



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's application pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act (the Act) and section 23.1 of the Residential Tenancy Regulation (the Regulation) for an additional rent increase for capital expenditure.

The parties listed on the coverage page attended the hearing on January 15, 2024.

The parties confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord, with the exception of the evidence dated January 8, 2024. I find the Tenants were served with the required materials in accordance with the Act, with the exception of documentation from January 8, 2024. As such, I informed the parties that I will not rely on the evidence of January 8, 2024, the Boiler Report.

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 submission of the parties and documentary evidence, not all details of their submissions are reproduced here. The relevant and important evidence related to this application before me have been reviewed, and my findings are set out below in the analysis portion of this Decision.

The capital expenditure (the "Work") incurred as follows:

Item	Description	Amount
1.	Elevator Modernization	\$162,392.75
2.	Hallway and Lobby Renovation and Replacement	\$108,828.02
3.	Exterior Lighting Upgrades	\$594.70

4.	Installation of Building Automation System and Boiler Upgrade	\$38,857.42
	Total	\$310,672.89

The rental property was constructed in 1965 and consists of 72 rental units. Legal counsel for the Landlord (Legal Counsel) submits that the capital expenditures, with the exception of three payments, were incurred in relation to the projects within 18 months preceding their application and they are not expected to recur for at least five years.

The Landlord submitted copies of invoices supporting these amounts. The Landlord paid the total capital expenditures by cheque(s).

Legal Counsel submits that these capital expenditures were incurred by the Landlord in order to repair or replace a major system or a major component of a major system that had failed, was malfunctioning or inoperative, or was close to the end of its useful life. The capital expenditures were also required to repair or replace a major system or major component to maintain the building in a state of repair that complies with section 32(1)(a) of the Act, to reduce energy use, and to enhance building security.

The Landlord has not previously applied for an additional rent increase within the past 18 months for capital expenditure as required by 23.1(2) of the Regulations for this Residential Property.

Legal Counsel submits that the Landlord was not entitled to be paid from another source for the any of the work subject to this application.

Item 1 - Elevator Modernization

Legal Counsel submits that a major control modernization was completed, to include door unlocking devices, building code requirements, increased accessibility, emergency power installation and machine room cooling as recommended. The elevators were at the end of their serviceable life and safety components were added. Legal counsel submits that previous modifications were made in 2013 and the Landlord is not seeking those costs.

Legal Counsel submits the Landlord's written submission, which I have copied and pasted into my decision.

The Landlord submits the following written submission:

Elevator Modernization (Capital Expenditure 01)

Scope of Work Completed: Major control modernization was completed including installation of a hands-free telephone, hall door retainers, door unlocking devices, cab finishes, barrier free access upgrades, emergency power operation, and machine room cooling (Elevator Modernization Project Specifications & Modernization Contract [Tab 5]). Expenditure was recommended by an elevator consultant (see K.J.A. Report at Appendix C of Morrison Hershfield Report [Tab 6]).

Reason for Work: Major components of the elevator were at the end of their useful life and required replacing. Due to the age of the elevator, replacement parts were difficult to find. The Landlord wanted to complete the modernization before a major breakdown occurred as the planning and tendering required could take a long time during which the tenants would not have access to an elevator. To meet code requirements, hoistway door unlocking devices were installed at every landing where there is an entrance, and elevator hall door retainers were added (see K.J.A. Report at Appendix C of Morrison Hershfield Report [Tab 6]). The elevator modernization increased the safety and security of residents, as there was a chance the elevator could malfunction and trap residents.

Timing of Last Repair/Upgrade: The elevator was originally installed in 1969 and it appears some upgrade work was carried out in 2013 (see K.J.A. Report at Appendix C of Morrison Hershfield Report [Tab 6]).

Anticipated Useful Life of Repair/Upgrade: The RTPG 40 [Tab 4] sets out the estimated useful life for an elevator as 20 years. The elevator was installed in 1969 and the Landlord does not anticipate making similar repairs or upgrades again for the next 20 years.

Total Cost of Work Completed (Capital Expenditures): \$162,392.75

Submission of Tenants

I have captured the Tenants' testimony and written submissions as follows:

The Tenants do not consider the elevator a necessary repair as it was in good working order.

The Tenants raised the argument that the building is not part of a Strata Corporation, and the onus and cost for upgrades remains with the Landlord.

Item 2. Hallway and Lobby Renovation and Replacement

Legal Counsel submits that the hallways were not sufficiently lit and to enhance building safety and security, additional lighting was necessary. Work was done to replace old bulb fixtures, to reduce energy consumption and to update signage to meet standards and codes. Door hardware was updated to ensure access would not become restricted due to failures, and to meet accessibility codes. The door hardware was replaced to match the new intercom and fob system. The system and door were replaced as they reached their useful life, and were upgraded with security features. Previously there

were no security cameras, which have been installed in the lobby, laundry area, and the elevator.

The Landlord submits the following written submission:

Hallway and Lobby Renovation and Replacement (Capital Expenditure 02)
<p>Scope of Work Completed: Lighting was added and replaced to ensure adequate visibility for tenants, door hardware was updated, emergency exit signage was added, the entrance door was replaced, and electrical components including outlets were updated. Fire code mandated signage for stairwells, exits, and tactile signage was procured and installed. A new intercom and FOB system was installed, and security cameras were installed. (See Excerpt from BC Fire Code [Tab 9]).</p> <p>Reason for Work: Improvements to visibility and safety with electrical system, door hardware was replaced to ensure tenants had uninterrupted access, drywall was installed following elevator modernization, and new intercom and FOB systems were installed to enhance building security.</p> <p>Timing of Last Repair/Upgrade: Unknown</p> <p>Anticipated Useful Life of Repair/Upgrade: The RTB Guidelines estimate a useful life of 20 years for doors, 15 years for electrical panels and wiring, 15 years for light fixtures, and 15 years for intercoms (see RTPG 40 [Tab 4]).</p> <p>Total Cost of Work Completed (Capital Expenditures): \$108,828.02</p>

Submission of Tenants

I have captured the Tenants' testimony and written submissions as follows:

The Tenants consider this a cosmetic expense for aesthetic appeal which does not increase the units' health, safety or housing standard. The Tenants stated that although the Landlord proceeded with the Work, they notice no improvements and that the Work was poorly done.

Item 3. Exterior Lighting Upgrades

Legal Counsel submits upgrades were completed to replace outdated and inefficient exterior lighting. New LED lights were placed at the front door and canopy, to improve visibility and security.

The Landlord submits the following written submission:

Exterior Lighting Upgrades (Capital Expenditure 03)
<p>Scope of Work Completed: Lighting was added to the exterior of the Building to improve visibility and security.</p> <p>Reason for Work: The Landlord determined the exterior of the Building was insufficient and added or replaced light fixtures to improve visibility and security.</p> <p>Timing of Last Repair/Upgrade: Unknown</p> <p>Anticipated Useful Life of Repair/Upgrade: The RTB Guidelines estimate a useful life of 15 years for light fixtures, (see RTPG 40 [Tab 4]).</p> <p>Total Cost of Work Completed (Capital Expenditures): \$594.70</p>

Submission of Tenants

The Tenants submit that the building had suitable exterior lighting, and they consider this a cosmetic expense which does not increase the units' health, safety or housing standard.

The Tenants state the Landlord is responsible for maintaining the lighting, and this item is not a tenant responsibility.

Item 4. Installation of Building Automation System and Boiler Upgrade

Legal Counsel submits the Landlord installed a building automation system and a boiler upgrade, to include sensors and pot feeders. The work was completed to reduce CO2 emissions and to enhance overall efficiency. The system tracks usage, energy input and alarms. The result is decreased scale build up and reduced corrosion. The Landlord can effectively service any issues with the boiler, and they report increased energy efficiency.

The Landlord submits the following written submission:

Installation of a Building Automation System and Boiler Upgrade (Capital Expenditure 04)
<p>Scope of Work Completed: Installation of building automation system ("BAS") including sensors and artificial intelligence ("AI") integration. New pot feeders were installed to allow</p> <p>Reason for Work: Work was undertaken to reduce the CO2 emissions through the use of sensors and AI to enhance tenant comfort and overall efficiency. Also provides real-time data to Landlord to allow for rapid response to any issues with systems (See Statement of Marek Kozlowski [Tab 10]). The installation increased reliability for adding chemicals into the closed loop system, to control corrosion, scale and microbial control, and improve the effectiveness of water treatment (see Letter re: Pot Feeders [Tab 11]).</p> <p>Timing of Last Repair/Upgrade: Unknown</p> <p>Anticipated Useful Life of Repair/Upgrade: 15-25 years (See Statement of Marek Kozlowski [Tab 7] and Letter re: Pot Feeders [Tab 11])</p> <p>Total Cost of Work Completed (Capital Expenditures): \$38,857.42</p>

Submission of Tenants

The Tenants consider this a cosmetic expense which does not increase the units' health, safety or housing standard.

The Tenants submit heating issue has been ongoing in the rental units that has been ignored by the Landlord. The Tenants stated that they should not be paying for energy efficiency, and any related savings for the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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.

1. Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set 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 successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- 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 (S. 23.1(4));
 - o the Work was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
 - because the system or component:
 - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
 - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
 - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
 - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

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 (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

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 above), the landlord may impose an additional rent increase pursuant to sections 23.2 and 23.3 of the Regulation.

2. Prior Application for Additional Rent Increase

In this matter, there have been no prior applications for an additional rent increase within the last 18 months before the application was filed.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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.

There are 72 specified dwelling units to be used for calculation of the additional rent increase.

4. Amount of Capital Expenditure

The Landlord is claiming the total amount of **\$310,672.89** as outlined in the above table for capital expenditures.

5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order for the Work to be considered an eligible capital expenditure, the landlord must prove the following:

- the Work was to repair, replace, or install a major system or a component of a major system
- 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
 - 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;
- 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.

I will address each of these in turn.

Item 1 – Elevator Modernization

Section 21.1 of the Regulation defines “major system” and “major component”:

"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;

"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;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, 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 find the elevator is a major component of the building. I find the Work was done to increase safety and reliability as the elevator was nearing its useful lifespan. I find this is sufficient to satisfy the requirements of the Regulation. I find that the Elevator Modernization was required because it exceeds its expected serviceable life as permitted by 23(1)(4)(a)(ii) of the regulations.

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made.

I accept the Landlord's evidence that the final payment for the Work was made February 8, 2023, and within 18 months of the Landlord making this application on September 19, 2023.

The Landlord provided the receipts for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application and I find it is

reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or
- the landlord has been paid, or is entitled to be paid, from another source.

The Tenants do not consider the elevator a necessary repair as it was in good working order. Further, the Tenants argue that they are not part of a Strata Corporation and, therefore, the onus and costs for these repairs rest with the Landlord, and not with Tenants.

I find these arguments are insufficient to defeat the Landlord's application. I find the Landlord completed necessary repairs, had to pay for such repairs, and is bound only by the statutory framework in seeking the capital expenditures, and not the arguments described above.

I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **\$162,392.75.**

Item 2. Hallway and Lobby Renovation and Replacement

In this case, I find the lighting in the hallways, signage, door hardware and the main entrance are a major component of the building. I find the Work was done to increase visibility, security and safety. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure and the latest payment was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

The Tenants argued that although such repairs were completed, they notice no improvements in the lobby area of the building and the renovations were poorly done.

I find no basis for such statement, as the Landlord's documentary evidence shows the upgrades and the payment for these upgrades. I find these alternate arguments do not form basis to dispute the application.

I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **\$108,828.02.**

Item 3. Exterior Lighting Upgrades

In this case, I find the exterior lighting to be a major component of the building. I find the Work was done to improve visibility, thereby, to increase security and safety. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

The Tenants submit that the building had suitable exterior lighting, and they consider this a cosmetic expense which does not increase the unit's health, safety or housing standard. The Tenants state the Landlord is responsible for maintaining the lighting, and this item is not a tenant responsibility.

The Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure, and I find the Tenants' arguments are outside of those reasons and they do not form a basis to dispute the application.

I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **\$594.70.**

Item 4. Installation of Building Automation System and Boiler Upgrade

In this case, I find the installation of the Building Automation System and the Boiler Upgrade are a major component of the building. I find the Work was done to increase energy efficiency. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure and the final payment was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

The Tenants submissions show they either considered this a cosmetic expense which does not increase the unit's health, safety or housing standard, or they submitted that heating was an ongoing issue. Either way the Tenants argued they should not be paying for this expense, and any related savings for the Landlord.

I find Tenants present alternate arguments that do not form basis to dispute the application. I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **\$38,857.42**.

Outcome

The Landlord has been successful with their application. They have proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for total capital expenditures of **\$310,672.89**.

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 72 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$310,672.89**

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$35.96** ($310,672.89 \div 72 \div 120 = 35.96$). 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 Landlord's submissions show additional rent increase for capital expenditures calculated at \$62.29 per rental unit per month, however, I find this to be a mathematical error. I find the additional rent increase of capital expenditures of **\$35.96** per rental unit

per month as per the formula set out in the regulations and illustrated in RTB Policy Guideline 37C.

The parties may refer to RTB Policy Guideline 40, 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

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$310,672.89**. 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: February 13, 2024

Residential Tenancy Branch