



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HORIZON TOWERS HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

On November 6, 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 the hearing at the scheduled hearing time. No tenants were in attendance for the hearing on May 11, 2023. Collectively, I refer to the “tenants” listed as Respondents for this hearing as the “Tenant” in this decision.

Preliminary Issue – service and disclosure of evidence

In the preliminary hearing on March 30, 2023, the Landlord presented that they served each Tenant a copy of the hearing materials, including the Notice of prehearing conference, and materials related to the dispute resolution process and additional rent increases. The Landlord provided individual registered mail to certain of the Tenants, in person, or emailed. The Landlord provided a schedule of all Tenants for the preliminary order and notice of dispute resolution. The Landlord provided an affidavit attesting to this, undated.

After the prehearing conference, the Landlord again provided evidence to the Tenants. In a Certificate of Personal Service signed by the parties on April 11, 2023, the Landlord set out service of the Interim Decision, and notice for the Landlord’s evidence. This was through similar methods as outlined above. The Landlord provided a link to each Tenant so that they could view or download the evidence documents online.

In each case, I find that the Landlord served each Tenant in accordance with the *Act*.

Issue(s) to be Decided

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

Background and Evidence

The rental property consists of one building of a two-building complex, sharing some common areas with the other building. The rental property was constructed in 1970 and consists of 103 individual units. The title for the rental property was transferred to this Landlord on May 29, 2014, as presented in the Landlord's written submissions.

In the pre-hearing phase of this proceeding, the Landlord included other claims for capital expenses; however, in the interim period, they abandoned 7 of those expenses for reimbursement. They also modified portions of expenditures they did include in their claim.

The Landlord provided a written submission dated April 4, 2023. This was with 16 separate documents attached as evidence.

In the scheduled May 11, 2023 hearing, the Landlord presented each set of capital expenses – which they submit are related to major systems or major components of the rental property – as follows:

	Description	paid date range	paid
1.	elevator modernization	Oct 1/18 – Feb 1/22	\$374,850.57
2.	boiler replacement	Jul 15/21 - Nov 23/21	\$136,272.75
3.	parkade repairs	Aug 3/21	\$5,197.50
4.	upgrades to security system	July 2/21	\$20,432.58
5.	panic bar	Aug 3/21	\$1,244.25
6.	pool repairs	Nov 29/21	\$2,291.22
Total			\$540,288.87

For each item, the Landlord presented written submissions, evidence in the form of professional reports, and invoices. In the hearing, two witnesses attested to the rationale for the listed items.

No Tenant from any of the units in the rental property made submissions querying the rationale or providing responses to the Landlord's submitted material.

1. elevator modernization

The Landlord summed up the work completed in their written submission:

The controllers, motors, door closures, floor indicators, cab finishes, and cab fixtures in the elevators were replaced. The elevators were at the end of their serviceable life. Parts and components difficult to source. Expenditure was recommended by an elevator consultant.

The Landlord submits the elevator is a major system because "it is integral to providing access for tenants to their individual units." The assessment completed upon the elevator inspection in 2016 specifically recommended modernization, to increase safety and security where there was a likelihood of parts/component failure.

The Landlord provided a series of 9 invoices, with evidence of the Landlord's payment. These invoices total \$374,850.57. The Landlord submits that the capital expenditures were made within the 18-month period prior to the Application date. They note four exceptions for invoices paid between October 2018 and March 2020.¹ The Landlord submits that "all capital expenditures made in relation to the elevator modernization as part of this same project should be considered as having been incurred during the 18 Month Period." This is because in reality construction projects of this nature "inevitably occur over a period of time", with some payments made prior to the 18-month period.

The Landlord submits this particular expenditure is not expected to recur for at least 5 years, with reference to the *Residential Tenancy Branch Policy Guidelines* (that is, 40. *Useful Life of Building Elements*) on the useful life of this particular component at 20 years, and the longer timespan since the elevator was installed with the rental property's original construction.

In the hearing, a representative reviewed the need for modernization based on the 2016 assessment. Following this there were operational issues with the elevator, then difficulties with finding parts and technicians who could complete required service. The Landlord accepted bids for the modernization project, awarding the contract to the service provider in 2020, with work starting in 2021.

¹ On my review, the four invoices outside of the 18-month date range total \$149,221.59.

2. boiler replacement

This is:

Replacement of old heating and DHW boilers with 5 new high efficiency boilers, heat exchangers and storage tanks.

The Landlord submits the mechanical, heating, and water systems are major systems, and the boilers had reached the end of their serviceable life, with reference to a specialist's report in the evidence. This will reduce operating costs and energy costs, and reduce emissions, as set out in the proposal the Landlord obtained for this project. This work also ensures the Landlord is compliant with s. 32(1) of the *Act* – the Landlord's obligation to maintain property in compliance with health, safety and housing standards – as well as improving energy efficiency.

The Landlord presents 3 invoices they paid within the 18-month period prior to the Application date. These invoices total \$158,544.75, and the Landlord reduced this amount by \$22,272, the amount of the "efficient boiler program rebate" from a public utility provider, making the Landlord's claimed amount total at \$136,272.75.

The Landlord submits they do not expect this work to recur for at least 5 years, with the anticipated useful life of a heating system to be 15-20 years, pledging to maintain preventative service annually.

In the hearing, the Landlord described the previous boilers installed "around 2005", being mid-efficiency boilers and lately prone to leaking, and failing in 2021. Their replacement "obviously improves energy expenditures at the building".

3. parkade repairs

The Landlord presented that they coated and sealed the concrete in the parkade entry ramp. They specified this is a major system/component near the end of its useful life, with the repair completed in order to comply with s. 32 of the *Act*, as well as to increase energy efficiency in the building.

They presented the single invoice for this work, paid on August 3, 2021 (*i.e.*, within the 18-month period), for \$10,395, relating to both buildings in the complex. There is a 50% share particular to this rental property, based on the equal split with the number of units in both buildings: this amount is \$5,197.50.

The Landlord submits the useful life for this expenditure is 10-20 years, based on the useful life of asphalt/concrete at 15 years.

4. upgrades to security systems

The Landlord claims for the installation of a fob system and new cameras for the security system. This is specifically listed as a major system/component as per the *Residential Tenancy Branch Policy Guidelines 37C: Additional Rent Increase for Capital Expenditures*. This work improves the safety of all building residents.

The Landlord provides the single invoice they paid on July 2, 2021, for \$20,432.58.

This security system is new; therefore, the Landlord submits it should not require replacement for at least 5 years. The security firm contracted for this job advised the cameras would last 10 years.

In the hearing, the Landlord specified these components were installed within the 2 elevator cabs. They pointed to the March 13, 2022 letter accompanying the invoice from the security firm that oversaw this job.

5. panic bar

The Landlord identified this as the horizontal bar that runs from one of the front entrance doors to the other. Prior to the replacement, this particular component was not working, due to "forceful use". The Landlord submits this is a major system/component as defined in the legislation.

The Landlord provides the single invoice they paid on August 3, 2021, in the amount of \$2,488.50, relating to both buildings in the complex. There is a 50% share particular to this rental property, based on the equal split with the number of units in both buildings: this amount is \$1,244.25.

The Landlord did not know of this piece ever being replaced or repaired in the past. They provided an estimated useful life of this piece of "10+ years."

6. pool repairs

This was the replacement of the grout around the "swimming pool tile line", necessitated by the grout coming out, causing leaking into an office space below. The pool itself is

located on the top of a shared underground parkade, located between the two buildings at the complex. As spoken to in the hearing, this work was replacement of the perimeter tiles and re-sealing the joints between the stones.

The Landlord submits this is a major system/component as defined in the legislation.

The Landlord provides the single invoice they paid on November 29, 2021, in the amount of \$4,582.44, relating to both buildings in the complex. There is a 50% share particular to this rental property, based on the equal split with the number of units in both buildings: this amount is \$2,291.22.

The Landlord submits this work “more likely than not” would last for more than 5 years.

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.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulations* 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 103 dwelling units, of which all 103 are eligible. There was testimony or evidence from any Tenant to challenge the accuracy of this information from the Landlord.

Eligibility and Amounts

For each of the Landlord's submitted expenditures 1 through 6 above, I address whether each expenditure was *eligible*, and each expenditure *amount*. I also make findings on whether each expenditure will be incurred again within 5 years.

1. elevator modernization

I find this was work undertaken to replace a major system, as defined in the *Regulation* s. 21.1(1).

I find the reason for this work was for replacement of a major system in order to maintain the residential property in a state of repair that complies with the health, safety and housing standards. Additionally, this was replacement of a major system that was malfunctioning and close to the end of its useful life. This is in line with the *Regulation* s. 23.1(4)(a)(i) and (ii).

No Tenant presented evidence to dispute the Landlord's presentation on the need for this capital expenditure.

Regarding the Landlord's timeline, I find that four payments presented were incurred before the 18-month period prior to the Landlord's Application to the Residential Tenancy Branch. These were paid between October 2018 and March 2020, totalling \$149, 221.59. On a strict reading of the legislation, I find the Landlord did not make these payments during the 18-Month Period. I subtract the amount from the Landlord's invoice total and grant \$225,628.98 is the eligible capital expenditure.

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. This is with regard to the system itself, commonly given a useful life of 20 years, as set out in the proposal that the Landlord provided in their evidence.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of \$225,628.98.

2. boiler replacement

I find this was work undertaken to replace a major system, as defined in the *Regulation* s. 21.1(1).

I find the reason for this work was to maintain the residential property in a state of repair that complies with the health, safety, and housing standards. This was also a malfunctioning system and will reduce energy use overall. This is in line with the *Regulation* s. 23.1(4)(a).

I find the Landlord made the two payments for this work within the 18-Month Period.

I find this work will not reoccur within 5 years.

I grant this portion of the Landlord's Application for the capital expenditure of \$136,272.75.

3. parkade repairs

As set out in the Landlord's submission, I find the repairs and preservation of the concrete in the parking entrance constitutes a major component of a major system. This supports a critical function of the residential property. This is to comply with health, safety, and housing standards, for a component that was close to the end of its useful life.

I find the Landlord made the payment for this work within the 18-Month Period, on August 3, 2021. I accept the Landlord's formula to reduce this amount of 50% due to its share of the cost with the adjoining building.

I find this work will not reoccur within 5 years.

I grant this portion of the Landlord's Application for the capital expenditure of \$5,197.50.

4. upgrades to security systems

I find this work was undertaken to replace a major component of a major system, to achieve an improvement in the security of the residential property. This is providing a service to the Tenants and occupants of the residential property.

I find the Landlord made a one-time payment of \$20,432.58 within the 18-Month Period. Additionally, I find this work will not reoccur again within 5 years.

I grant this portion of the Landlord's Application.

5. panic bar

This capital expenditure consisted of replacement of the “panic bar”. As the Landlord submitted, this provides ease of use for residents, after the existing bar was broken.

I find this piece exists as a “major component” in relation to the residential property. As per the s. 21.1 *Regulation* definition, I find this is a component of the residential property that is integral to the residential property, providing ease of access and ease of use to all building residents who use the front door of the building. I also find this was incurred for compliance with health/safety standards. Additionally, I find the Landlord’s evidence plausible that the existing door handle openers failed or were near the end of their life cycle.

I find the Landlord made the one-time payment for this work within the 18-Month Period, on August 3, 2021. I accept the Landlord’s formula to reduce this amount of 50% due to its share of the cost with the adjoining building.

I find this work will not reoccur within 5 years.

I grant this portion of the Landlord’s Application for the capital expenditure of \$1,244.25.

6. pool repairs

I find this work was undertaken to repair a major component of a major system to comply with health, safety, and housing standards required by law. This is due to the fact that active leaks were compromising structural integrity, into the office below. This is in line with the *Regulation* s. 23.1(4)(a)(i).

I find the Landlord made the two payments for this work within the 18-Month Period on November 29, 2021. I accept the Landlord’s formula to reduce this amount by 50% due to its share of the cost with the adjoining building.

I find this work will not reoccur within 5 years.

I grant this portion of the Landlord’s Application for the capital expenditure of \$2,291.22.

Outcome

The Landlord has proven all of the necessary elements for six pieces of their Application; these are items 1 through 6 outlined above.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditures outlined above:

1. \$225,628.98. for elevator modernization
2. \$136,272.75 for boiler replacement
3. \$5,197.50 for parkade repairs
4. \$20,432.58 for security system upgrades
5. \$1,244.25 for the panic bar
6. \$2,291.22 for pool repairs

This is pursuant to 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 103 specified dwelling units, and that the amount of the eligible capital expenditure is \$391,067.28

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$31.64 ($\$391,067.28 \div 103 \div 120$) 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 Guidelines* 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 both 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 \$391,067.28.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by sending it to Tenants via email. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a printed copy in person.

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: May 29, 2023

Residential Tenancy Branch