



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

A hearing was convened on May 26, 2023 to consider the Landlord's application for an additional rent increase for capital expenditure pursuant to *Residential Tenancy Act* (Act) and section 23.1 of the and the *Residential Tenancy Regulation* (Regulation). That hearing was adjourned for reasons outlined in the original Arbitrator's interim decision of June 04, 2023.

The Arbitrator who considered the Application for Dispute Resolution on May 26, 2023 is, unfortunately, unable to proceed with this matter. The hearing was therefore reassigned to me and I will be considering it anew. The hearing was reconvened on September 21, 2023 for that purpose.

The Agent for the Landlord stated that on February 09, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch February 03, 2023 were served to all of the Tenants/Respondents, via registered mail. The Landlord submitted Canada Post documentation that corroborates this testimony and I accept these documents were served to the Tenants in accordance with section 89 of the Act.

On May 12, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to each Tenant, by posting it on their doors, on May 12, 2023. In absence of evidence to the contrary, I accept that this evidence was served to the Tenants and it was accepted as evidence for these proceedings.

On May 16, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to each Tenant, by posting it on their doors, on May 16, 2023. In absence of evidence to the contrary, I

accept that this evidence was served to the Tenants and it was accepted as evidence for these proceedings.

On June 12, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to each Tenant, by registered mail, on June 13, 2023. In absence of evidence to the contrary, I accept that this evidence was served to the Tenants and it was accepted as evidence for these proceedings. The Landlord submitted Canada Post documentation that corroborates this testimony and I accept these documents were served to the Tenants in accordance with section 88 of the *Act*.

The Agent for the Landlord stated that on July 13, 2023 the Notice of this Reconvened Hearing was served to each Tenant, by posting it on their doors. In absence of evidence to the contrary, I accept that the Tenants were aware of the hearing on September 21, 2023, and the hearing proceeded in their absence.

Evidence was submitted by a Tenant on April 11, 2023. As the Landlord acknowledged receipt of this evidence at the original hearing, I find it reasonable to accept it as evidence at these proceedings.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. He affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

Issues to be Decided

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

Background and Evidence

The Agent for the Landlord stated that this complex has six residential rental units and six commercial units. He stated that the square footage of the commercial units is the same of as the square footage of the residential units.

The Agent for the Landlord stated that the landlord has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application and there has been no additional rent increase in the last 18 months.

The Landlord is seeking to impose an additional rent increase for a capital expenditure incurred to upgrade the electrical system of the entire complex. The Landlord submitted letters, dated February 26, 2021 and June 09, 2023, from an electrical contractor which declare, in part, that the electrical services were “long past life expectancy” and that the system should be upgraded.

The Agent for the Landlord stated that the entire electrical system was upgraded in 2021, which included installing new electrical panels inside each unit and building a new electrical room for the complex.

The Landlord submitted invoices to show that the landlord incurred expenses of \$148,626.09 for the electrical upgrades, as follows:

- September 09, 2021 – \$33,995.45
- September 15, 2021 - \$2,251.00
- September 30, 2021 - \$38,245.54
- October 19, 2021 - \$3,861.15
- October 31, 2021 - \$47,893.24
- November 30, 2021 – \$21,421.58
- December 18, 2021 – \$958.13

The Tenants did not dispute any of the aforementioned submissions.

The Agent for the Landlord stated that although the landlord originally applied for a rent increase on the basis of the total capital expenditure of \$148,626.09, the Landlord would like to amend the application for a rent increase based on 40% of that capital expenditure.

The Agent for the Landlord stated that the Landlord wants to reduce the application by 50% to reflect the fact that only 50% of the expenditures benefit the residential units. The Agent for the Landlord stated that the Landlord wants to reduce the application by a further 10% to reflect the fact that two of the commercial units have 200 amp service and the other units have 100 amp service.

Analysis

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. Those sections establish that before imposing an additional rent increase for capital expenditures, a landlord must prove the following, on a balance of probabilities:

- The Landlord has not made an application for an additional rent increase naming 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 expenditure was an eligible capital expenditure, specifically that:
 - the expenditure was to repair, replace, or install a major system or a major component;
 - the expenditure was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards;
 - because the system was close to the end of its useful life;
 - because it has 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:

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

On the basis of the undisputed evidence, I find that prior to this application, the Landlord had not applied for an additional rent increase for capital expenditure naming any of these Tenants and there has been no additional rent increase in the last 18 months.

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;

...

"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;

...

"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.

On the basis of the undisputed evidence, I find the capital expenditures made apply to 6 residential units and 6 commercial units in this residential complex, and that the footprint of the residential units is the same size as the commercial units.

On the basis of the undisputed evidence, I find that the Landlord spent \$148,626.09 to upgrade the electrical service in the entire complex.

As previously stated, to be considered an eligible capital expenditure, the Landlord must prove:

- the work done was to repair, replace, or install a major system or a major component;
- 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.

On the basis of the undisputed evidence, I find that the capital expenditure was incurred to replace the electrical system, which the *Regulation* explicitly identifies as a “major system”.

On the basis of the evidence submitted, I am satisfied that the electrical system in the complex had exceeded its useful life. In reaching this conclusion I was heavily influenced by the letters from the electrical contractor, dated February 26, 2021 and June 09, 2023.

On the basis of the undisputed evidence, I find the capital expenditure occurred less than 18 months prior to the Landlord applying for the additional rent increase.

Residential Tenancy Branch Policy Guideline #40 suggests that the useful life of various electrical components is between 15 and 25 years. On the basis of this guideline, I find it reasonable to conclude that the electrical system will not need to be replaced within the next five years.

For all of the above reasons, I find that the electrical system upgrade is an eligible capital expenditure, as defined by the *Regulation*.

I find that the Tenants have submitted no evidence to establish that the capital expenditure was incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or that the landlord has been paid, or is entitled to be paid, from another source.

I find that the Landlord has proved, on a balance of probabilities, all of the elements required to impose an additional rent increase for capital expenditure.

Although the Landlord originally applied for a rent increase on the basis of the total capital expenditure of \$148,626.09, I find the Landlord's request to amend the application for a rent increase based on 40% of that capital expenditure is reasonable. I find the amendment is reasonable to reflect the fact that only 50% of the expenditures benefit the residential units and the fact that two of the commercial units have 200 amp service and the other units have 100 amp service. I therefore grant the Landlord the right to impose an additional rent increase based on 40% of the capital expenditures, which is \$59,450.43.

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 six specified dwelling units and that the amount of the eligible capital expenditure is \$59,450.43.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$82.57 (**\$59,450.43** ÷ 6 units ÷ 120).

The parties may refer to 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), Residential Tenancy Branch Policy Guideline #37, and the additional rent increase calculator on the Residential Tenancy Branch website for further guidance regarding how this rent increase may be imposed.

Conclusion

The Landlord's amended application for an additional rent increase for a capital expenditure of \$59,450.43 is granted. The landlord may 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 *Act*.

Dated: September 22, 2023

Residential Tenancy Branch