



Dispute Resolution Services

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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's agent (the "agent") and the landlord property manager (the "manager") attended the hearing. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:19 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The agent and manager attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent, manager and I were the only ones who had called into this teleconference.

The manager and agent testified that since filing for dispute resolution six of the tenants named in this application for dispute resolution have moved out. The manager and agent testified that the landlord is seeking to remove those tenants from this proceeding. The manager and agent testified that the tenants, including the tenants who moved out of the subject rental building have been served with an RTB Form 42O "Amend an Application for Dispute Resolution Add/Remove an Applicant". The landlord entered into evidence proof of service documents for same. I accept the agent and managers testimony that tenants HG, BC, JN, LJ, NT, and AK have moved out. Pursuant to section 64 of the act, I amend the landlord's application for dispute resolution and remove tenants HG, BC, JN, LJ, NT, and AK from the style of cause.

In the Interim Decision I ordered the landlord to serve each tenant with their respective copy of the Notice of Hearing and with a copy of the Interim Decision. I permitted service via posting. The agent and manager testified that the tenants were each served with the Notice of Hearing documents and the Interim Decision via posting on January 11, 2023. The landlord entered into evidence witnessed proof of service documents for service via posting on January 11, 2023. I find that the tenants were served with the above documents in accordance with my Interim Decision.

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 manager and agent, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The manager and agent testified that the subject rental building is a three-story wood framed apartment building built in 1975 containing 43 dwelling units.

The landlord has not applied for an additional rent increase for capital expenditures against any of the tenants prior to this application.

The manager and the agent testified that the landlord is seeking to impose an additional rent increase for capital expenditures incurred to pay for works done to the residential property. The manager and the agent testified that the following eligible capital expenditures were made:

1. Exterior security lighting
2. Basement lighting
3. Tile replacement
4. FOB / camera / intercom / security system
5. Laundry room HVAC
6. Fire alarm upgrade
7. Water recirculation pump

Exterior security lighting

The manager and the agent testified that the landlord installed LED lighting in the parking lot of the subject rental building to improve safety and security for tenants moving between the parking lot and the subject rental building. The manager and agent testified that no lighting was previously in place in the area.

The manager and the agent testified that the lighting installed should last 20 plus years. The manager and the agent testified that the expenditure was incurred on April 13, 2021.

The landlord entered into evidence an invoice from an electrical company in the amount of \$3,825.15. The invoice has a note "paid on account" written on it. The landlord

entered into evidence a Fortis BC rebate in the amount of \$120.00 for the exterior lighting installation.

Basement lighting

The manager and the agent testified that the basement of the subject rental building contains the laundry room and mechanical room for the subject rental building. The manager and agent testified that the common area lighting in the basement was replaced because it was at the end of its useful life and was not energy efficient. The manager and the agent testified that the basement used to be dark and dingy which was a safety concern for tenants of the building. The manager and the agent testified that the lighting was original to the 1975 building.

The manager and the agent testified that the upgraded lighting in the basement cost \$613.53. An invoice for same was entered into evidence. The invoice is dated January 17, 2022. The manager and agent testified that the cost was incurred on January 17, 2022. The manager and agent testified that they expect the basement lighting to last 10 to 12 years and that the LED lights have a 50,000 hour rating.

Tile replacement

The manager and agent testified that the building had old tiles in the lobby, laundry room and basement (common areas) that were well over 20 years old and had reached the end of their useful life. The tiles were smooth and their finish was worn-out leaving them extremely slippery when wet. The manager and agent testified that the tiles were replaced because they were past their useful life and posed a slipping hazard for tenants.

The manager and the agent testified that the laundry room, on top of being a wet area, also had a treacherous slope to the main drain which compounded the risk of accidental fall. The landlord entered into evidence a written complain of same from a tenant in the subject rental building. The manager and agent testified that to correct the issue, new anti-slip tiles with light commercial rating were installed in those three areas. The manager and the agent testified that the laundry drain could not be removed or moved so the tiling around it was redone with a much less pronounced slope and smooth drain cover.

The landlord entered into evidence an invoice dated November 29, 2021 in the amount of \$28,847.36 for the supply of the new tile flooring. A credit card receipt for the above amount dated December 14, 2021 was entered into evidence. The landlord entered into evidence an invoice dated November 18, 2021 for tile installation in the amount of \$27,522. The manager and the agent testified that the tiles were ordered on their account and were paid for on December 14, 2021 after the installation occurred. The

manager and agent testified that the labour to install the tiles was paid for on November 18, 2021. The November 18, 2021 invoice states that the invoice is paid. The manager and the agent testified that the new tiles should last 20 plus years.

FOB / camera / intercom / security system

The agent and manager testified that there was no security system at the subject rental building and that access to the building was granted with an antiquated key system. The landlord and manager testified that the security and entrance system to the subject rental building was upgraded to provide additional security. The manager and agent testified that new cameras, a new intercom and fob devices instead of keys were installed.

The agent testified that the intercom at the subject rental property was at the end of its useful life and was too old to be upgraded. The manager and the agent testified that only tenants with a land line were able to use the old intercom system and three tenants, even with a landline, could not use the old system. The manager and agent testified that many tenants no longer have landlines and so the old intercom was not useful to many tenants. The agent and manager testified that the new intercom can dial any number, including cell phone numbers, to grant access.

The manager and agent testified that magnetic locks were installed on the entrance doors to the subject rental building to prevent them from being able to be pried open.

The landlord entered into evidence an invoice dated June 9, 2022 for the above work totalling \$36,440.25. The June 9, 2022 invoice shows that \$15,000 of the above total was paid as a deposit and that an additional \$21,440.25 is owing. A separate deposit invoice dated March 4, 2022 was entered into evidence with the notation that the \$15,000.00 deposit was paid on March 7, 2022. The June 9, 2022 invoice has a notation that the balance of \$21,440.25 was paid on June 17, 2022.

The landlord testified that the back door to the subject rental building used to be key operated. The agent and manager testified that the back door hardware was upgraded to meet current code. The manager and agent testified that panic hardware was installed that allowed a tenant exiting the building to simply push it open rather than having to turn a knob. The manager and agent testified that the hardware was altered for safety and security reasons and that the hardware that was removed was original to the 1975 building. An invoice for the hardware dated March 23, 2022 was entered into evidence in the amount of \$575.68. The invoice includes the notation "paid on account".

Laundry room HVAC

The agent and manager testified that the subject rental building's laundry room located in the basement has no heat source. When temperatures drop below -10 degrees Celsius, the hydraulic-oil line to the elevator, which is located on the backside of the laundry room, seizes due to the cold causing daily malfunctions of the elevator, rendering it inoperable.

The manager and agent testified that the solution brought forward by the elevator maintenance company was to add heat to the laundry room. The manager and agent testified that they obtained a quote from an electrical company for the above work in the amount of \$1,659.27. That e-mail quote was entered into evidence. The manager and agent testified that they were able to install the recommended heaters using a third party at a lower cost than the quote.

The manager and agent testified that they purchased the required supplies and hired a third party to install the heaters. The landlord entered into evidence the following receipts with the following dates:

- February 23, 2022 in the amount of \$71.23 for a thermostat and thermostat guard,
- March 11, 2022 in the amount of \$131.32 for wire and items required for electrical installation, and
- February 28, 2022 in the amount of \$451.03 for heaters.

The manager and the agent testified that they paid the third party \$165.00 to complete the installation. An e-transfer confirmation was entered into evidence dated April 8, 2022 in the amount of \$165.00 with the message "March 11, 2022 laundry heater installation. 5.5 hrs at \$30.000." The total capital expenditure for the laundry room HVAC is \$818.58.

The agent and manager testified that adding heaters to the laundry room worked well this past winter and prevented the elevator from shutting down due to cold temperatures.

Fire alarm upgrade

The agent and manager testified that when the subject rental building was built there was no fire alarm system. Approximately 30 to 40 years ago there was a retrofit and fire alarms were added; however, the system did not have alarms that rang in individual units, but only in the common areas.

The manager and agent testified that the old system was at the end of its useful life and required replacement. A new addressable panel was required to upgrade the fire alarm system which now includes new heat detectors with alarms in every suite

interconnected to the central system to increase tenants' fire safety. The new system meets current fire safety codes.

The agent entered into evidence an invoice dated June 29, 2022 in the amount of \$18,406.88. The invoice notes "paid on account". The agent and manager testified that the fire alarm upgrade expense was incurred on June 29, 2022 and should last over 30 years.

Water recirculation pump

The manager and agent testified that the water recirculation pump for the boiler was installed in 2008 and was at the end of its useful life. Units close to the boiler are able to get hot water on demand but units further away have to wait long periods of time for hot water to reach them. The replacement cost for the water circulation pump was \$325.37. The landlord entered into evidence an invoice for same dated May 17, 2021 with a due date of June 30, 2021. The invoice notes "paid on account". The manager and agent testified that the invoice was paid on June 30, 2021. The manager and agent testified that the new water recirculation pump should last 10 to 12 years.

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

Upon review of the Residential Tenancy Branch Dispute Management System, I find that the landlord has not applied for an additional rent increase against these tenants 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 accept the manager and agent's undisputed testimony that the subject rental building contains 43 dwelling units all of which are eligible specified dwelling units.

4. Amount of Capital Expenditures

Based on the testimony of the agent and the manager and the invoices / receipts entered into evidence, I find that the landlord has proved the amount of the capital expenditures as follows:

1. Exterior security lighting: \$3,825.16 (less rebate of \$120.00) = \$3,705.16
2. Basement lighting: \$613.53
3. Tile replacement: \$ 56,369.36
4. FOB / camera / intercom / security system: \$37,015.93
5. Laundry room HVAC: \$818.58
6. Fire alarm upgrade: \$18,406.88
7. Water recirculation pump: \$325.37

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;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

I find that the exterior lighting installation is a component of a security system which, as defined above, is an example of a major system. I find that the exterior lighting installation provides added safety and security to the tenants moving between the subject rental building and the exterior of the building.

I find that lighting in the basement of the subject rental building is integral to the residential property as the basement cannot be properly used without lighting. I find that the basement lighting is a major component of the electrical system which is a major system as defined by the Regulation.

As set out in RTB Policy Guideline 37, I find that tile replacement in the common areas of the building is a major system or component.

I find that the installation of the new intercom is part of the landlord's upgrade of the safety and security system as a whole which also included the installation of cameras, fobs, door locks and panic hardware. As set out in RTB Policy Guideline 37, I find that the above upgrades to safety and security are a major system or component.

As set out in RTB Policy Guideline 37, I find that the elevator is a major system of the subject rental building. I find that providing heat to the areas surrounding the hydraulic oil to prevent shut down constitutes a repair to the elevator. As such, I find that the laundry HVAC work was undertaken to repair "major components" of a "major system" of the residential property.

I find that the fire alarm system is a major system in the subject rental building as it is integral to the safe occupation of the subject rental building and provides a safety service to the tenants and occupants of the residential property.

As set out in RTB Policy Guideline 37, I find that plumbing is a major system of the subject rental building. I find that the water recirculation pump is a component of the building's plumbing, as it sends hot water to each of the dwelling units, and is therefore a component of a major system.

b. Reason for Capital Expenditure

I accept the agent and manager's testimony that the subject rental property was built in 1975.

Residential Tenancy Branch Policy Guideline #40 states that light fixtures have a useful life of 15 years.

I accept the agent and manager's testimony that the exterior lighting was installed to improve the security of the residential property.

I accept the agent and the manager's testimony that the basement lighting was original to the subject rental property. I find that the basement lighting was well beyond the useful life of light fixtures and required replacement.

I accept the agent and the manager's testimony that the common area tiles were over 20 years old and were slippery when wet. Residential Tenancy Branch Policy Guideline #40 states that tile flooring has a useful life of 10 years. I find that the common area tiling was well beyond its useful life and required replacement.

I find that the installation of a security system (including a new intercom, fob system, cameras, door locks and panic hardware) at the subject rental property was installed to improve security of the residential property.

Residential Tenancy Branch Policy Guideline #40 states that the useful life of a intercom system is 15 years. I accept the agent and landlord's testimony that the intercom was original to the subject rental property and its useful life had expired. I find, on a balance of probabilities, that the security system including the intercom, cameras, and fob devices have a useful life of 15 years.

Residential Tenancy Branch Policy Guideline #40 states that the useful life of doors is 20 years. I find on a balance of probabilities that the new locks and hardware installed on the exterior doors to the subject rental building have a useful life of over 5 years.

I accept the agent and the manager's testimony that the heating in the laundry room was installed because the elevator (a major system/component) was malfunctioning in cold temperatures.

Residential Tenancy Branch Policy Guideline #40 states that the useful life of a heating system is 15 years.

I accept the manager and the agent's testimony that the fire alarm system was 30- 40 years old. Residential Tenancy Branch Policy Guideline #40 states that fire alarms have a useful life of 15 years. I find that the fire alarm system was beyond its useful life and required replacement. I find that the replacement was also required to comply with current safety standards.

I accept the landlord and the agent's testimony that the water recirculating pump was installed in 2008, making it approximately 13 years old when it was replaced. I accept the landlord and the agent's testimony that a new water recirculating pump should last 10-12 years. I find that the water recirculating pump's useful life had passed when it was replaced.

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 manager and agent's uncontroverted evidence that the payments for the following capital expenditures were made on the following dates:

1. Exterior security lighting: April 13, 2021
2. Basement lighting: January 17, 2022
3. Tile replacement: November 18, 2021 and December 14, 2021
4. FOB / camera / intercom / security system- March 7, 2022, March 23, 2022 and June 17, 2022
5. Laundry room HVAC: February 23, 2022, February 28, 2022, March 11, 2022 and April 18, 2022
6. Fire alarm upgrade: June 29, 2022
7. Water recirculation pump: June 30, 2021

The landlord filed this application for dispute resolution on July 20, 2022. I find that all of the above listed payment dates fall within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components/systems replaced/repaired/installed all exceed five years. There is nothing in evidence which would suggest that the life expectancy of the components replaced/repaired/installed 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/repaired/installed 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 expenditures incurred by the landlord are eligible capital expenditures, as defined by the Regulation.

6. Outcome

The landlord has been successful. The landlord 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 amount of the eligible capital expenditures incurred divided by the number of specified dwelling units, divided by 120. In this case, I have found that there are 43 specified dwelling units and that the amount of the eligible capital expenditure is \$117,254.81.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$22.72 ($\$117,254.81 \div 43 \text{ units} \div 120$). If this amount exceeds 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 of \$22.72. 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: May 24, 2023

Residential Tenancy Branch