



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Code: ARI-C

Introduction

The Landlords seek a rent increase pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the “Act”) and section 23.1 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 (the “Regulation”).

An application was made on November 25, 2021, and a preliminary hearing was held on February 4, 2022. The matter was adjourned to a hearing scheduled for October 6, 2022. At the request of Landlords’ counsel, the matter was adjourned to February 21, 2023. Hearings were held on February 21 and June 27, 2023.

Preliminary Matters

Based on Landlords’ counsel’s updated list of tenants who are no longer affected tenants for the purpose of this application based on their vacating of the property, the style of cause on the cover page of this decision has been updated.

Landlords’ counsel submitted an updated summary of the various claims both sought and abandoned.

Issue

Are the Landlords entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

In an application for dispute resolution under the Act, the applicants must prove their application for an entitlement to impose an additional rent increase for eligible capital expenditures on a balance of probabilities (meaning more likely than not).

I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision. For the purposes of brevity, I have reproduced portions of the Landlords' written submissions below.

The Landlords apply for an additional rent increase for one of the buildings it owns and operates.

The Landlords apply for an additional rent increase, pursuant to sections 43(1)(b) and 43(3) of the Act, on the basis that the Landlords have incurred eligible capital expenditures.

These capital expenditures were incurred in relation to a project completed within the 18 months preceding the additional rent increase application, and each expenditure relates to a project with an anticipated useful life of between 5-25 years.

These capital expenditures were incurred by the Landlords in order to repair, install or replace a major system or a major component of a major system that had failed or was close to the end of its useful life, to maintain the building in a state of decoration and repair that complies with the health, safety, and housing standards required by law, to reduce energy use at the building, and to improve the security of the building.

The building was built in 1965 and there are 45 rental units therein.

After taking over ownership and operation of the building, the Landlords made a number of capital expenditures to comply with its duty to provide and maintain the building in a state of decoration and repair that comply with the health, safety and housing standards required by law, as set out in section 32(1) of the Act, to repair and/or replace a number of major systems and/or major components of major systems in the building, or to improve the energy efficiency and/or safety and security of the building.

Landlords' counsel submitted that the Landlords have not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

Landlords' counsel submitted that the Landlords seek to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the property. Over the course of two hearings, the Landlords' witness provided affirmed testimony regarding the following work (collectively, the "Work"), the reason for the Work, and the cost of the Work. Copies of invoices, along with additional documentary evidence, were submitted by the Landlords in support of this application.

The amounts claimed do not (of course) include any amounts previously claimed but now abandoned. Further, for the purposes of brevity, I will not reproduce the detailed breakdown of subcomponents for the Work done for each claim. However, reference to these subcomponents may be made where they are contested by the Tenants. The description of the scope and reason largely mirror that of the written submissions where the witness' testimony was consistent with that description.

It should be noted that all the following claims cover Work where the anticipated useful life of the repair or upgrade meets the required minimums under the Act.

Claim and Amount	Scope of Work	Reason for Work
Social Room & Rooftop Patio \$54,908.66	The Social Room and Rooftop Patio were completely updated with new flooring, electrical, lighting, wall finishes, appliances, kitchen and washroom facilities, exterior patio pavers, glass and aluminum guardrail, BBQs and furniture.	The existing social room was not very useable for functions or events (did not have a kitchen, air conditioning, or appropriate furniture). The interior finishes (carpet, lighting, furniture) were outdated and in need of replacement. The exterior rooftop patio wood decking was not level and needed to be replaced and an aluminum guard rail was installed to make the area safer and bring it to code. FOB access was added to the main entrance to the social room to make the area more secure.
Corridor – Phase 4 \$135,943.50	The corridor was updated with new carpet, vinyl wallcovering, wood base, painting, and lighting.	The corridor finishes were outdated and damaged and required replacing.
Window & Patio Sliding Door Screen Installation \$25,229.60	Window and patio screens were added to all units.	Window and patio door screens were added to improve air control, add pest and lighting control, and improve energy efficiency and security.

Paving Parking Area \$35,852.25	The old asphalt was removed, and new asphalt was placed in the parking area.	There were potholes and areas where the asphalt paving had heaved/bumped, creating a tripping hazard.
Fencing \$13,034.31	The existing fence was rotting and falling. Although regularly maintained, the wood fence was beyond painting or repairs as a solution and needed to be entirely replaced.	The fence was replaced to increase security at the Building (it was taller than the previous fence) and used environmentally friendly finishes.
Staircase Painting \$12,474.00	The exterior staircases were treated and painted.	The exterior staircases required painting to keep the building in an appropriate state of repair and to protect the wood underneath.
Garbage Enclosure \$38,283.00	Garbage bin enclosure was created next to an existing storage structure.	Garbage bins were previously stored at the west end of the building, under resident balconies. Creating an enclosure to store the garbage bins so they no longer need to be stored under resident balconies improves the health of residents and also makes the garbage more difficult to access, keeping animals and trespassers out.
Landscaping \$6,162.19	An existing pathway was regraded and repaved.	The existing pathway was in poor condition and needed to be repaired, as it was creating a tripping hazard.
Ductless Split and Hot Water Tank \$17,903.11	The domestic hot water tank was leaking and needed to be replaced. Air conditioning was also installed in the Social Room.	The domestic hot water tank was leaking and could not be repaired. The air conditioning unit in the social room was installed due to heat build up in that area.

Access Control System \$20,029.79	The access control system was updated, and new card readers were added, software was updated, and new FOB readers were installed.	The access control system was updated to increase the security of the building and the safety of residents.
Interior and Exterior Lighting \$2,617.55	The existing interior and exterior lighting were replaced with more energy efficient LED light fixtures.	The interior and exterior lighting was replaced with more energy efficient LED light fixtures to increase energy efficiency and improve lighting at the building.
Door Replacement \$1,601.25	The fire exit door was replaced.	The old door was damaged and required replacing. Working fire exits are crucial for the safety of building residents.
Landscaping (Gazebo Roof) \$2,045.51	The gazebo roof was replaced.	The gazebo roof was in poor condition and needed to be replaced.
Roof Repairs \$4,126.50	Parts of the roof that had been leaking were repaired.	The roof was leaking, causing water to penetrate the outer roof material, causing water damage and rot.
Mechanical & Plumbing Replacements and Repairs \$6,840.07	Various repairs to heating and domestic hot water boilers as part of preventative maintenance. A number of components of the heating and water systems were also replaced.	The municipality required a backflow installation and a number of parts had to be replaced as the heating and hot water equipment were starting to fail.

The total amount of eligible capital expenditures sought is \$377,051.29.

Analysis

1. Statutory Framework

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:

1. for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
2. for which the landlord has been paid, or is entitled to be paid, from another source.

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

There has been no prior application by the Landlords for an additional rent increase under this section of the Act or the Regulation.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Act 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.

There are 45 specified dwelling units for the purposes of this application.

4. Amount of Capital Expenditure

The total amount of the capital expenditures is \$377,051.29.

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
 - 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.

Having considered each of the claims made by the Landlords it is my finding that they meet the criteria and requirements to be considered an eligible capital expenditure, including the estimated life expectancies or useful life estimations for each.

6. Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase. 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 either or both of the following:

1. 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
2. That the landlord has been paid, or is entitled to be paid, from another source.

Neither the Tenants who attended the hearings nor two of the Tenants' counsel provided any evidence to support any argument that might defeat the Landlords' application on the basis of the above-noted two scenarios.

It was suggested by Tenants' counsel (by way of cross-examination of the Landlords' witness) that the Landlords ought to have carried out some of the Work right after purchasing the property. The witness explained that only so much Work could have been undertaken at once.

An argument also advanced is that the social room and rooftop patio does not constitute a “major component.” I respectfully disagree. Nor do I agree with the argument that just because the new boiler room equipment is not always functioning at 100% means that the life expectancy of the new equipment is not what it is supposed to be. Even if the boiler room equipment experiences occasional breakdowns, the Landlords are prohibited from making any additional expenditures on the boiler room for at least another 5 years while also making any further application for a rent increase based on additional expenditures.

The one unrepresented Tenant (L.B.) argued that the “improved” LED lighting in the parking lot made the parking lot less safe because the improved lighting made it easier for thieves. He provided an example of a recent incident involving thieves stealing catalytic converters from vehicles. While I certainly appreciate the Tenant’s comments in this regard, generally speaking, better lighting is considered an improvement in parking lot safety.

The Tenant also objected to the Landlords’ position that the social room is a shared room, and that in fact some of the building managers discriminate against use by certain tenants. He continued by explaining some of the managers’ behavior was egregious and unfair.

In summary, the Tenants did not provide any evidence to support an argument that might defeat the Landlords’ application on either of the two points above, nor any additional evidence that suggested that the Landlords have not met the required elements proving an eligible capital expenditure.

Outcome

On a balance of probabilities, it is my finding that the Landlords are successful in this application. The Landlords have proven, 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 addition rent increase as follows:

- (a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and
- (b) divide the amount calculated under paragraph (a) by 120.

In this case, I have found that there are 45 specified dwelling units and that the amount of the eligible capital expenditure is \$377,051.29. Accordingly, the Landlords have established the basis for an additional rent increase for capital expenditures of \$69.82 ($\$377,051.29 \div 45 \text{ units} \div 120$).

However, as set out in section 23.2(3) and (4) of the Regulation:

- (3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43 (1) (a) of the Act in that year by 3%.
- (4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

It falls upon the Landlords to make these required calculations before imposing any such additional rent increase.

The parties may refer to *Residential Tenancy Policy Guideline 40* and the additional rent increase calculator on the Residential Tenancy Branch website for further guidance regarding how this rent increase made be imposed.

Conclusion

The Landlords' application is hereby GRANTED for an additional rent increase for capital expenditure in the amount of \$69.82. The Landlords may only impose this increase in accordance with the Act and the Regulation.

I order the Landlords to serve all Tenants with a copy of this Decision in accordance with section 88 of the Act.

Dated: July 1, 2023

Residential Tenancy Branch