



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding KELS GROUP PROPERTY
MANAGEMENT and [tenant name sued to protect privacy]

DECISION

Dispute Code ARI-C

Introduction

Landlord Kelson Group Property Management applied for an additional rent increase for capital expenditures (expenditures), under section 43(3) of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

Kelson Group Property Management was represented by agents JF (the Landlord), KW, DM, DW and CT. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I left the conference line open until 10:08 am to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The tenants did not attend the hearing.

The Landlord registered mailed the notice of hearing and evidence (the documents) to all the respondents on September 8, 2023. The Landlord submitted the tracking numbers for the packages and affirmed that two tenants verbally confirmed receipt of the documents.

Based on the Landlord's convincing testimony and the tracking numbers, I find the Landlord served the documents in accordance with section 89(1)(c) of the Act.

I deem the Tenants received the documents on September 13, 2023, per section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

I note that the standing order dated February 17, 2023 allows landlords to serve an application under section 43(3) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides. This order is available at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/misc/directororderaricservice20230217.pdf> .

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The Landlord submitted this application on August 29, 2023 and did not submit a prior application for an additional rent increase.

The rental building was built in 1972 and contains 51 rental units. The Landlord submitted this application against all the 59 tenants that occupy 47 units, as the excluded 4 units recorded on the cover page of this decision started their tenancy after the Landlord incurred the expenditures and the Landlord is not seeking an additional rent increase for the excluded units. All the rental units benefit from the expenditures.

The Landlord is seeking the additional rent increase for 3 expenditures: elevator replacement, electrical and fence installation.

The Landlord affirmed that all the expenditures are not expected to be incurred again for at least 5 years, they were not required because of inadequate repair or maintenance, and the Landlord is not entitled to be paid from another source.

The Landlord replaced the original elevator from 1972 in 2022, as it was beyond its useful life and it was not working properly. The Landlord submitted 6 invoices into evidence totalling \$85,313.75. The Landlord affirmed he made the payments between March 17, 2022 and August 28, 2022 and concluded the elevator replacement in July 2022. The Landlord submitted 4 photographs showing the new elevator.

The Landlord installed copper wire in the electrical switches in the rental units and common areas, as the electrical installation is original from 1972 and was not safe. The copper electrical installation is safer, as it reduces the fire risk. The Landlord submitted

an invoice dated August 22, 2022 in the amount of \$43,747.85 for the electrical work. The Landlord completed this expenditure and paid for it in August 2022.

The Landlord installed a new 106-foot-long fence around the rental building's perimeter. The original fence from 1972 was falling and the new fence will improve the building's safety, as it will be harder for trespassers to enter the building. The Landlord submitted an invoice in the amount of \$7,677.89 for the new fence. The Landlord completed this expenditure and paid for it on July 27, 2022. The Landlord affirmed the neighbour paid part of the fence's expenses, but the amount claimed is only the amount paid by the Landlord. The Landlord submitted 2 photographs showing the new fence.

Analysis

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. The onus to prove the case is on the person making the claim.

Section 23.1 of the Regulation sets out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures:

(1) Subject to subsection (2), a landlord may apply under section 43 (3) [additional rent increase] of the Act for an additional rent increase in respect of a rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.

(2) If the landlord made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.

(3) If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.

(4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:

(a) the capital expenditures were incurred for one of the following:

- (i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [landlord and tenant obligations to repair and maintain] of the Act;
- (ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
- (iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:
 - (A) a reduction in energy use or greenhouse gas emissions;
 - (B) an improvement in the security of the residential property;
- (b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
- (c) the capital expenditures are not expected to be incurred again for at least 5 years.

Per section 23.1(5) of the Regulation, the tenant may defeat an application for an additional rent increase for capital expenditure if the tenant can prove, on a balance of probabilities, that the capital expenditure was incurred:

- (5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred
 - (a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
 - (b) 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 in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

I will address each of the legal requirements.

Prior application for additional rent increase

Based on the Landlord's undisputed convincing testimony, I find that the Landlord has submitted a previous application for an additional rent increase and has not imposed an

additional rent increase in the 18 months preceding the date on which the landlord submitted the application, per Regulation 23.1(2)

Number of specified dwelling units

Per section 21.1(1), a 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.

Based on the Landlord's undisputed and convincing testimony, I find the residential property has 51 specified dwelling units, per regulation 21.1(1), and that the Landlord submitted this application against all the rented units on which the Landlord intends to impose the rent increase, per regulation 23.1(3).

Timing of capital expenditures

Policy Guideline 37C states: "The capital expenditure must have been incurred in the 18-month period preceding the date the landlord submits their application to be eligible for an additional rent increase. A "capital expenditure" refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted (see section C.1). As such, the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made."

Based on the Landlord's undisputed and convincing testimony and the invoices, I find that the Landlord paid for the expenditures between March 17, 2022 and August 28. The landlord submitted this application on August 29, 2023.

Thus, I find the Landlord incurred the capital expenditures in the 18-month period preceding the date on which the Landlord submitted this application, per Regulation 23.1(1) and 23.1(4)(b).

Expenditures not expected to be incurred again for at least 5 years

Based on the Landlord's undisputed convincing testimony, I find that the life expectancy of the expenditures is more than 5 years and they are not expected to be incurred again for at least 5 years.

Thus, I find that the capital expenditures incurred are eligible capital expenditures, per Regulation 23.1(4)(c).

Expenditures because of inadequate repair or maintenance

Based on the Landlord's undisputed and convincing testimony, I find the expenditures were not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Payment from another source

Based on the Landlord's undisputed and convincing testimony, I find the Landlord is not entitled to be paid from another source, per Regulation 23.1(5)(b).

Elevator

Policy Guideline 37C defines major system as "an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants." and a major component as "a component of the residential property that is integral to the property or a significant component of a major system."

Policy Guideline 37C states:

Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. Examples of major systems or major components include, but are not limited to, the foundation; load-bearing elements (e.g., walls, beams, and columns); the roof; siding; entry doors; windows; primary flooring in common areas; subflooring throughout the building or residential property; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including cameras or gates to prevent unauthorized entry; and elevators.

A major system or major component may need to be repaired, replaced, or installed so the landlord can meet their obligation to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Laws include municipal bylaws and provincial and federal laws. For example, a water-based fire protection system may need to be installed to comply with a new bylaw.

Installations, repairs, or replacements of major systems or major components will qualify for an additional rent increase if the system or component has failed, is malfunctioning, or is inoperative. For example, this would capture repairs to a roof damaged in a storm and is now leaking or replacing an elevator that no longer operates properly.

Installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of or has exceeded its useful life. A landlord will need to provide sufficient evidence to establish the useful life of the major system or major component that was repaired or replaced. This evidence may be in the form of work orders, invoices, estimates from professional contractors, manuals or other manufacturer materials, or other documentary evidence.

Repairs should be substantive rather than minor. For example, replacing a picket in a railing is a minor repair, but replacing the whole railing is a major repair. Cosmetic changes are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or component. For example, a landlord may replace carpet at the end of its useful life with porcelain tiles even if it costs more than a new carpet.

The following is a non-exhaustive list of expenditures that would not be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:

- repairing a leaky faucet or pipe under a sink,
- routine wall painting, and
- patching dents or holes in drywall.

Policy Guideline 40 states:

A landlord may apply for an additional rent increase in an amount greater than the basic Annual Rent Increase in extraordinary circumstances. One of those circumstances is when a landlord has completed significant repairs or renovations that could not have been foreseen under reasonable circumstances and that will not recur within a reasonable time period. When reviewing applications for additional rent

increases, the director may use this guide to determine whether the landlord could have foreseen the repair or renovation.

[...]

Useful life of asphalt in elevator: 20 years

Based on the Landlord's uncontested and convincing testimony, I find the elevator replaced in 2022 was originally from 1972.

The parties did not submit testimony or evidence regarding the elevator's useful life contrary to the policy guideline. I find the original elevator was beyond its useful life, as it was 50 years old when it was replaced, and Policy Guideline 40 provides the useful life of an elevator is 20 years.

Based on the Landlord's convincing testimony, the photographs and the invoices, I find the Landlord proved, on a balance of probabilities, that he replaced the elevator that was beyond its useful life.

Policy Guideline 37C states that elevator is a major system of rental buildings.

I find the elevator is a major system and integral to the rental building, as elevators are essential for tenants to reach their units, per regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$85,313.75 to replace the elevator is in accordance with Regulation 23.1(4)(a)(ii).

Electrical installation

Based on the Landlord's uncontested and convincing testimony and the invoice, I find the Landlord installed in 2022 copper wire in the electrical switches and the copper wires provide an improvement in the security of the rental building.

Policy Guideline 37C states that electrical wiring is a part of the electrical system and it is a major system in a rental building.

I find that electrical installation is a major component of the rental building, as it is necessary to provide access to electricity and this is essential for the tenants, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$43,747.85 is in accordance with Regulation 23.1(4)(a)(iii)(B).

Fence installation

Based on the Landlord's uncontested and convincing testimony, the invoice and the photographs, I find the Landlord replaced in 2022 the original fence from 1972.

The parties did not submit testimony or evidence regarding the fence's useful life contrary to the policy guideline. I find the fence was beyond its useful life, as it was 50 years old when the Landlord replaced it, and Policy Guideline 40 provides the useful life of the fence is at the most 25 years.

I find that a perimeter fence is part of the rental building's security system, and that this system is integral to the rental building, per Regulation 21.1 and Policy Guideline 37, and that a new fence will improve the building's security by making it harder for people to trespass into the building's perimeter.

Considering the above, I find that the expenditure of \$7,677.89 is in accordance with Regulation 23.1(4)(a)(ii).

Outcome

The Landlord has been successful in this application, as the Landlord proved that all the elements required to impose an additional rent increase for expenditure and the Tenants failed to prove the conditions of Regulation 23.1(5).

In summary, the Landlord is entitled to impose an additional rent increase for the following expenditures:

Expenditure	Amount \$
Elevator	85,313.75
Electrical installation	43,747.85
Fence	\$7,677.89
Total	136,739.49

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the total amount of expenditures divided by

the number of specified dwelling units and by 120. In this case, I have found that there are 51 specified dwelling units and that the amount of the eligible expenditure is \$136,739.49.

The Landlord has established the basis for an additional rent increase for expenditures of \$22.34 per unit ($\$136,739.4 / 51 \text{ units} / 120$). If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with Regulation 23.3.

The parties may refer to RTB Policy Guideline 37C, Regulations 23.2 and 23.3, section 42 of the Act (which requires that a landlord provide a tenant 3 months' notice of a rent increase), and the additional rent increase calculator on the RTB website (<http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1>) for further guidance regarding how this rent increase may be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for expenditures of \$22.34 per unit. The Landlord must impose this 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 Act.

Dated: November 1, 2023

Residential Tenancy Branch