



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

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 (agents of) attended the hearing. Two Tenants provided oral testimony at the hearing. All parties provided affirmed testimony. The Landlord provided a proof of service document showing they served the Tenants with the Notice of Dispute Resolution Proceeding and evidence package at their respective rental units by either posting it to the door, or giving it to them personally. I find the Tenants have been sufficiently served, as no service issues were raised.

The Tenants did not provide any documentary evidence.

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 rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this 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 parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The Landlord noted that this rental building consists of 41 rental units.

The Landlord further explained that this rental building was built around 1965, and many of the building components are original and are starting to break down (windows, patio doors, decking, siding).

The Landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The Landlord applied for permission to impose an additional rent increase for capital expenditures that were incurred to pay for the following items, as follows:

- 1) \$681,714.92 – Centra Invoice – All windows, patio doors, deck resurfacing, and siding
- 2) \$19,741.52 – Structural Engineering fees for oversight of project
- 3) \$8,629.95 – BC Hydro Fees
- 4) \$56,828.15 – Stucco repairs due to window replacement
- 5) \$4,138.05 – Landscape remediation to affected areas near construction site
- 6) \$7,606.28 – Minor drywall and window sill repair to windows that had been leaking

Total amount sought: \$778,658.87

The Landlord explained that this building is 1965 building and many of the building components are original and well beyond their useful life expectancy. The Landlord noted that they had a consultant come to the building around 2 years ago to provide a report on energy efficiency upgrades that could and should be done to the building. The central issue were the windows and patio door, and this appears to have precipitated the other costs, as they were incurred to repair adjoining surfaces and materials.

The Landlord stated that the windows in the building were single pane aluminum windows, and many were leaking and falling apart. The Landlord stated that they replaced all windows and patio doors in the building, and they also repaired the adjoining deck surfaces by reinstalling a new vinyl membrane. The Landlord also had a

rip out some of the older siding and stucco around the windows, and given the age of the stucco/siding, significant repairs were required due to the window upgrade, and the general age of the components. The Landlord also pointed out that the deck surfaces were starting to deteriorate.

The Landlord noted that they had to pay additional fees to BC Hydro, and to an engineer to oversee the project. The Landlord further stated that they had to remediate the Landscaping which was damaged due to the equipment and the work done. The Landlord also noted that there was some minor interior work around the windows and doors that was required in some units, since some of them were leaking and failing. The Landlord also noted that the building needed repainting due to the significant stucco repairs that were done when replacing the windows. All of the invoices for the above noted items were provided into evidence. The Landlord stated that the work was completed on September 21, 2022.

One of the Tenants indicated that this rent increase will cause him hardship, and that the Landlord has already given a regular annual rent increase this year. However, the Tenant noted that there was a lot of work needed on the building. Another Tenant also spoke during the hearing to explain that the Landlord has done lots of work in the past, but not asked for additional rent increases, and she does not feel this is fair. The Tenant also opined that the Landlord left a mess in some area, and did not complete the repairs “properly”.

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

I am satisfied that the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months. This was not in dispute.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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.

The Landlord noted that there are 41 dwelling units/specified dwelling units.

4. Amount of Capital Expenditure

- 1) \$681,714.92 – Centra Invoice – All windows, patio doors, deck resurfacing, and siding
- 2) \$19,741.52 – Structural Engineering fees for oversight of project
- 3) \$8,629.95 – BC Hydro Fees
- 4) \$56,828.15 – Stucco repairs due to window replacement
- 5) \$4,138.05 – Landscape remediation to affected areas near construction site
- 6) \$7,606.28 – Minor drywall and window sill repair to windows that had been leaking

Total amount sought: \$778,658.87

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 will address each of the items in the same order they were laid out above:

- 1) \$681,714.92 – Centra Invoice – All windows, patio doors, deck resurfacing, and siding

I am satisfied that the windows, patio doors, deck surface, and siding (all part of this invoice) are considered major components/major systems.

- 2) \$19,741.52 – Structural Engineering fees for oversight of project
- 3) \$8,629.95 – BC Hydro Fees
- 4) \$56,828.15 – Stucco repairs due to window replacement
- 5) \$4,138.05 – Landscape remediation to affected areas near construction site
- 6) \$7,606.28 – Minor drywall and window sill repair to windows that had been leaking

I find these next 5 items also qualify as eligible expenses, as they were secondary but related expenses incurred to tidy up and repair adjoining building components, which were also near the end of their useful life. All these expenses were incurred so that the Landlord could complete the major repairs to windows, doors, siding, and patio decking as part of the first invoice.

b. Reason for Capital Expenditure

I am satisfied that the work was completed on all items to replace aging building components and to repair adjoining and related work. I am satisfied that all items were close to the end of their useful life expectancy and were mostly original to the 1965 building. I am also satisfied that some of related components had already started malfunctioning and failing (some windows, siding, and doors).

c. Timing of Capital Expenditure

I note the Landlord made the application on November 8, 2022, and I am satisfied that all work was completed and paid within the 18-month period preceding this application, as per the invoices.

d. Life expectancy of the Capital Expenditure

Policy Guidelines #40 sets out the useful life expectancy for typical building components.

I find that the life expectancy of the components replaced 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 expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the Landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the Landlord, or
- the Landlord has been paid, or is entitled to be paid, from another source.

The Tenants spoke about hardship, which cannot be factored into this decision. One of the Tenants pointed out that she does not feel the Landlord did the repairs properly. However, she did not sufficiently elaborate on this matter. The Tenant also noted that the Landlord has failed to clean up properly. However, I do not find any of the statements made by the Tenants sufficiently support either of the two bullet points above, required in order to defeat this application.

Outcome

I find the Landlord is successful. He 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 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 41 specified dwelling units and that the amount of the eligible capital expenditure is \$778,658.87.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$158.26 ($\$778,658.87 \div 41 \text{ units} \div 120$). 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 \$778,658.87. 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: July 18, 2023

Residential Tenancy Branch