



DECISION

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed on February 23, 2023, under the Residential Tenancy Act (the “Act”) for an additional rent increase for capital expenditures.

This matter commenced on July 7, 2023, and was unable to complete. The interim decision of July 12, 2023, should be read in conjunction with this decision.

Only the parties listed on the covering page appeared at the continuation of the hearing.

Issue(s) to be Decided

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

Background and Evidence

I have considered the documentary evidence and the testimony of the parties not all details of their submissions are reproduced here. The relevant and important aspects of the parties’ claims, and my findings are set out below.

The rental property was constructed in 1970 and consist of 35 rental units.

The landlord is seeking to impose an additional rent increase for a capital expenditure (ADI) incurred to pay for a work done to the residential property between September 2021 and December 2022.

The capital expenditure (the “Work”) incurred as follows:

Item	Description	Amount
a.	Podium upgrading and waterproofing	\$246,496.50
	Removal of No 411 (277.14) and 415 (111.25) earthly designs Garden Landscape	\$ (165.89)

	Total Claimed	\$246,108.11
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The landlord has provided a detail calculation, showing the cost of the capital expenditure, outlining the capital expenditure and any allocated amount for the additional rent increase. Copies of the receipts have been provided.

Summary of Landlord's submissions

The landlord submits that the podium of the building is the platform to which the wood building sits and below the podium is the underground parking for the building. Counsel submits that the waterproofing of the podium was past its useful lifespan as defined in the Residential Tenancy Branch Policy Guideline 40 Useful Life of a Building Element.

The landlord submits that water was starting to egress into the building and impacting some units on the first floor. The landlord submits the underground podium has to be stripped back to the bare concrete, which included removing soil, landscaping and the irrigation system. The landlord submits some pipes had to be removed and a concrete staircase.

The landlord submits that the podium was then waterproofed and then everything had to be put back together. The landlord submits that this was a capital expenditure that will likely last for 25 years. The landlord submits the Capital expenditure incurred less than 18 months prior to making their application as the receipts for the capital expenditure were incurred between September 2021 and December 2022.

Summary of Tenant's submission

The tenant submit that after they receive the landlord's revised detailed calculation showing the breakdown of the receipts that they have three issues. The tenant submits that the landlord should not be entitled to recover the incurred cost of landscaping as these appear to be again charging additional monthly fees as set out on page 70 of the landlord's documents and they do not believe landscaping is a capital expenditure.

The tenant submits that an irrigation system would also not meet the criteria of a capital expenditure as they are not a major component of the building.

The tenant submits that they are unsure of the receipts from Accolade Interior, and they would like clarification on the work they did.

The landlord responded that they would agree to remove the receipts numbered 411 and 415 that are related to the landscape, I have removed the from the landlord's calculation in the above table.

The landlord submits that all other incurred landscaping and irrigation system was necessary. The landlord submits landscaping is a major component of the scope of work that had to be completed to waterproof the podium as it was stripped away and had to be replaced once the waterproofing was completed and is part of the residential property as defined in the Regulations. The landlord argued it reasonable that all work that related to the capital expenditure that was removed because of the work, would be replaced back to the original condition.

The landlord stated that the receipts for Accolade Interior was for concrete work, such as forming, pouring of the concrete stairs, and railings that had to be removed to get at the podium and then reinstalled.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application.

Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

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:

- 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.

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.

In this matter, there have been no prior application for an additional rent increase within the last 18 months before the application was filed. There are 35 specified dwelling units to be used for calculation of the additional rent increase. The landlord is claiming the total amount of **\$246,108.11** as outlined in the above table for capital expenditures.

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.

In September of 2021, the landlord commenced the Work to repair and replaced the waterproofing of the concrete podium, this is a major structure of the building and was past its useful life span and was failing. I find this is a major component of the building and was required to be repaired.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

While the tenant argued that landscaping and irrigation should be excluded as they do not believe this is a capital expenditure as it is not part of the building; however, I disagree. A capital expenditure is the residential property. I find it reasonable that the Work was necessary because it had to be removed in the first place to make the repair to the podium. It is unreasonable to believe that this is not part of the entire Work that was necessary to make the repair and to return the residential property back to its original condition.

As the Work was necessary because the waterproofing was past its useful lifespan and failing, I find the only the only way for the tenants to defeat the application is to prove

the landlord has been paid, or is entitled to be paid, from another source. No evidence was given that the landlord was entitled to be paid from another source.

Therefore, I find the landlord is entitled to recover the amount of **\$246,108.11**.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$246,108.11**. The landlord must impose this rent increase in accordance with the Act and the Regulation.

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: November 1, 2023

Residential Tenancy Branch