



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding JANIS INDUSTRIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the Landlord's April 30, 2023 Application under 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.

Preliminary Matter – Service and Evidence

The Landlord provided a proof of service and evidence to establish that each Tenant named in the application was served the Notice of Dispute Resolution Hearing, relevant documents and evidence in accordance with section 89 of the Act. I find the Landlord sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages.

Rule 11.4 of the Residential Tenancy Branch Rules of Procedure requires the Landlord to submit maintenance records in their possession for each component or system that was repaired. I note that the Landlord did not submit maintenance records. It is possible the Landlord does not possess these records. Therefore, I find the lack of maintenance records is not at issue, and I will not draw an adverse inference against the Landlord in this respect.

Issue to be Decided

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

Background and Evidence

The Landlord has applied for permission to impose an additional rent increase for capital expenditures that were incurred to replace the rental building's (i) windows and patio doors, (ii) new electric circuit, (iii) fire sprinkler suppression system, (iv) building security upgrades, (v) roofing membrane and wood deck area above parking entrance, and (vi) renovations to the rental building's lobby, totalling \$134,376.46.

The Landlord testified that the rental building was constructed in 1972 and there are 28 rental units in the building, including the two that were joined and are occupied by the Landlord.

Analysis

Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation provide the framework for determining if a Landlord is entitled to impose an additional rent increase for capital expenditures. The Landlord must prove the following, on a balance of probabilities:

1. the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
2. the number of specified dwelling units on the residential property (s. 23.2(2));
3. the amount of the capital expenditure (s. 23.2(2)); and,
4. that the work was an eligible capital expenditure (s. 23.1(4)).

Tenants may defeat an application for an additional rent increase for capital expenditure if they prove the capital expenditure was incurred because of inadequate repair or maintenance on the part of the Landlord (s. 23.1(5)(a)) or that the Landlord has been paid, or is entitled to be paid, from another source for that expenditure (s. 23.1(5)(a)).

1. Prior Application for Additional Rent Increase

I am satisfied that the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months. This was not in dispute.

2. Number of Specified Dwelling Units

In the Regulation, a dwelling unit means a unit suitable for living accommodation, including a rental unit. A rental unit is only considered a “specified dwelling unit” once the work associated with a capital expenditure is completed and it affects that unit. In other words, ARI-C applications can only be made once the work associated with the capital expenditure is complete.

I accept the undisputed evidence that the work on each component listed above for which the Landlord submitted this application for an additional rent increased is for the benefit of each dwelling unit in the building.

The Landlord testified that one unit is a dedicated office space. There are a total of 28 dwelling units. This number includes the Landlord’s dwelling unit which includes two individual dwelling units that have been combined but is exclusive of the dedicated office unit.

3. Amount of Capital Expenditure

The Landlord provided sufficient evidence to support the following costs:

- Window and patio door replacement for each unit - \$80,347.05
- New electric circuit breaker - \$35,615.98
- Replacement of fire sprinkler heads/suppression system - \$4,534.78
- Building security upgrades - \$5,943.13
- Replacement of roofing membrane and wood decking over membrane - \$4,749.50
- Lobby renovation - \$3,186.02

4. Eligibility of Capital Expenditure

For the work to be considered an eligible capital expenditure, the Landlord must prove the following:

- A. the work was done to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
- B. the work was undertaken for one of the following reasons:
 - a. to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));

- b. because the system or component:
 - i. was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
 - ii. had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
 - c. to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
 - d. to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
- B. the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- D. the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

A. Whether Capital Expenditure relates to Major System or Component

A major system is integral to the property or to providing services to the tenants and occupants of the property. RTB Policy Guideline 37 provides the following examples of major systems and major components: 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.

I am satisfied the roof membrane and replacement of wood decking over the membrane for that area over the underground parking entrance, as well as the window and patio door replacement for each dwelling unit, are each a “major component” as each is part of the building envelope, and services the whole building. The Landlord testified that the window and patio doors on each unit were original, single-pane glass and were replaced with energy-efficient double-pane windows and patio doors. The Landlord submitted evidence in support of his testimony. The Landlord further noted that each unit has access to an underground parking space in the building, although not every Tenant has a vehicle.

The Landlord testified that the fire sprinkler heads of the fire suppression system were replaced pursuant to local municipal ordinance and fire department regulations. The Landlord testified that the fire sprinkler heads are required to be replaced every 50 years and the sprinkler heads that were in place were original to the building. I find that the fire suppression system in the building is a major component and services the entire

building. Further, I find that the sprinkler heads were required to be replaced and had reached the end of their useful life pursuant to fire safety regulations of the municipality.

The Landlord testified that the new electric circuit breaker was replaced as the prior breaker was original to the building and the insurance carrier required replacement of the circuit breaker. I find that the electric circuit breaker is a major component of the building and services the entire building.

Concerning the building security upgrades, the Landlord testified that the deadbolts, metal security plates and shrouds around each unit's door were replaced. The Landlord explained that the deadbolts on each unit door and service doors that were replaced were original to the building. The metal security plates and shroud assure that a unit cannot be broken into by use of a crowbar or similar instrumentality. The Landlord also stated that each deadbolt was re-keyed by a locksmith and that the key lock box required replacement as this is used by the fire department in the event of emergency.

I find the building security work undertaken by the Landlord provides a service to the tenants and occupants of the property by providing security to the units and the building and qualifies as a major component system of the building.

The lobby renovation consisted of the replacement of a new counter by tenant mailboxes, old moulding was removed and the drywall skimmed and repainted, installation of new wall tile and lighting. The Landlord stated that the lobby was last renovated in 1989. I do not find that the lobby renovations qualify as a major component of the building or renovation necessary for purposes of health, safety, or housing standards, was done for purposes of energy efficiency or to improve building security. Therefore, this expense does not qualify for purposes of an additional rent increase for capital expenditure.

B. Reason for Capital Expenditure

The Landlord testified that the major components systems were original to the building, which was constructed in 1972. Additionally, the Landlord testified that the roofing membrane was leaking and required replacement as water was intruding into one of the units.

Considering the age of these major components, I am satisfied that each was at the end of its useful life expectancy. I further find that the building security improvements

undertaken were for the purpose of improving building security and each the security of each individual dwelling unit.

C. Timing of Capital Expenditure

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. 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.

A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. The cost of the capital expenditure is eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

The Landlord made the application on November 7, 2023. Based upon the Landlord’s testimony and evidence of invoices paid for the work, I am satisfied work was completed and paid within the 18-month period preceding this application for each of the major component systems as set forth herein.

D. Life Expectancy of the Capital Expenditure

Based on the Landlord’s testimony and evidence I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

Determination Based Upon Evidence

For the above-stated reasons, I find that the capital expenditures for the window and patio door replacement, electric circuit breaker, building security upgrades, replacement fire sprinkler heads of the fire suppression system and roofing membrane work are each eligible capital expenditures, as defined by the Regulation.

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 specified dwelling units divided

by the amount of the eligible capital expenditure divided by 120. I find the eligible additional rent increase to be as follows:

$$[\$131,190.44 / 28 \text{ dwelling units}] / 120 = \$39.04$$

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 for replacement of the windows and patio doors, replacement of the fire sprinkler heads for the fire suppression system, replacement of the electric circuit breaker, replacement of the roofing membrane and wood decking, and building security upgrades in the amount of \$131,190.44. I dismiss without leave to reapply the Landlord's application for additional rent increase for the lobby renovation.

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: December 21, 2023

Residential Tenancy Branch