



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding LANTERN PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This dispute dealt with the landlord's application pursuant to the Residential Tenancy Act (Act) for an additional rent increase for capital expenditure pursuant to Residential Tenancy Regulation (Regulation) 23.1.

The landlord submitted that all tenants were served the required documents on April 14, 2023, by attaching them to the tenants' doors. The landlord submitted documentary evidence as to service of the required documents. I find that all tenants were served in accordance with the Act and the Interim Decision entered in this matter on April 3, 2023, relating to the preliminary hearing on March 27, 2023.

The landlord served additional documentary evidence in this matter, as well as an updated tenant list.

No tenant filed evidence in these matters.

Issue(s) to be Decided

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

Background and Evidence

I have considered the documentary evidence; however, not all details of the submissions and arguments are reproduced here. The relevant evidence, and my findings are set out below.

The residential property is an apartment building with a total of 30 units on 5 floors.

The landlord submitted that they have not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord's written submission is reproduced in part, as follows:

The Applicant has owned the building since the late 1960's. It has maintained it conscientiously and thoroughly since purchase. Inevitably, some of the building's mechanical components reach the end of their useful life. In deciding when to replace these components, the Applicant relies on the advice of its experts. The building has a single hydraulic elevator (the "Elevator") which the Applicant has operated continuously since it bought the building. It has never been out of service for longer than a couple of hours, if at all. According to the experts, components of the Elevator have reached the end of their useful life and are at risk of malfunctioning without warning. Further, the experts have told the Applicant that the Elevator will need to be fully modernized over the next several years but that the most important component of upgrading is the door assembly. It can conveniently be separated for replacement as a separate capital item and once done can be "crossed off" the modernization plan.

The Elevator Repairs meet the criteria set out in **Section 23.1(4)(a)(ii)** in that the elevator assemblies had failed and were close to the end of their useful life.

The report from *Westcoast Elevators* recommends that the existing original door operation equipment of the elevator at 1665 Duchess Avenue be upgraded with new. The existing original door equipment is well worn having operated many years beyond its life expectancy. Due to its age, the existing original equipment is obsolete with replacement parts no longer available. Please note that this upgrade would be considered the first step of a Full Elevator Modernization. West Coast Elevator proposes to supply & install a new GAL MOVFR II" Electronic Door Operator Assembly for the elevator at the above location. The GAL MOVFR II Door Operator is an industry standard product that has been proven to provide reliable door operation for many years. All new Car and Hall Door Equipment & Linkages will be provided with the new Door Operator Assembly.

New Hall Door Spirator Closing Devices will be installed to enhance the door closing force.

As per code requirements new Car Door Restrictive Clutch Drop Key Access Devices and Hall Door Fire Safety Retainers & Keels will be installed.

As part of this upgrade, the existing car door protective device of the elevator will be upgraded with a new Formula Systems Safescreen Electronic Door

Detector Edge Unit. The upgrade to a new Electronic Door Detector Edge Unit will provide a greater degree of safety and reliability for the tenants, as its infrared detector beam will not allow the elevator door to close until the door's path is clear. This upgrade will be very beneficial when considering the needs of the elderly and passengers with mobility issues.

The Applicant did not fail to repair or maintain the Elevator. Quite to the contrary. It services the Elevator monthly as required by law. It follows the recommendations of its expert contractor, who has been continuously maintaining the Elevator since the Applicant bought the building. It acted reasonably and prudently in all of the circumstances. Nobody has reimbursed the Applicant for the Elevator Repairs nor is the Landlord entitled to be paid for the Elevator Repairs by any other source.

The Elevator Repairs are complete as set out in the letter by West Coast Elevator Services Ltd. dated November 15, 2022, that was upload to RTB as part of this proceeding.

These Elevator Repairs should have a useful life of at least 25 years. The original door assembly provided reliable service from 1961-2022. Absent failure owing to defects in **workmanship, it is inconceivable that the Applicant will have to repeat these repairs in the next five years.**

[Reproduced as written]

The landlord submitted that the elevator was malfunctioning, meaning there was a failure to "function normally or satisfactorily". Further, the landlord incurred the expenditures for the elevator within the 18 months prior to the application.

The landlord's capital expenditures claim was in the amount of \$21,840. The claim is for an elevator door operator assembly upgrade.

Included in the evidence filed by the landlord was the quote for repairs, the invoice for repairs, and a letter from West Coast Elevators detailing work and confirming completion.

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. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application.

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. 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 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 submitted 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.

The landlord's undisputed evidence is that there are 30 dwelling units in the residential property and the evidence supports that all of the dwelling units are eligible.

In this case, I find the landlord submitted sufficient evidence that they had not made a prior application for an additional rent increase for an elevator door operator assembly upgrade within the 18 months prior to filing.

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred for an elevator door operator assembly upgrade to the elevator of the residential property and was therefore, I find, a component of a major component.

Based on the landlord's detailed written statement and other evidence before me, I find that the landlord incurred capital expenditures in order to maintain a component of a building component of the residential property, as the elevator door operator assembly upgrade had exceeded its useful life, per section 40 of the Tenancy Policy Guideline.

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred in the 18-month period preceding the date the landlord made their application.

Based upon the undisputed evidence before me, I find that the capital expenditure for the elevator door operator assembly upgrade is not expected to be incurred again for at least 5 years.

For these reasons, I grant the landlord's application for the rent increase based on eligible capital expenditures of \$21,840, 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 as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there are 30 specified dwelling units and that the amount of the eligible capital expenditure is \$21,840 in total.

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$6.07** per affected tenancy ($\$21,840 \div 30 \text{ units} \div 120$). This amount may not exceed 3% of a 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.

The landlord is directed to Policy Guideline 37, page 11 to properly calculate the rent increase in accordance with the Regulations, 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 to learn about 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.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 15, 2023

Residential Tenancy Branch