



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 capital expenditure pursuant to section 23.1 of the Regulation.

Those listed on the cover page of this decision attended the hearing.

The landlord submitted that tenants in 5 separate units were not served as their tenancy began after the capital expenditures were incurred.

The landlord said that all other tenants were served the application for dispute resolution, evidence, and notice of hearing (proceeding package) by registered mail. The landlord submitted documentary evidence as to service of the dispute resolution proceeding package.

The parties were affirmed and the hearing proceeded. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

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

Background and Evidence

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

The landlord submitted that the residential property is a 3 floor, wood frame apartment building, that was built in the late 1960's, and has 31 dwelling units.

The landlord testified that they have not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord testified that they were seeking to impose an additional rent increase for capital expenditures incurred to pay for expenses in connection to three separate components in the building.

In a claim for capital expenditures of \$59,487.63, the landlord wrote the following:

The hallways, stairwells and lobby of the building were substantially renovated with new flooring, paint, door handles and locks, exit signs, emergency lights, furniture and decor. The hallways had not been renovated for at least 20 years. The work completed is expected to last 15 to 25 years.

The completion date was May 31, 2023. The expenses were incurred between January 27, 2023 and August 4, 2023.

In a claim for capital expenditures of \$11,898.92, the landlord wrote the following:

The two swamp coolers that provide air conditioning or cooling in the summer for the hallways were replaced with new ones. The old swamp coolers were at least 20 years old and the new ones are expected to last 20 years.

The completion date was June 30, 2023. The expenses were incurred June 30, 2023.

In a claim for capital expenditures of \$10,936.26, the landlord wrote the following:

Drainage pipes in the crawlspace of the building were replaced with new pipes. The old original pipes from the late 1960's were leaking and required replacement. The new drainage pipes are expected to last up to 40 years.

The completion date was May 25, 2023. The expenses were incurred May 25, 2023.

The landlord testified that the work was done because they had issues with leaks in the basement, which ultimately could not be repaired due to their age and condition. Additionally, the hallways were updated and improved to add safety and fire protection features. The work included adding exit signs and safety door locks, replace old and frayed carpet that had become tripping hazards, and updated the décor. The swamp coolers providing cooling for the building required replacement and were over 20 years old. The exact age was indeterminate, but the landlord purchased the residential property in 2012 and they had not replaced them until this replacement.

The landlord submitted documentary and photographic evidence, which included detailed receipts, detailed ledger and accounting records, and before and after photos.

The landlord's capital expenditures claim was in the amount of \$82,322.81, as noted above.

Tenants' response and submissions –

No tenant filed evidence and the tenants at the hearing agreed the work needed to be done.

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. 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.

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 a prior 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:
 - o the Work was to repair, replace, or install a major system or a component of a major system
 - o 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;
 - o the capital expenditure was incurred less than 18 months prior to the making of the application
 - o 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 submitted sufficient and required evidence to support their application 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 case, I find the landlord submitted sufficient evidence that they had not made a prior application for an additional rent increase for the work claimed for within the prior 18 months.

The landlord's undisputed evidence is that there are 31 dwelling units in the residential property and the evidence supports that all of the dwelling units are eligible.

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred for the repair and replacement of the cracked and leaking pipes, a renovation and upgrade to the flooring in the common area due to the frayed carpet, and installation of fire and safety features (locks, exits signs, etc.), and to the cooling system of the building, all of which I find are major components under Tenancy Policy Guideline 37.C.

Based on the evidence before me, I find that the landlord incurred capital expenditures in order to maintain the residential property, as I find all of the major components had exceeded their useful life, per section 40 of the Tenancy Policy Guideline.

Upon a review of the landlord's evidence, I find that the capital expenditures were incurred in the 18-month period preceding the date the landlord made their application.

Based upon the evidence before me, I find that the capital expenditures are not expected to be incurred for at least 5 years. I base this finding on the useful life of the building elements under the Policy Guideline.

For these reasons, I grant the landlord's application for the rent increase based on eligible capital expenditures of \$82,322.81, pursuant to section 43(1(b) of the Act and 23.1(4) of the Regulations referred to above.

Section 23.2 provides the formula for the calculating 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 31 specified dwelling units and that the amount of the eligible capital expenditure is \$82,322.81 in total.

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$22.13** per affected tenancy ($\$82,322.81 \div 31 \text{ units} \div 120$). This amount may not exceed 3% of a tenant's monthly rent, and if so, the landlord may not be permitted to impose a rent increase for the entire amount in a single year.

The landlord is directed to Policy Guideline 37, page 11 to properly calculate the rent increase in accordance with the Regulations, as this is the landlord's responsibility.

In addition to the above Policy Guideline, the parties are also directed to section 42 of the Act to learn about annual rent increases, for which the landlord is still entitled to apply, and the Residential Tenancy Branch website for further information on the additional rent increase calculator and how this increase may be imposed.

Conclusion

The landlord's application for an additional rent increase for eligible capital expenditures is granted.

The landlord is directed to serve this Decision on each affected tenant, individually, within two weeks of this Decision.

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: January 25, 2024

Residential Tenancy Branch