Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding REDBRICK PROPERTIES INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on January 6, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- An additional rent increase for capital expenditures under section 43(3) of the Act.

The hearing was convened by telephone conference call at 9:30 am on June 8, 2023, and was attended by an agent for the Landlord AJ (Agent) and three tenants, JG, AD, and RD. All testimony provided was affirmed. The Agent stated that the Notice of Dispute Resolution Proceeding (NODRP), and the documentary evidence before me from the Landlord, was sent to all 57 respondents by registered mail on February 16, 2023. JG, AD, and RD acknowledged receipt by registered mail. I deem the remaining respondents served on February 21, 2023, pursuant to section 90(a) of the Act. The hearing therefore proceeded as scheduled, despite the absence of the other 54 respondents pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure).

The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing. The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to a rent increase for eligible capital expenditures?

Background and Evidence

In the Application the Landlord sought an additional rent increase in relation to the following expenditures:

- $28,338.46 for the cost of replacing the elevator door operator;
- $1,890.00 for the cost of a Technical Safety BC category 5 safety test;
- $2,296.35 for replacement of the intercom system;
- $2,041.20 for replacement of the boiler pump;
- $3,667.65 for roof and deck repairs;
- $3,549.00 for repairs to roof and deck drainage systems;
- $850.00 for reimbursement of compensation paid to the tenant of unit 106 for water damage;
- $1,008.00 for the cost of replacing a countertop and cabinetry in unit 211; and
- $11,658.68 for the cost of replacing appliances such as fridges, dishwashers, and ovens/ranges.

At the hearing there was no dispute between the parties that the property has 41 dwelling units. The Agent stated that the door operator system for the elevator was replaced at a cost of $28,338.46, paid via two equal payments n the amount of $14,169.23 on December 1, 2021, and February 10, 2022, as it was at the end of its useful life and malfunctioning. The Tenant RD argued that the Landlord should not be able to claim this amount as an eligible capital expenditure for an additional rent increase as it had been poorly maintained and the Landlord did not adequately respond to complaints about its lack of functioning. The Agent disagreed stating that the door operator system needed to be replaced because it was no longer functioning properly as it was 46 years old and at the end of its useful life. The Agent stated that the elevator was regularly maintained through a monthly service contract. The Agent also denied RD’s allegations that the Landlord did not take complaints about the elevator seriously stating that the delays in replacing the door operator system were due to supply chain shortages on the part of the elevator service provider.

In support of this claim amount the Landlord submitted documentary evidence including an invoice, proof of payment, call out reports from the elevator service provider, a copy of the elevator door operator replacement proposal from the elevator service provider; and a copy of a notice to tenants regarding the elevator repairs.

The Agent sought recovery of $1,890.00 paid on June 17, 2022, for the cost of a Technical Safety BC category 5 elevator test. The Agent stated that this test was not related to the above noted replacement of the elevator door operator and is required every few years. An invoice and a copy of the cheque were submitted.

The Agent stated that the pump for the domestic hot water system required replacement as it was over 12 years old and had failed. The Agent stated the plumber attended the property to diagnose the problem and replaced the pump at a cost of $2,041.20. The agent stated that this amount was paid by cheque on May 30, 2022, and a copy of the cheque and the invoice were submitted.

The Agent stated that the intercom system was replaced in September of 2022 as it was over 10 years old and was not functioning correctly. The Agent stated that some doors could not be opened as a result and that either a major upgrade or replacement of the system was therefore required. The Agent stated that based on the recommendations from the intercom provider, the intercom system was replaced as the provider could not guarantee that upgrading the intercom system would prevent these issues from reoccurring in the future. The agent stated $4,592.70 was therefore paid for its replacement by etransfer on September 9, 2022. An e-mail from the intercom provider outlining available options and an invoice were submitted.

The Agent stated that the Landlord is seeking a rent increase for capital expenditures against all 41 dwelling units because of the above noted claims. However, they only sought a rent increase for capital expenditures related to the following three claims against unit 106. The Agent stated that the waterproof membrane covering the deck of suite 106 which extends over a portion of the underground garage, failed causing water to leak into the wall of the building and the underground parking garage. As a result, the Agent stated that the entire deck membrane needed to be replaced and resurfaced at a cost of $3,667.65. The Agent stated that the drainage related to the deck also needed to be upgraded to prevent future water buildup at a cost of $3,549.00. Invoices as well as proof of payment via etransfer on February 7, 2022, and cheque on March 4, 2022, were submitted. Finally, the Agent stated that the Tenant of unit 106 was provided with $850.00 in compensation for water damage to their rental unit and possessions on

February 7, 2022, because of the water leak caused by the membrane failure and therefore sought to have this amount included as part of the above noted capital expenditures. The Tenant RD argued that the decking/roofing membrane replacement and associated repairs do not meet the eligibility criteria as a waterproofing membrane degrades over time. RD then compared the waterproof membrane to lightbulbs in support of their position that the Landlord should not be entitled to claim a rent increase for its replacement.

Finally, the Agent stated that the Landlord is seeking a rent increase for $1,008.00 in costs for replacing a countertop and cabinets in unit 211, and $11,658.68 in costs incurred to replace appliances such as dishwashers, fridges, and stoves/ranges in units 104, 105, 106, 107, 110, 203, 204, 205, 209, 211, 304, 307, and 313. The Agent stated that the Landlord is seeking the proportional rent increase amounts against only the units to which the replacements apply, and that the above noted items were replaced as they were past their useful lives. The Agent also stated that these expenses should be considered as eligible capitol expenditures for the purpose of an additional rent increase pursuant to the versions of Policy Guideline #37 (now Policy Guideline #37C) that were in place at the time the expenses were incurred and the Application was filed, even if they would not now be covered in accordance with Policy Guideline #37C which has an effective date of February 17, 2023.

Analysis

Although I am satisfied that all of the above noted costs were incurred within the 18 months immediately preceding the Application, and that they are not expected to reoccur within the next five years, I do not find that all of them qualify as eligible capitol expenditures for the purpose of an additional rent increase.

Although the Agent sought recovery of costs incurred to replace appliances such as dishwashers, fridges, ranges, and stoves, as well as cabinetry and countertops, which they stated were well past their useful life, no evidence of the age of these items or their useful life expectancy was submitted. Policy Guideline #37 states that in addition to testimony at the hearing, applicants should consider submitting documents to support their application including but not limited to:

- Expert reports regarding the useful life of the prior system or component;
- Expert reports regarding the expected lifespan of the installed, repaired or replaced system or component;
- The reason the installation, repair or replacement was needed;

- Documents showing the date the prior system or component was purchased and installed; and
- Manufacturer's documents relating to the prior system's or component's useful life expectancy.

Nothing of the above nature was submitted for my consideration in relation to the replaced appliances. As a result, I find that the Landlord has failed to satisfy me on a balance of probabilities that the above noted items were replaced because they were past their useful life. I therefore dismiss these portions of the Landlord's claim for a rent increase for eligible capital expenditures, without leave to reapply.

Although I am satisfied that $850.00 in compensation was paid to the tenant of unit 106 for damage caused to their furniture due to the membrane failure of their deck and the lack of proper drainage, I do not find this amount to be an eligible capitol expenditure. It was not paid to install, repair, or replace a major system or major component as required by section 23.1(4) of the regulations. I also find that it would be illogical for the Act to allow a landlord to pay a tenant compensation for damage to their furniture, only for the landlord to be able to turn around and claim that money back from the same tenant through an additional rent increase. For the reasons above, I therefore dismiss this portion of their claim without leave to reapply.

Further to the above I also dismiss the Landlord's claim to include the $1,890.00 paid for a Technical Safety BC category 5 test for the elevator without leave to reapply. The Agent stated at the hearing that this test is required every few years for safety. As a result, I find it to be routine maintenance, rather than an installation, repair, or replacement. I am also satisfied that it is likely to reoccur within 5 years and that it clearly falls within the type of expense not intended to be eligible, as set out under Policy Guideline #37.

Despite the above, I grant the Landlord's Application in relation to the following expenses:

- $28,338.46 for the cost of replacing the elevator door operator;
- $2,296.35 for replacement of the intercom system;
- $2,041.20 for replacement of the domestic hot water system pump;
- $3,667.65 for deck/garage roof repairs; and
- $3,549.00 for drainage system upgrades.

I dismiss RD's argument that the waterproof deck and roof membrane replaced by the Landlord does not meet the criteria of a major component because it degrades over time like a lightbulb. All items degrade over time, and I find that section 23.1(4)(c) of the regulation has accounted for this degradation by specifically requiring that the expense not be expected to reoccur for at least 5 years. I am also satisfied that the waterproofing membrane for the deck of unit 106 and a portion of the underground garage clearly meets the definition set out in Policy Guideline #37 for a major component as I am satisfied that a waterproofing membrane is an integral component of the residential property required to both enclose the building, or portions thereof, and protect its physical integrity. I make similar findings in relation to the associated drainage upgrades.

The Tenant RD argued that I must not grant the Application in relation to the elevator pursuant to section 23.1(5) of the regulation, I disagree. As set out in Policy Guideline #37, tenants bear the onus to establish on a balance of probabilities that what is otherwise an eligible capital expenditure is ineligible because either the repairs or replacement were required because of 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. Although RD argued that the elevator was not properly maintained, no documentary or other corroboratory evidence was submitted in support of this claim, the Agent denied these allegations, and call-out records were provided for the elevator maintenance company which satisfy me on a balance of probabilities that the elevator was regularly inspected and maintained. As a result, I dismiss RD's claim, and I find that section 23.1(5) of the regulation does not apply.

I am satisfied based on the documentary evidence before me from the Landlord, and the affirmed testimony of the Agent at the hearing, that the above noted 5 expenditures clearly meet the criteria for eligible capitol expenditures set out in section 23.1 of the regulation and Policy Guideline #37. As a result, I grant the Landlord's claim for an additional rent increase in relation to these amounts. However, I grant the Landlord authority to claim only $2,296.35 of this amount, as this is the amount claimed in the Application, no amendment to the application was filed prior to the hearing, and at the hearing the Agent did not seek to amend the application pursuant to rule 4.2 of the Rules of Procedure.

I accept that the property consists of 41 dwelling units, all of which are related to or impacted by the granted claim amounts. Although the Agent argued that only the tenant of unit 106 is impacted by the replacement of the decking membrane and drainage

upgrades, I disagree. At the hearing the Agent stated that the decking extends over a portion of the parking garage, and that as a result, the parking garage was affected by the membrane failure and drainage upgrades. As the parking garage impacts all occupants of the building, I therefore find that these expenditures relate to al 41 dwelling units. The relevant calculation pursuant to section 23.3 of the Regulation is:

$$\text{Total ARI} = \frac{\$39{,}892.66 \div 41}{120} = \$8.11$$

The Landlord must do the remainder of the calculations and must impose the additional rent increases in accordance with the Act, Regulation, and the current version of Policy Guideline #37C.

Conclusion

The Landlord is entitled to impose the above noted additional rent increase. The amount calculated pursuant to section 23.2(2) of the Regulation is $4.47. The Landlord must do the remainder of the calculations and must impose this additional rent increase in accordance with the Act, Regulation, and Policy Guideline #37C.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the fact that it was issued more than 30 days after the close of the proceedings.

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 12, 2023

Residential Tenancy Branch