



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

On July 6, 2022 (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 a capital expenditure pursuant to s. 23.1 of the *Regulation*.

The Landlord attended the hearing at the scheduled hearing time. The Tenant did not attend.

Preliminary Issue – service and disclosure of evidence

In the hearing, the Landlord reviewed how they served the Notice of Dispute Resolution Proceeding in this matter. With the Tenant’s consent, they entered the rental unit and left the material in the rental unit for the Tenant to peruse on their return. This included all the evidence that the Landlord presented for this hearing.

I find that the Landlord utilized a means of service to the Tenant with the Tenant’s consent. I find that the Landlord served the Tenant for the purposes of this *Act*, in accordance with s. 71 of the *Act*.

The Tenant provided no document evidence for this matter.

Issue(s) to be Decided

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

Background and Evidence

The rental property in this matter is a single rental unit. The Landlord who attended the hearing stated they were the secretary and acting Landlord for the corporate entity named as the Landlord on the tenancy agreement.

The Landlord clarified that the Tenant is a person who owns their own business and wanted to enter the tenancy agreement via their company's name. The rental unit is used as the Tenant's personal residence and place of business.

The Landlord and Tenant entered a tenancy agreement on August 5, 2003, with the tenancy starting on September 1, 2003. Over the course of the tenancy, the rent increased from \$1,350 to \$1,922.

The rental property is a unit in a 25-floor apartment building. The strata advised the Landlord that windows and doors in the entire building required replacement. On May 2, 2022 the strata held a townhall meeting on this project. The Landlord provided information into evidence that are pages from the townhall meeting that state:

- windows and doors “have generally reached end of expected service life (35-40 years)” – seals are deteriorating, increasing risk of water leakage, and “decreasing performance”
- windows and doors have poor thermal performance – condensation, mould/mildew growth, and units overheating
- windows/doors prone to leakage

The townhall meeting, presented by hired engineers, recommended a replacement project, instead of ongoing temporary repairs: “Since the issues that are causing leakage exist throughout the buildings, a general window, door and wall repair project is recommended.”

The strata charged the Landlord a special levy for the project. The Landlord paid the full amount in advance of the work commencing. The Landlord presented the following documentation:

- an invoice from the strata property management company for \$67,397.72, for window replacement project levy, dated July 2, 2022 – the balance owing after this payment was \$0
- a copy of the cheque the Landlord issued to the strata on July 1, 2022 for \$67,397.72

- a excerpt from a schedule showing all individual units in the property special levy contributions” – showing the individual rental unit contribution for the same special levy amount.
- a note from the building manager liaison who frequently sent out project updates to all building residents – this update shows the upcoming completion date for the rental unit, slated for November 20, 2023.

In the hearing, the Landlord confirmed that the completion date of the work was November 20, 2023. The Landlord completed this Application at the Residential Tenancy Branch on December 4, 2023. In the hearing, the Landlord stated it was their intention to complete this rent increase for capital expenses, in addition to a normal procedure for an annual rent increase (*i.e.*, non-capital expense driven) as set out in the *Act*.

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 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".

Eligibility and Amount

The work, as per s. 21.1(1)(a), was “an installation . . . repairs or replacement” was completed on November 20, 2023.

I find the Landlord presented evidence that the capital expenditure to them was incurred, as required by s. 23.1(4)(b) of the *Regulation*. This was the form of a special levy contribution as set out in the schedule “A” document evidence the Landlord provided. I find the special levy is an incurred capital expenditure as set out in the *Regulation*. This amount is clearly shown in the Landlord’s evidence as \$67,397.72.

Moreover, this was for an allowed purpose under s. 23.1(4)(a)(ii) of the *Regulation*. I find windows and doors are each a “major component” as defined in s. 21.1 of the *Regulation*, integral to the residential property/rental unit.

Referring to the *Residential Tenancy Guideline 40. Useful Life of Building Elements*, I find the windows and doors presented by the Landlord here were well past the useful life cycle of 15 and 20 years.

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*.

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 4, 2023, after the completion of the work on November 20, 2023.

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 this work will not reoccur, and more likely than not there will be no expenditure incurred again within 5 years.

Outcome

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$67,397.72.

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 \$67,397.72.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$561.65 ($\$67,397.72 \div 1 \div 120$) 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 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

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 \$67,397.72. 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

Residential Tenancy Branch