



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

On September 27, 2023 (the “Application date”), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Regulation*.

The Landlord attended the hearing at the scheduled time. The Tenants listed as Respondents, who live at the rental unit property, did not attend the hearing. Collectively, I refer to the “tenants” listed as Respondents for this hearing as the “Tenant” in this decision.

Preliminary Issue – service and disclosure of evidence

The Landlord presented a record of their delivery to each rental unit in the building. They served to each rental unit, by name to each Tenant, a copy of the hearing materials, including the Notice of Dispute Resolution Proceeding, and their prepared evidence for this hearing. This was by registered mail on October 3, 2023. To show this, the Landlord provided a copy of each registered mail label they prepared for one Tenant from each rental unit.

From this evidence, I find that the Landlord served each Tenant in accordance with the *Act*.

Issue to be Decided

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

Background and Evidence

The rental unit property consists of three buildings, constructed in the 1960s. There are 52 units in total, 26 units in each of the two buildings the Landlord is basing this Application on. As submitted by the Landlord, 50 of the 52 units are the subject of this Application, due to two rental units' tenants moving out after the work was completed. The Landlord replaced all balconies, all windows and doors, and two parts of the security systems.

As set out by the Landlord on their Application:

- The balconies were refurbished with new aluminum railings and vinyl decking. Old railings and decks were original to the building construction in the late 1960's and required replacement and repair. New products expected to last 15 to 30 years.

claimed cost: \$190,497.80

- The windows and patio doors in the apartments and common areas of the building were replaced with new vinyl windows. The old windows were original to the building construction in the late 1960's and required replacement. New windows expected to last 20 to 40 years. We also had to complete some asbestos abatement from the drywall around the old windows inside the apartments.

claimed cost: \$430,080.30

- We completed two improvements to building security. First, a new intercom system was installed for the two buildings for remote access control. Old intercoms often broke down and required replacement. Second, an access control fob system was installed on the front and back entrance doors to the buildings eliminating key access and greatly improving security. Both systems are expected to last 10 to 20 years.

claimed cost: \$24,034.47

For the balconies, doors and windows, the Landlord included photos showing the condition of these pieces before replacement. In the hearing, the Landlord stated that these pieces were original to the building that was constructed in the 1960s. The Landlord also included pictures for reference of the security door entry-system, as well as one fob that has been added as a means of entry for each resident.

The Landlord presented each set of capital expenses that they submit are related to major systems or major components of the rental unit property.

The Landlord presented a series of invoices for each piece of the work completed, categorized by decks/railings, security, and doors/windows:

	Description	invoice date	amount*
A.	wiring for security systems	March 8, 2023	\$4,809.99
B.	intercom	January 23, 2023	\$6,999.23
C.	access control (fobs)	January 23, 2023	\$12,225.25
D.	21 decks 940 & 980 (each)	August 10, 2022	\$60,324.60
E.	21 decks 940 & 980 (each)	July 26, 2022	\$49,242.06
F.	12 soffitts/backing 940	June 1, 2022	\$15,668.87
G.	services – decks at 940	July 12, 2022	\$21,162.27
H.	services – decks at 980	July 12, 2022	\$44,100.00
I.	deposit	March 21, 2022	\$33,000.00
J.	patio doors/side windows	December 8, 2022	\$45,240.13
K.	148 windows & patio doors	January 13, 2023	\$80,000.00
L.	88 windows & patio doors	January 13, 2023	\$40,000.00
M.	4 windows/patio door	January 23, 2023	\$5,936.95
N.	final draw for windows	June 1, 2023	\$57,759.98
O.	balance owing final	July 11, 2023	\$103,260.39
P.	88 windows abatement	February 13, 2023	\$9,240.00
Q.	88 windows abatement	February 13, 2023	\$9,240.00
R.	130 windows/18 doors	February 13, 2023	\$18,375.00
S.	130 windows/18 doors	February 13, 2023	\$18,375.00
T.	single window abatement	June 27, 2022	\$3,150.00
U.	abatement	July 14, 2022	\$8,137.50
V.	dump asbestos	March 31, 2023	\$1,365.35
TOTAL			\$647,612.57

On their invoices, the Landlord was specific about the expenses incurred only for the two buildings of the three-building complex involved.

The Landlord provided a detailed breakdown of specific costs in charts they prepared for each category, and presented in their evidence. I reproduced the line items in the table above.

Analysis

The *Residential Tenancy Regulation* (the “*Regulation*”), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
 - to repair, replace, or install a major system or a component of a major system; and
 - undertaken:
 - to comply with health, safety, and housing standards;
 - because the system/component was either:
 - close to the end of its’ useful life, or
 - failed, malfunctioning, or inoperative
 - to achieve either:
 - a reduction in energy use or greenhouse gas emissions; or
 - an improvement in security at the residential property
- and
- the capital expenditure was incurred less than 18 months prior to the making of the landlord’s application for an additional rent increase
- and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the Landlord;
- or
- the Landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

In this case, I find the Landlord did not make a prior application for an additional rent increase within the previous 18 months. I find this to be fact, where this work was completed, as noted by the contractor, in 2022 to 2023, and the Landlord filed their Application at the Residential Tenancy Branch on September 27, 2023.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

“dwelling unit” means:

- (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.

I find there are 52 dwelling units, of which all 52 are eligible. This was as specified by the Landlord in the hearing. I make this finding based on s. 21.1(1)(a) of the *Regulation*, set out immediately above.

Eligibility and Amount

For the Landlord's submitted expenditures, I address whether it was *eligible*, and then determine the expenditure *amount*.

As set out in s. 23.1(4) of the *Regulation*, I find the replacement of balconies, patio (*i.e.*, balcony) doors, and windows at the rental unit property is replacement of a major system. As per the definition of "major system", I find the balconies are a structural system that is integral to the residential property.

Regarding windows and doors' installation, I find these are each a "major component" as defined in s. 21.1 of the *Regulation*, integral to the residential property.

Regarding the replacement of the intercom system, and installation of fob entry system, I find these are each a component of a major system. As per s. 23.1(4)(a)(iii)(A), these achieve an improvement in the security of the residential property.

The separate invoices provided by the Landlord add up, from relevant work, to \$647,612.57. I find the Landlord provided sufficient detail to separate work that was not included for the third building on the property, not within the scope of this present Application. I find the invoices each bear sufficient detail to show how they are related to the project as a whole.

I grant this capital expenditure, as provided on the Landlord's Application, for the amount of \$647,612.57.

Timing of the Capital Expenditure

I accept the Landlord's evidence that the first payment for the work was on June 1, 2022, and the final payment was made on July 11, 2023. Both of these dates are within 18 months of the Landlord's making this Application on September 27, 2023. I find the Landlord's deposit paid on March 21, 2022 does not apply as a payment; the Landlord's record shows that deposit was offset on an invoice dated December 8, 2022.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find all components are within 15 to 20 years.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years.

Outcome

The Landlord has proven all of the necessary elements for their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$647,612.57. This is pursuant of s. 43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation*, referred to above.

The *Regulation* s. 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of dwelling units, divided by 120. In this case, I found there are 52 specified dwelling units, and that the amount of the eligible capital expenditure is \$647,612.57.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$103.78 ($\$647,612.57 \div 52 \div 120$) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of any tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount, calculated above, in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37, page 11, to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$457,676.72

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by sending it to them via email where possible. Within reason, the

Landlord must also be able to provide a copy to any Tenant that requests a printed copy in person.

I make this decision is made on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 10, 2024

Residential Tenancy Branch