



Dispute Resolution Services

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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 (Act)* and the *Residential Tenancy Regulation (Regulation)* for an additional rent increase for a capital expenditure.

AE stated that on October 26, 2023 the Application for an Additional Rent Increase, Dispute Resolution Package, and evidence submitted to the Residential Tenancy Branch in October of 2023 were served to each respondent (tenant) by posting a copy of it on the door of their rental unit. The landlord submitted Proof of Service documents that corroborate this testimony.

IT and PT both stated that they received these documents on October 24, 2023.

On the basis of the undisputed evidence, I find that the aforementioned documents were posted on the tenant's doors in October of 2023.

On February 17, 2023, the director of the Residential Tenancy Branch issued a standing order allowing landlords to serve the application for an ARI-C and associated documents by attaching copies to the door or other conspicuous place at the address at which the tenant resides. I therefore find that the aforementioned documents were served to all of the tenants in accordance with the standing order and section 89(1)(e) of the Act.

As the documents were properly served to the tenants, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of most of the tenants.

On December 13, 2023, the landlord submitted additional evidence to the Residential Tenancy Branch. AE stated that this evidence was served to each respondent by posting a copy of it on the door of each tenant's rental unit. The landlord submitted Proof of Service documents that corroborate this testimony.

IT and PT both stated that they received these documents on December 14, 2023.

I find that the evidence of December 13, 2023 was properly served to the tenants and it was accepted as evidence for these proceedings.

On December 27, 2023, IT submitted evidence to the Residential Tenancy Branch. IT stated that this evidence was delivered to the Resident Manager's door on December 27, 2023 and was emailed to the landlord on that same date. AE acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they 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

AE stated that this is a residential complex with a total of 56 rental units. The tenants did not dispute this testimony.

AE testified that the landlord has not applied for an additional rent increase for capital expenditure against any of the respondents prior to this application and there has been no additional rent increase in the last 18 months. The tenants did not dispute this testimony.

AE testified that the landlord is seeking to impose an additional rent increase, in part, for a capital expenditure incurred for replacing the fire alarm system.

AE stated that the fire alarm system was approximately 47 years old, the audible alarms were malfunctioning, and parts for the audible alarm are no longer being manufactured.

The landlord submitted a letter from an electrical contractor, dated October 16, 2023, which corroborates the landlord's submission that the fire alarm system was old and needed to be replaced.

The landlord submitted invoices to show that the landlord paid \$89,524.05 to replace the fire alarm system. The first invoice is dated February 24, 2022 and the final invoice is dated April 25, 2022. AE stated that the final payment for the fire alarm system was paid on May 01, 2022.

AE estimates that the fire alarm system will not need to be upgraded for at least 10 years.

AE testified that the landlord is seeking to impose an additional rent increase, in part, for a capital expenditure incurred for modernizing and upgrading the elevator.

AE stated that the elevator was approximately 47 years old, it was malfunctioning, and parts for the old elevator are no longer available.

The landlord submitted a letter from an elevator technician, dated March 24, 2023, which declares, in part, that components the elevator were long past their life expectancy and that modernizing the elevator will increase comfort and safety.

The landlord submitted invoices to show that the landlord paid \$203,061.48 to modernize the elevator. The first invoice is dated August 23, 2022 and the final invoice is dated February 22, 2023.

AE estimates that the elevator will not need to be upgraded for at least 20 years.

The tenants did not dispute any of the evidence submitted by the landlord, although they submit that some of the expenses for repairing the fire alarm system were incurred more than 18 months before the application for a rent increase was filed.

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 has not applied for an additional rent increase for capital expenditure naming any of these respondents 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 following capital expenditures apply to 56 dwelling units in this residential complex.

On the basis of the undisputed evidence, I find that the landlord spent \$89,524.05 to replace the fire alarm system.

I find that a fire alarm system meets the definition of a "major system", as that term is defined by the legislation.

On the basis of the undisputed evidence, I find that the fire alarm system was replaced because it was failing and the replacement enhanced the security of the residential property and the safety of the occupants.

The landlord filed the application for a rent increase on October 17, 2023. The first invoice for upgrading the elevator is dated February 24, 2022, which is more than 18 months before the application for a rent increase was filed. The final invoice for replacing the fire alarm system is dated April 25, 2022, which is less than 18 months before the application for a rent increase was filed.

Residential Tenancy Branch Guideline 37C reads, in part:

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.

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. For clarity, the capital expenditure will still be 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.

On the basis of the guidance provided by Residential Tenancy Branch Policy Guideline 37C, I find that the capital expenditure for replacing the fire alarm system was incurred less than 18 months prior to the making of the application because the final invoice was dated April 25, 2022, which is less than 18 months of the date the application for a rent increase was filed.

As the evidence shows that the fire alarm system in the residential complex was very old when it was replaced, I find it reasonable to conclude that the system will not need to be replaced within the next 5 years.

For all of the above reasons, I find that the fire alarm system replacement 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 for the fire alarm system replacement was 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 for that expenditure, 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 expenditures related to replacing the fire alarm system. 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 56 specified dwelling units and that the amount of the eligible capital expenditure for replacing the fire alarm system is \$89,524.05.

As such, the landlord has established the basis for an additional rent increase for capital expenditures for the fire alarm system of \$13.32 ($\$89,524.05 \div 56 \text{ units} \div 120$).

On the basis of the undisputed evidence, I find that the landlord spent \$203,061.48 to upgrade and modernize the elevator.

I find that an elevator meets the definition of a “major system”, as that term is defined by the legislation.

On the basis of the undisputed evidence, I find that the elevator was modernized because some of the components of the elevator had exceeded their life expectancy; that replacement parts were not available, and that modernizing the elevator will increase the comfort and safety of this service.

The landlord filed the application for a rent increase on October 17, 2023. The first invoice for upgrading the elevator is dated August 23, 2022 and the final invoice is dated February 22, 2023, both of which are less than 18 months before the application for a rent increase was filed.

Residential Tenancy Branch Policy Guideline #40 suggests the average life of an elevator is 20 years. I therefore find it reasonable to conclude that the elevator will not need to be modernized in the next 5 years.

For all of the above reasons, I find that the elevator expenditure 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 for the elevator modernization was 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 for that expenditure, 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 expenditures related to modernize the elevator. 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. I have found that there are 56 specified dwelling units and that the amount of the eligible capital expenditure for modernizing the elevator is \$203,061.48.

As such, the landlord has established the basis for an additional rent increase for capital expenditures for the elevator of \$30.22 ($\$203,061.48 \div 56 \text{ units} \div 120$).

The landlord has established the basis for an additional rent increase on the basis of the capital expenditures for the fire alarm system and the elevator, in the total amount of \$43.54.

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 application for an additional rent increase for a capital expenditure 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: January 17, 2024

Residential Tenancy Branch