

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An additional rent increase for capital expenditure under section 43(3) of the Act

The Landlord attended the hearing. No person attended the hearing on behalf of the Tenants.

### **Preliminary Issue- Service**

The Landlord testified that on December 22, 2023 she contacted the Tenants to arrange personal service of this Application for Dispute Resolution and evidence. The Landlord testified that the Tenants were not available on December 22, 2023 to accept personal service, but agreed for the Landlord to leave the above documents on their doorstep. The Landlord testified that on December 22, 2023 she left the above documents on the Tenants' doorstep. The Landlord testified that after she served the Tenants, she contacted them via telephone and they confirmed receipt and that they had reviewed the documents in the package.

Based on the above undisputed testimony I find that the Tenants were sufficiently served for the purposes of this Act under section 71 of the Act, with the Landlord's Application for Dispute Resolution and evidence as the Tenants agreed to the above service and confirmed receipt with the Landlord.

### **Issue to be Decided**

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

### **Background and Evidence**

While I have turned my mind to the documentary evidence and the testimony of the Landlord, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claims and my findings are set out below.

The Landlord testified to the following facts:

- This tenancy began on January 1, 2028 and is currently ongoing,
- monthly rent in the amount of \$2,229.00 is payable on the first day of each month,
- a security deposit of \$1,000.00 was paid by the Tenants to the Landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The Landlord testified that the rental property is a condominium in a 25-floor condominium building. The Landlord testified that she was advised by the Strata of the rental property that the exterior windows and doors in the entire building required replacement (the Project) and was given a special levy for the Project totalling \$67,454.76. The Landlord entered into evidence a document titled "Schedule "A" Special Levy Contributions and Optional Installment Payments" which sets out each unit's special levy amount in the condominium building. The above document states that the rental unit owes a special levy of \$67,454.76.

The Landlord testified that on May 2, 2022 the Strata held a townhall meeting regarding the Project. The Landlord entered into evidence information pages from the townhall meeting which state:

- The project team includes a professional engineer
- Windows and doors have generally reached end of expected service life (35-40 years)". Internal seals within the window/door assemblies are deteriorating, increasing the risk of water leakage, and decreasing performance.
- The windows and doors have poor thermal performance, leading to condensation, and contributing to mould and mildew growth, and units overheating.
- Windows and doors have poor rain control detailing and are vulnerable to leakage without head/sil flashings or waterproofing lining to inhibit water from entering the wall cavities.
- Recommended Project:
  - The frequency of leaks is expected to increase in the years ahead. A continued approach of temporary repairs will be impractical, and the success of repairs cannot be guaranteed.
  - Given the current building envelope condition and frequency of recent leakage, we do not recommend continued with targeted repairs.
  - Since the issues that are causing leakage exist throughout the buildings, a general window, door and wall repair project is recommended.

The Landlord testified that the doors and windows in the condominium building that required replacement were original to the building which was constructed in the early

1980s. The Landlord testified that the doors and windows were at the end of their useful life and were leaking.

The Landlord testified that she paid the full amount of the special levy on July 1, 2022. The Landlord entered into evidence a cheque for same made out to the strata corporation and dated July 1, 2022. The Landlord entered into evidence a receipt for same dated July 2, 2022 from the property manager.

The Landlord testified that the Project completed on November 17, 2023. The Landlord entered into evidence a Project update from the Strata which states that the completion date for the rental unit was slated for November 17, 2023. The Landlord filed this Application for Dispute Resolution on December 3, 2023. The Landlord testified that she has not filed a previous Application for an additional rent increase for capital expenditures against the Tenants.

## **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, there was no evidence that the Landlord made a prior application for an additional rent increase for capital expenditures against the Tenants within the previous 18 months.

*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 that the rental unit in question in this Landlord's Application is the single “specified dwelling unit”.

### Amount

Based on the document titled “Schedule “A” Special Levy Contributions and Optional Installment Payments” I find that the Landlord has proved that the cost of the special levy for exterior door and window replacement was \$67,454.76.

### Eligibility- Type of Capital Expenditure

Residential Tenancy Policy Guideline 37 (PG 37) provides examples of major systems and components as defined by section 21.1 of the Regulation. 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.

As set out in PG 37, the replacement of doors and windows constitutes a major system or component. As such, I find that the Project was undertaken to replace a major system or component.

### Eligibility- Reason for Capital Expenditure

I accept the Landlord’s undisputed evidence that the windows and doors were original to the building which was built in the early 1980s. Referring to the *Residential Tenancy Guideline 40. Useful Life of Building Elements*, I find the windows and doors were past their useful life cycle of 15 and 20 years.

Based on the town hall information pages and the Landlord’s testimony, I find that the Project was required because the doors and windows were failing because they were at the end of their useful life.

The capital expenditure was for “the installation, repair or replacement of a . . . major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life” as set out in s. 23.1(4)(a)(ii) of the *Regulation*.

### Eligibility- Timing of the Capital Expenditure

I accept the Landlord’s evidence that their single payment for the work was on July 1, 2022. The was within 18 months of the Landlord making this Application on December 3, 2023, after the completion of the work on November 17, 2023.

### Eligibility- Life Expectancy of the Capital Expenditure

As set out above, with reference to the *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements*, I find the windows and doors have a life expectancy of 15 to

20 years. I find on a balance of probabilities that this work will not reoccur in the next 5 years as the life expectancy of the replaced components exceeds 5 years.

### Outcome

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$67,454.76.

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 is one single specified dwelling unit, and that the amount of the eligible capital expenditure is \$67,454.76.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$562.12 ( $\$67,454.76 \div 1 \div 120$ ) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of the 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 37C, page 14, to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is 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

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

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$67,454.76. This is pursuant to s. 43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation*, referred to above.

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

Dated: March 5, 2024

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Residential Tenancy Branch