



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding PRIMEKORE LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Issue Code ARI-C

Introduction

On December 22, 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 time. The Tenants listed as Respondents, who live at the rental unit property, did not attend the hearing. 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

The Landlord presented a record of their delivery to each rental unit in the building. They served each Tenant a copy of the hearing materials, including the Notice of Dispute Resolution Proceeding, and materials related to the dispute resolution process and additional rent increases. This was either in person or attached to the door of individual rental units. The Landlord provided a “Proof of Service” document for each rental unit, signed by the person who completed service, as well as a witness in each instance.

From this evidence, I find that the Landlord served each Tenant in accordance with the *Act*.

Issue to be Decided

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

Background and Evidence

The rental unit property consists of a single building, constructed in 1966. There are 76 units in total in the building. As submitted by the Landlord, 39 of these are eligible for the work completed involving balcony, window, and door replacement. The Landlord reduced the number of eligible units because those units did not feature a patio or balcony (7), including the penthouse rental unit (1), or the tenancy started after work completed (29).

The Landlord acquired ownership of the building in May 2019. The Landlord obtained a building permit on October 8, 2020, as they presented in their evidence. This permit shows the scope of the permit/project to be “repair/remediation of 54 balconies.”

The Landlord hired a contractor to complete the work in September 2020. The contractor provided a comprehensive summary, dated December 1, 2022 as the Landlord presented in their evidence. This work “generally included the replacement of the exterior doors and windows, new door and window trims, deck and railing replacement, remediation of encountered rot, insulating of the deck rims with spray foam insulation, new deck soffits, and exterior painting.” The contractor confirmed the building was “assumed to have been constructed around 1966”, having 70 units.

Specific to technical specifications and observations, the contractor noted “For this particular building it was apparent that the expected life span [of the building envelope] had been well exceeded.” They noted specific defects.

They completed deck replacement on all 69 units, including single and double decks. They installed 69 glass doors and 174 windows in total. The contractor completed work in August 2021.

Regarding the completed work, the contractor noted: “With routine inspection and maintenance, the doors, windows, and decks should perform for the next 20 years.”

In their evidence, the Landlord included photos of the old windows and balconies from different viewpoints on the exterior. The Landlord included images of the completed work.

The Landlord presented each set of capital expenses that they submit are related to major systems or major components of the rental unit property. They distinguished between additional rent increase work for installation of the balconies, doors, and windows. They removed amounts associated with additional costs that included other expenses such as landscaping and fencing.

The Landlord presented a series of five invoices, and reduced the amount to the work attributed to deck, window, and door installation:

	Description	invoice date	paid date	amount*
A.	#8961 – total \$165,129.91	June 30, 2021	July 19, 2021	\$142,620.51
B.	#9015 – total \$212,347.98	July 31, 2021	August 26, 2021	\$145,071.41
C.	#9068 – total \$124,095.82	August 31, 2021	September 24, 2021	\$124,095.82
D.	#9122 – total \$44,871.84	October 22, 2021	March 12, 2021	\$44,016.76
E.	#9156 – total \$2,784.83	October 31, 2021	November 17, 2021	\$1,872.22
Total				\$457,676.72

*amount only for installation of decks, windows, and doors

The Landlord presented an image of their completed payment for each invoice, in the form of their money order payments referencing each invoice number.

The Landlord provided a detailed breakdown of specific costs in a chart they prepared and presented in their evidence. This the Landlord specifying items associated with decks windows and doors, separated from other costs.

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, the Landlord presented that they did not make a prior application for an additional rent increase within the previous 18 months. I find this to be fact, where this work was

completed, as noted by the contractor, in August 2021, and the Landlord filed their Application at the Residential Tenancy Branch on December 22, 2022.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* 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 39 dwelling units, of which all 39 are eligible. This was as specified by the Landlord in the hearing. I make this finding based on s. 21.1(1)(a) of the *Regulation*, set out immediately above.

Eligibility and Amount

For the Landlord’s submitted expenditures, I address whether it was *eligible*, and then determine the expenditure *amount*.

As set out in s. 23.1(4) of the *Regulation*, I find the replacement of balconies, doors, and windows at the rental unit property is replacement of a major system. As per the definition of “major system”, I find the balconies are a structural system that is integral to the residential property.

Regarding windows and doors’ installation, I find these are each a “major component” as defined in s. 21.1 of the *Regulation*, integral to the residential property.

The separate invoices provided by the Landlord add up, from relevant work, to \$457,676.72. I find the Landlord provided sufficient detail to separate work that was not related to the project,

and I find that separation validates each amount they attributed exclusively to installation of decks, windows and doors.

I grant this capital expenditure, as provided on the Landlord's Application, for the amount of \$457,676.72.

Timing of the Capital Expenditure

I accept the Landlord's evidence that the first payment for the work was on July 19, 2021, and the final payment was incurred on November 17, 2021. Both of these dates are within 18 months of the Landlord's making this Application on December 22, 2022.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find all components are within 15 to 20 years.

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.

Outcome

The Landlord has proven all of the necessary elements for their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$457,676.72. This is pursuant of 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 39 specified dwelling units, and that the amount of the eligible capital expenditure is \$457,676.72.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$97.79 ($\$457,676.72 \div 39 \div 120$) 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, calculated above, in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37, 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 \$457,676.72

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 them via email where possible. 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: July 10, 2023

Residential Tenancy Branch