which the landlord submitted the application, per regulation 23.1(2).

Number of specified dwelling units

Per section 21.1(1):

> "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.

Based on the landlord's undisputed convincing testimony, I find the residential property has 42 specified dwelling unit, per regulation 21.1(1). I find the landlord submitted this application against all the rented units on which the landlord intends to impose the rent increase, per regulation 23.1(3).

Expenditures incurred in the 18-month period prior to the application

Residential Tenancy Branch (RTB) Policy Guideline 37 states: "capital expenditure is considered 'incurred' when payment for it is made."

Based on the landlord's convincing testimony and the invoices submitted, I find the landlord proved that he incurred the expenditures in the 18-month period preceding the submission of this application, per Regulation 23.1(4)(b), as the expenditures occurred

between July 05 and August 26, 2022 and the landlord submitted this application on October 24, 2022.

Expenditures expected to occur again for the next five years

Based on the landlord's undisputed and convincing testimony, I find the landlord proved that the expenditures are not expected to be incurred again for at least five years, per Regulation 23.1(4)(c).

Expenditures because of inadequate repair

Based on the landlord's undisputed convincing testimony, I find the expenditures were not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Payment from another source

Based on the landlord's undisputed and convincing testimony, I find the landlord is not entitled to be paid from another source, per Regulation 23.1(5)(b).

Parking lot

RTB Policy Guideline 37C states:

> The Regulation **defines a "major system" as an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants. A "major component" is a component of the residential property that is integral to the property or a significant component of a major system.**
> **Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. Examples of major systems or major components include, but are not limited to, the foundation; load-bearing elements (e.g., walls**, beams, and columns); the roof; siding; entry doors; windows; primary flooring in common areas; subflooring throughout the building or residential property; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including cameras or gates to prevent unauthorized entry; and elevators.
> **A major system or major component may need to be repaired, replaced, or installed so the landlord can meet their obligation to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.** Laws include municipal bylaws and provincial and federal laws. For example, a water-based fire protection system may need to be installed to comply with a new bylaw.
> Installations, repairs, or replacements of major systems or major components will qualify for an additional rent increase if the system or component has failed, is

> malfunctioning, or is inoperative. For example, this would capture repairs to a roof damaged in a storm and is now leaking or replacing an elevator that no longer operates properly.
> **Installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of or has exceeded its useful life**. A landlord will need to provide sufficient evidence to establish the useful life of the major system or major component that was repaired or replaced. This evidence may be in the form of work orders, invoices, estimates from professional contractors, manuals or other manufacturer materials, or other documentary evidence.
> Repairs should be substantive rather than minor. For example, replacing a picket in a railing is a minor repair, but replacing the whole railing is a major repair. Cosmetic changes are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or component. For example, a landlord may replace carpet at the end of its useful life with porcelain tiles even if it costs more than a new carpet.
> The following is a non-exhaustive list of expenditures that would not be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:
> • repairing a leaky faucet or pipe under a sink,
> • routine wall painting, and
> • patching dents or holes in drywall.

RTB Policy Guideline 40 states:

> A landlord may apply for an additional rent increase in an amount greater than the basic Annual Rent Increase in extraordinary circumstances. One of those circumstances is when a landlord has completed significant repairs or renovations that could not have been foreseen under reasonable circumstances and that will not recur within a reasonable time period. When reviewing applications for additional rent increases, the director may use this guide to determine whether the landlord could have foreseen the repair or renovation.
> […]
> Useful life of asphalt in parking lots: 15 years

Based on the landlord's uncontested and convincing testimony, I find the asphalt and drainage system replaced in 2022 were original from the 1960s.

The parties did not submit testimony or evidence regarding the asphalt's useful life contrary to the policy guideline. I find the original asphalt was beyond its useful life, as it

was at least 53 years old when it was replaced, and Policy Guideline 40 provides the useful life of asphalt is 15 years.

Based on the landlord's convincing testimony, the photographs, the construction permit application, the memorandum and the invoices, I find the landlord proved, on a balance of probabilities, that he replaced the asphalt in the parking lot and improved the drainage system instead of doing routine maintenance.

I find the asphalt in the parking lot and the improved drainage system are integral to the rental building, as parking is a service to the tenants, per regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of $200,848.54 to replace the asphalt and improve the drainage system is in accordance with Regulation 23.1(4)(a)(ii).

Outcome

The landlord has been successful in this application, as the landlord proved, on a balance of probabilities, all 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 specified dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there are 42 specified dwelling units and that the amount of the eligible capital expenditure is $$ 200,848.54.

So, the landlord has established the basis for an additional rent increase for capital expenditures of $39.85 ($200,848.54 / 42 units / 120). If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 37C, Regulations 23.2 and 23.3, 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 (http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1) for further guidance regarding how this rent increase may be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for expenditures of $39.85 per unit. The landlord must impose this increase in accordance with the Act and the Regulation.

The landlord must 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: May 16, 2023

Residential Tenancy Branch