



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding bclMC Realty Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

On February 7, 2023, the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and section 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 and four of the Tenants attended the hearing at the scheduled hearing time on November 29, 2022. Collectively, I refer to the “tenants” listed as Respondents for this hearing as the “Tenant” in this decision.

Service and disclosure of evidence

Based on the submissions before me, I find that each of the Tenants listing on the Landlord’s application were served the Notice of Dispute Resolution Proceeding and the Landlord’s evidence in accordance with section 88 of the Act.

Issues to be Decided

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

Background and Evidence

Landlord submissions

The rental property was constructed in the late 1960s and consists of 26 individual units.

The Landlord presented each set of capital expenses are related to major systems or major components of the rental property, as follows:

A. Replacement of decks and railings

The Landlord submitted that the exterior decks had many soft spots and rot in the plywood and the railings, which had become loose and unsafe. The decks and railings were almost all original from the construction of the building. The Landlord submitted that the deck surfaces and railings for each unit in the building were at the end of their life expectancy and were replaced with the following: new plywood covered with vinyl decking on the surfaces, aluminum railings and new fascia trim around the base of the decks. Three invoices with before and after photos were submitted with the Landlord's evidence package to support their claim for an expenditure in the amount of \$66,993.43.

The Landlord also submitted that the deck replacement this considered a component where it enhances safety at the rental property due to the component being at the end of its useful life.

The Landlord submits that the final expenditure occurred on October 8, 2022, within 18 months of their Application date, and that this expenditure is not expected to recur for at least 20 years.

B. Window replacement

The Landlord submitted that the old windows at the rental property were original from the construction date of the building. The Landlord submitted that the old windows did not close tightly and were very drafty. The Landlord submitted that all windows were replaced throughout the entire building including patio doors, side windows to the patio doors, bedroom windows and windows in stairwells and the lobby. All new windows are vinyl, double-paned and energy efficient. Five invoices were submitted with the Landlord's evidence package to support their claim for an expenditure in the amount of \$184,719.72.

The Landlord also submitted that asbestos was found when the old windows were removed, and that for safety reasons all asbestos was removed from the drywall.

The Landlord submits that this can be considered a component where it enhances safety and energy efficiency at the rental property, as all the new windows close properly and eliminate drafts, which will reduce energy costs.

The Landlord submits this expenditure occurred on October 20, 2022, within 18 months of their Application date, and that this expenditure is not expected to recur for at least 20 years.

Tenant submissions

Three of the four Tenants present in these proceedings offered no objection to this rent increase requested by the Landlord.

The fourth Tenant present in these proceedings asserted that due to the current economic situation that these expenses should not be passed on to the Tenants of this building as it would create a financial hardship for them. This tenant submitted a written impact statement into documentary evidence.

The fourth Tenant also submitted that they feel the proper maintenance had not been kept up on the decks of the rental unit, and that this lack of maintenance had caused the need for the deck replacement work.

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, there was no evidence that the Landlord made a prior application for an additional rent increase within the previous 18 months.

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 26 dwelling units, of which all 26 are eligible. The Tenant did not submit or state otherwise in their response; therefore, the Landlord's indication of 26 individual dwelling units is undisputed evidence.

Eligibility and Amounts

For both of the Landlord's submitted expenditures, listed above, I address whether each expenditure was *eligible*, and each expenditure *amount*. I also make findings on whether each expenditure will be incurred again within 5 years.

Replacement of decks and railings

I find this work was an upgrade in the buildings' exterior decks and railing. The Landlord stated this was to improve the overall safety of the Tenants when using these decks; I find there is no evidence to the contrary on this individual point. As well, I find that exterior decks and railing to be a major component as defined in Regulation section 21.1.

I find the reason for this work was to achieve a state of repair that complies with the health, safety and housing standards required by law, and to replace a component that was at the end of its useful life, as set out in s. 23 of the *Regulation*.

I find that there is no evidence before me to show that this capital expenditure is eligible for reimbursement.

The Tenant called into question the level of maintenance that was maintained on the decks for the rental unit. However, I find the Tenant has not provided any submission beyond a personal belief that regular maintenance was not completed. Additionally, I accept the Landlord's submission that the decks and railing on the rental unit had been original to the building construction in the late 1960s, making the decks and railings over 50 years old when the Landlord replaced them in 2022. The *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements*, puts the life expectance of wood decks at 20 years, therefore the decks on the rental building were well past their normal life expectance. As these decks were 30 years past their life expectance, I find that no amount of regular maintenance would have removed the need for their replacement. As such, I find the Landlord has met the burden of proof on this piece, based on a balance of probabilities.

I accept the Landlord's evidence that the first payment for the work was incurred on June 1, 2022, and that the last payment was incurred on October 8, 2022, as per the invoices they submitted into evidence, that finalizes the transaction as per the *Residential Tenancy Policy Guideline 27: Rent Increases*. In simple terms, I find the expense, in the form of a finalized payment, occurred on the invoice dates that I have before me. This was a period of 8 months and 6 days to the Application date of February 7, 2023. I find the Landlord made the payments for this work within the 18-Month Period.

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. This is with regard to the type of materials used in the deck replacement, rated at 20 years' lifetime, as set out in the *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements*.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of \$66,993.43.

Window replacement

I find this work was an upgrade in the buildings' windows. The Landlord stated this was to reduce energy loss and to improve the overall safety of the Tenants; I find there is no evidence to the contrary on this individual point. As well, I find that windows are a major component as defined in Regulation section 21.1.

I find the reason for this work was to achieve a state energy usage reduction and to replace a component that was at the end of its useful life, as set out in s. 23 of the *Regulation*.

I find that there is no evidence before me to show that this capital expenditure was eligible for reimbursement.

The Tenant submitted that an increase in rent would cause financial hardship and that due to the current economic conditions, the requested additional rent increase should be denied. The Tenant was advised during the hearing that the Act did not allow for the refusal of the Landlord's request for an additional rent increase due to financial hardship.

I accept the Landlord's evidence that the first payment for the work was incurred on August 9, 2021, and that the last payment was incurred on October 20, 2022, as per the invoices they submitted into evidence, that finalizes the transaction as per the *Residential Tenancy Policy Guideline 27: Rent Increases*. In simple terms, I find the expense, in the form of a finalized payment, occurred on the invoice dates that I have before me. This was a period of 17 months and 29 days to the Application date of February 7, 2023. I find the Landlord made the payments for this work within the 18-Month Period.

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. This is with regard to the type of windows installed, rated at 20 years' lifetime, as set out in the *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements*.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of \$184,719.72.

Outcome

The Landlord has proven all of the necessary elements for their Application, and I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditures of \$66,993.43 (replacement of decks and railings), and \$184,719.72 (window replacement). This is pursuant to section 43(1)(b) of the *Act*, and section 23.1(4) of the *Regulation* referred to above.

The *Regulation* section 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 26 specified dwelling units, and that the amount of the eligible capital expenditure is \$251,713.15.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$80.67 ($\$251,713.15 \div 26 \div 120$) per month, per affected tenancy. This is as per section 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 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* section 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to section 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 \$251,713.15.

I order the Landlord to serve all Tenants with this Decision, in accordance with section 88 of the *Act*. This must occur within two weeks of this Decision.

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 7, 2023

Residential Tenancy Branch