



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 was represented at the hearing by its agent, CS. Two of the Tenants, LC and TK, attended this hearing on their own behalf. None of the other Tenants attended.

This matter was reconvened from a preliminary hearing on March 30, 2023. Following that hearing I issued an interim decision dated April 4, 2023, in which I ordered the Landlord to serve each of the Tenants with a copy of the notice of hearing and the interim decision (collectively, the "Proceeding Packages"). The Landlord submitted signed and witnessed proof of service forms confirming that the packages were served on the Tenants in person or by posting to their doors. I find the Tenants were sufficiently served with the Proceeding Packages in accordance with the Act. CS confirmed that the Landlord did not submit any new evidence other than proof of service. None of the Tenants submitted any documentary or digital evidence for this application.

Preliminary Matter: Tenants Moved Out

CS testified that some tenants have moved out since this application was filed (unit numbers referenced on the cover page of this decision). Pursuant to section 64(3)(c) of the Act, I have amended the style of cause to remove those tenants as respondents.

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 residential property is a four-storey building with 70 dwelling units. The building was constructed in 1976.

CS confirmed that the Landlord seeks to impose an additional rent increase for capital expenditures incurred to pay for structural shoring of the building's east wing and for the modernization upgrade of the building's elevator (collectively, the "**Work**").

CS testified the Work was done because:

- The building required exterior maintenance as the original building envelope has exceeded its useful life. Water entered the stucco, compromising the building structure. Repairs were completed to fix structural damage and to shore up the east wing of the building.
- The elevator was also original to the building from 1976. The old elevator was experiencing issues. Three elevator consultants hired by the Landlord stated that elevator could not be fixed and recommended that it be replaced. At the time, it was becoming increasingly difficult to obtain replacement parts for an old elevator. The parts were not being made new and were passed around from other buildings as they were upgraded. The Landlord decided to proceed with the least expensive quote. The elevator modernization project was completed and the old elevator was replaced with a new one.

The Landlord submitted a building envelope condition assessment report dated March 1, 2021 into evidence. This report includes the following observations and recommendations:

- Bowed/out-of-plumb sections of stucco, staining, high moisture content, and extensive wood stud deformation were observed. Wall rehabilitation was recommended, including removal and replacement of exterior stucco, building paper, sheathing, and wood framing replacement.
- The east facing exterior wall framing was observed to be in dire condition and would require immediate repair. The east facing wall was observed to have significant damage including bowed and deteriorated wall studs and crushing of the top plate which indicates that the wall framing is significantly overloaded. Additionally, several cracks in the stucco were also observed at this location, suggesting out of plane movement such as rotation of the structural framing in the area. A major structural retrofit of the existing wall framing would be required to restore the structural integrity of the units supported by this load bearing wall.
- Extensive staining, high moisture content, material deterioration at the balcony rim joists and base of railing posts, as well as deterioration at outer corners of the balcony fascia were observed. Repairs or replacement of the deteriorated balcony rim joists and railings was recommended.

The Landlord submitted a spreadsheet of expenditures and various invoices into evidence. CS confirmed that the Landlord already paid the invoices. CS explained that when the shoring work was performed, the interiors of some units were also affected so that floor joists, door frames, and load bearing walls could be fixed.

The Landlord submits that the cost for the Work is as follows:

Cost of Work

Description	Amount
Structural Shoring of East Wing	\$90,885.48
Modernization Upgrade of Elevator	\$91,361.20
Total	\$182,246.68

Tenant TK questioned the cause of the structural damage to the building. TK stated that in 2016, a truck ran into the building and it was not fixed at the time. TK questioned why the Tenants should be responsible for structural damage to the building. TK stated that the Landlord has not made any improvements to TK's unit during approximately 9 years of tenancy. Tenant LC also disagreed that the Tenants should face rent increases for normal maintenance done on the building.

CS stated that the truck incident would have caused cosmetic but not structural damage. CS stated that the expenditures were for structural and envelope repairs due to the building's age. CS stated that water had gotten in and needed to be remediated. CS explained that repairs were made from the first floor all the way up to the roof of the building.

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, a 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)).

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 find there is no evidence to indicate that the Landlord has previously imposed an additional rent increase on any of the Tenants within the last 18 months.

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.

RTB Policy Guideline 37 states that a specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred, or if not located in the building, is affected by the capital expenditure at the residential property.

I find the number of specified dwelling units for the purposes of the Work is equal to the total number of units in the building, or 70 units. I find all units are located in the same building in which the Work was performed, and therefore, no units are exempted.

4. Amount of Capital Expenditure

I find the Landlord has submitted invoices to support all expenditures except for \$474.56 claimed for “shoring installation” stated in the Landlord’s spreadsheet. Therefore, I accept that the Landlord has incurred expenditures of \$181,772.12, or \$182,246.68 - \$474.56 in relation to the Work.

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;

(emphasis underlined)

"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.

(emphasis underlined)

The Work consisted of shoring the building and elevator modernization. I find that with respect to shoring, repairs were made to the building's structural system, which falls under a "major system" as defined in the Regulations. I find that according to RTB Policy Guideline 37, elevators are an example of major systems or major components.

As such, I find the Work was undertaken to repair or replace a "major system" or "major component" of the residential property.

b. Reason for Capital Expenditure

I accept the Landlord's evidence that the structural damage and deterioration was due to the building's age. I find there is insufficient evidence to prove that the repairs were related to damage caused by a vehicular collision. Based on the observations and recommendations in the building envelope assessment report submitted by the Landlord, I am satisfied that the structural repairs and shoring performed were necessary to maintain the residential property in a state of repair that complies with the health, safety and housing standards required by law.

Furthermore, I am satisfied that the old elevator was replaced as it was malfunctioning and was close to or past the end of its useful life. According to RTB Policy Guideline 40, elevators have a useful life of 20 years. I accept the Landlord's evidence that the old elevator was original to the building.

c. Timing of Capital Expenditure

RTB Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made. If a landlord pays for a capital expenditure by cheque, the date the payment is considered to be “incurred” is the date the cheque was issued by the landlord.

As this application was filed on November 17, 2022, the expenditures claimed by the Landlord must have been incurred in the 18-month period prior to that date, that is, on or after May 17, 2021. The onus is on the Landlord to establish on a balance of probabilities that the expenditures meet the requirements to be eligible for an additional rent increase.

While I accept the Landlord has paid for the invoices submitted, I find the Landlord has not provided sufficient evidence to demonstrate that the following expenditures were “incurred” or paid within the 18-month period:

- Invoices for temporary shoring dated November 17, 2020, December 24, 2020, December 31, 2020, and February 28, 2021, totalling \$1,373.02
- Engineering invoice for shoring dated April 7, 2021 in the amount of \$4,935.00
- \$27,000.00 deposit dated April 17, 2021, as noted in the renovation invoice for shoring dated June 5, 2022

Therefore, I find the Landlord is not entitled to seek an additional rent increase based on the above noted expenditures.

I find the other invoices were dated within the 18-month period and I accept that the remaining expenditures supported by invoices were paid for within that timeframe.

d. Life expectancy of the Capital Expenditure

According to RTB Policy Guideline 40, the useful life of elements such as stucco, drywall, and elevators is 20 years. The useful life of wooden components, including walls, framing, and railings, is estimated to be 10 to 15 years. I find the evidence does not indicate that the life expectancy of the components repaired or replaced would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40. For this reason, I find the capital expenditures incurred by the Landlord cannot reasonably be expected to re-occur within five years.

6. 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), tenants 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.

I find there is insufficient evidence to prove that there was inadequate repair or maintenance on the Landlord's part which necessitated the Work. I accept the Landlord's evidence that the Work was required due to the building's age.

I find there is no evidence to suggest that the Landlord has been paid or is entitled to be paid for the Work from another source.

7. Outcome

The Landlord has been partially successful. The Landlord has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for some of the capital expenditures claimed. 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 70 specified dwelling units. Excluding expenditures not supported by any invoice and those that fall outside of the 18-month period, I find the amount of eligible capital expenditures established by the Landlord is **\$148,464.10**, or $\$91,361.20 + \$840.00 + \$6,586.65 + \$76,676.25 - \$27,000.00$.

Therefore, I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$17.67** ($\$148,464.10 \div 70 \text{ units} \div 120$). 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

I grant the Landlord's application for an additional rent increase for capital expenditures as specified above. 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: August 12, 2023

Residential Tenancy Branch