



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with a Landlord's Application for Dispute Resolution, filed on November 10, 2022, pursuant to the *Residential Tenancy Act* (the "*Act*") and the *Residential Tenancy Regulation* (the "*Regulation*") for authority to impose an additional rent increase for capital expenditure pursuant to section 23.1 of the *Regulation*.

The hearing of the Landlord's Application was scheduled for teleconference at 11:00 a.m. on March 20, 2023. The Landlord's Agents, A.E. (Property Manager), D.B. (Associate Vice President), and M.G. (Director of Property Management), attended the hearing. Two tenants, J.S. and R.S. also called into the hearing. They confirmed they were not disputing the Landlord's request but simply wished to be present to participate in the hearing and to inform other tenants of the outcome. All parties provided affirmed testimony. The Tenants J.S. and R.S. confirmed receipt of the Landlord's application, Notice of Dispute Resolution Proceeding, and evidence packages.

Documentary evidence filed by the Landlord confirmed that all named tenants were served with the Landlord's application, Notice of Dispute Resolution Proceeding, and evidence packages by registered mail sent on November 25, 2022. Two packages were returned such that on March 20, 2023 the Landlord personally served the Tenants E.B., G.K. and J.K.

Pursuant to section 90 of the *Act*, documents served by registered mail are deemed served five days later; as such I find that all tenants were served with Notice of the hearing as of November 30, 2022 and proceeded in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the

Residential Tenancy Branch Rules of Procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Landlord's Application concluded on March 20, 2023. This Decision was rendered on May 24, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issue to be Decided

Is the Landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

The Landlord's agent, A.E. provided affirmed testimony in support of the Landlord's claim. The Landlord seeks an additional rent increase relating to the replacement of the elevator and associated electrical costs. The total expense incurred by the Landlord is \$212,782.50 including \$204,592.50 for the elevator and \$8,190.00 for the electrical costs. Documentary evidence supplied by the Landlord confirms these figures. The work commenced June 2021 and was completed September 2021.

The Agent confirmed that the tenants in units 101, 106, 308, 401, 403, 405, 406 and 408 moved in after the elevator was repaired and the rent charged to those units took into account the elevator costs. As such the Landlord does not wish to further increase their rent.

In terms of the necessity of the work, the Agent testified that the previous elevator was installed in 1972 and had more than exceeded its useful life. It had also become a safety hazard as it was not level. The mechanical components were original and needed to be updated. In support of the expenditure the Landlord submitted an email from D.P. dated October 20, 2022 wherein they provided their opinion as to the necessity of this expense.

The Agent further testified that the elevator should have been replaced in 2000, but they tried to maximize its use. They made their best efforts to reduce the overall cost of this expense and confirmed that to their knowledge there were no incentives, rebates or grants available to reduce the overall cost of this work. The Agent also confirmed that the safety issues as well as the maintenance costs going forward were a deciding factor in terms of the decision to replace the elevator.

In reply to the Landlord's submissions, the Tenant, J.S. stated that it was very nice to have the elevator replaced as it was no longer a tripping hazard. J.S. further confirmed they were agreeable to the rent increase requested by the Landlord for this expense.

Analysis

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. 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:
 - 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
 - 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;

- 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.

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 submits sufficient and required evidence to support their application and the tenants fail 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*.

After consideration of the evidence before me, and on a balance of probabilities, I find the Landlord submitted sufficient evidence that they had not made a prior application for an additional rent increase for a replacement of the elevator within the prior 18 months.

I find that the capital expenditures were incurred for the replacement of the elevator of the residential property and was therefore a major component. I find it reasonable that the Landlord incur expenses for installation of the elevator and related electrical work to improve the safety and accessibility of the rental building. I further find that the Landlord incurred this capital expenditures in order to maintain the residential property, as the elevator had exceeded its useful life, of 20 years, as set out in section 40 of the *Residential Tenancy Policy Guideline*.

I also find that the capital expenditures were incurred in the 18-month period preceding the date the Landlord made this application and are not expected to be incurred for at least 5 years. I base this finding on the useful life of elevators under the Policy Guideline of 20 years.

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. Only two tenants attended

the hearing and they confirmed they were in agreement with the Landlord's request for an additional rent increase. They also expressed their gratitude that the elevator was replaced and no longer a tripping hazard. There was no suggestions the Landlord failed to repair or maintain the elevator, nor was there any 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 \$212,782.50, 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. The Landlord is directed to Policy Guideline 37, and the Residential Tenancy Branch's online calculator to properly calculate the rent increase in accordance with the *Regulations*, and my decision, 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* relating to 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. Based on the Landlord's submissions, all tenants, save an except for those in units 101, 106, 308, 401, 403, 405, 406 and 408 are subject to this additional rent increase.

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 24, 2023

Residential Tenancy Branch