



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 March 28, 2024.

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act. Further, as the hearing of February 15, 2024 was adjourned, I find both parties were given an opportunity to review evidence and to be prepared to proceed at the hearing of March 28, 2024.

Preliminary Matters

During the hearing of March 28, 2024, Legal Counsel for the Landlord (Legal Counsel) stated that the Landlord would like to withdraw their claim for the capital expenditure of the exterior wall restoration and repairs for the amount of \$8,237.25. As such, this claim of \$8,237.25 is dismissed without leave to reapply.

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	\$252,197.31
2.	Renovations and Repairs to Hallways and Lobby	\$53,993.77
3.	Exterior Lighting	\$2,504.90
4.	Intercom and Security System	\$43,175.30
5.	Installation of New Boiler and Building Automation System	\$167,998.16
	Total	\$519,869.44

The rental property was constructed in 1964 and consists of 30 rental units. Legal Counsel submits that the capital expenditures 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. Legal Counsel submits that the invoices dated outside of the 18 month period are in relation to the same project and, therefore, the Landlord has added those amounts in their claim.

The Landlord submitted copies of invoices supporting these amounts. The Landlord paid the total capital expenditures by cheque(s). Legal Counsel submits the last cheque was held and the payment was completed in December 2023.

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. Representative MF for the Landlord testified to the same.

Item 1 - Elevator Modernization

MF testified that the elevator was 60 years old and was not modernized prior to the current Work.

Legal Counsel submits that a major control modernization was completed as per the recommendation by an elevator consultant. The work included installation of a hands-free telephone, car door restrictors, hall door retainers, door unlocking devices, barrier free access upgrades, emergency power operation, equipment guarding and machine room cooling as recommended. Legal Counsel submits that major components of the elevator were at the end of their useful life, and required replacement, and this also improved reliability and safety.

Legal Counsel submits the Landlord's written submission(s), 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, car door restrictors, hall door retainers, door unlocking devices, car top railings, cab finishes, barrier free access upgrades, emergency power operation, equipment guarding, 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]). Consultant was retained to oversee bid process, progress, and completion of project (Rodney, Irving & Associates Services Scope of Work [Tab 7]).

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 1964 and the Landlord does not know of any major modernization work that has taken place since that time (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 1964 and the Landlord does not anticipate making similar repairs or upgrades again for the next 20 years.

Total Cost of Work Completed (Capital Expenditures): \$252,197.31

Submission of Tenants

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

The Tenants raise issue with the last payment of \$24,497.55, stating the payment was held and no cheque number is provided.

The Tenants raised the argument that that new lighting and mirrors should not be part of this claim. The Tenants stated that they were without an elevator the building for four months and the Landlord failed to provide a rent reduction.

The Tenants stated that they asked for additional information about the scope of services, such as the contractors hired, however, the Landlord failed to provide them with this information.

Item 2 - Renovations and Repairs to Hallways and Lobby

MF testified that the traditional lighting, provided low lighting and outdated exit signs that did not meet fire safety codes. MF stated that the Landlord installed new LED light fixtures, emergency lighting and exit signs to comply with fire safety codes. The entrance door and windows were installed, with a new fob system and intercom. Common area doors were upgraded with hardware replacement, and the new control key system provided enhanced security features. There is improved security and reliability with new dead bolts and locks, and commercial grade handles that meet the accessibility code.

The Landlord submits the following written submission:

Renovations and Repairs to Hallways and Lobby (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.</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, entry doors were replaced for compatibility with new intercom and FOB systems.</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]). The Landlord does not expect to make any of the same repairs or upgrades again for a minimum of 5 years.</p>
<p>Total Cost of Work Completed (Capital Expenditures): \$53,993.77</p>

Submission of Tenants

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

The Tenants consider this Work to be general maintenance and not a major component that was at the end of its useful life.

The Tenants stated that there were delays and the Work was not completed within an 18 month period. Further, they stated that these recommendations were optional as per the Commission Deficient Report filed by the Landlord.

The Tenants argued that they asked for additional information, however, the Landlord stated that there was no requirement for them to provide such documentation. The Tenants' written submissions details their request for information.

The Tenants stated that the main door to the building did not present any concerns with respect to a security issue, and that the Landlord neglected safety and security when the main door remained open during the renovation period.

Item 3 - Exterior Lighting

MF testified that the Landlord updated exterior lighting for the building, as the old lights and fixtures were not functioning properly. The replacements included LED fixtures, and energy efficient lighting that has improved lighting, visibility and safety. MF stated that there is a separate breaker maintenance issue that is impacting the new lighting system, which the Landlord plans to address. MF stated that regardless of any ongoing maintenance of the new system, these expenditures are not expected to recur for at least five years.

The Landlord submits the following written submission:

Exterior Lighting (Capital Expenditure 03)
Scope of Work Completed: Supply and install new exterior lighting for Building.
Reason for Work: Outside of building was insufficiently lit and additional light fixtures were installed to enhance building safety.
Timing of Last Repair/Upgrade: Unknown
Anticipated Useful Life of Repair/Upgrade: The RTB Guidelines provide an estimated useful life of 15 years for light fixtures (see RTPG 40, page 40-7 [Tab 3])
Total Cost of Work Completed (Capital Expenditures): \$2,504.90

Submission of Tenants

The Tenants submit that this work is repair and maintenance, and not the replacement of a major component.

Further, the Tenants stated, and submitted as part of their documentary evidence, that the new lights are not functioning properly, and tenants have sent multiple complaints to the property manager.

Item 4 – Intercom and Security System

MF testified that the original intercom was 15 years old, and was unreliable due to poor connectivity and no data log capability for access and security purposes. The Landlord added a new intercom system that allows remote access, and real time control and access. The Landlord also added a new Fob system and cameras throughout all common areas, which has improved access, safety and security.

Legal Counsel submits that as per the Engineer's Report, the intercom had the life expectancy of 15 to 20 years and they recommended replacement.

The Landlord submits the following written submission:

Intercom and Security System (Capital Expenditure 04)						
<p>Scope of Work Completed: A new access control system, CCTV, and intercom system were installed which included additional cameras and FOB access at all points of entry.</p> <p>Reason for Work: A new intercom system was installed which enhanced safety and security at the building and allows for remote access and the security system was upgraded including the addition of a new access control system and installation of CCTV cameras. This replacement was recommended by consultants (see 8.5.4 of Morrison Hershfield Report [Tab 6]).</p> <p>Timing of Last Repair/Upgrade: The intercom and FOB system was installed approximately 15 years ago (Morrison Hershfield Report [Tab 6])</p> <p>Anticipated Useful Life of Repair/Upgrade: The RTB Guidance does not provide an estimated useful life for security systems, but intercom systems have an estimated useful life of 15 years (see RTPG 40, page 40-7 [Tab 3])</p> <p>Total Cost of Work Completed (Capital Expenditures): \$43,175.30</p>						
Detailed Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord						
Work Done	Invoice No.	Tab 2c Pg.#	Cost	Date Paid	Cheque No. (Payment)	Tab 2c Pg.#
Vandelta Communication – Supply and install a Kantech intercom, access control system, and CCTV	7338	8-9	\$29,357.30	March 30, 2022	11195	10
1Valet Corp. – Supply and install intercom system	INV-01807	12	\$1,344.00	September 20, 2022	11786	14
1Valet Corp. – Supply and install intercom system	INV-02341	16	\$12,096.00	December 21, 2022	12005	18
Vandelta Communication – Lobby camera and exit proxy sensor installed	8183	20	\$378.00	July 13, 2022	11547	21
Total Cost			\$43,175.30			

Submission of Tenants

The Tenants argued that the old intercom was reliable and the Landlord could have remedied any issues by adding a power supply. Further, the Tenants stated that they were not provided with quotes or information for the work completed. The Tenants stated that the new system is unreliable.

Item 5 – Installation of New Boiler and Building Automation System

MF testified that the previous system from 1987 was inefficient, and due to lower capacity and efficiency there was high gas consumption. The new Building Automation System has 95% efficiency, with a reduction of gas usage. The Landlord submitted evidence of a Boiler Report to support this claim.

MF testified that 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. MF stated that the systems were upgraded and installed and will now require ongoing maintenance.

Legal Counsel referred to the Engineer's Report showing a recommendation for the system to be replaced within the next five years. Legal Counsel submits that the boiler was at the end of its useful life and had to be replaced.

The Landlord submits the following written submission:

Installation of New Boiler and Building Automation System (Capital Expenditure 05)						
<p>Scope of Work Completed: Replacement of hydronic boiler system was completed. Installation of building automation system ("BAS") including sensors and artificial intelligence ("AI") integration.</p> <p>Reason for Work: Hydronic boiler system was replaced as recommended by consultants (see Morrison Hershfield Report at 8.4.2 [Tab 6]). 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 8]).</p> <p>Timing of Last Repair/Upgrade: The boiler was originally installed in 1987.</p> <p>Anticipated Useful Life of Repair/Upgrade: The RTPG 40 provides an estimated useful life for heating systems of 15 years (see RTPG 40, page 40-6 [Tab 3]), and the BAS system installed is expected to last 20-25 years (See Statement of Marek Kozlowski [Tab 8]).</p> <p>Total Cost of Work Completed (Capital Expenditures): \$167,998.16</p>						
Detailed Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord						
Work Done	Invoice No.	Tab 2d Pg.#	Cost	Date Paid	Cheque No. (Payment)	Tab 2d Pg.#
2257808 Ontario Inc. o/a PID Controls - KMC upgrades to boiler system to connect to network and remote management	INV-2021-0028-001	2	\$261.31	December 30, 2021	925	3
Inline Sales & Services Ltd. – Supply and install new natural gas boiler	50920	5	\$96,870.35	February 2, 2022	11019	6
2257808 Ontario Inc. o/a PID Controls – Install building automation system	INV-2021-010-001	8	\$8,400.00	May 31, 2022	11366	9
Inline Sales & Services Ltd. – Supply and install new natural gas boiler	51702	11	\$24,244.00	August 9, 2022	11620	12
Inline Sales & Services Ltd. – Supply and install new natural gas boiler	52241	14	\$12,760.00	September 14, 2022	11749	16
2257808 Ontario Inc. o/a PID Controls – Supply and shipping and handling for BAS control panel	INV-2021-0101-002	18	\$262.50	September 20, 2022	11769	19
2257808 Ontario Inc. o/a PID Controls – Supply and shipping and handling for BAS control panel	INV-2021-0101-003	21	\$25,200.00	January 17, 2023	12081	22
Total Cost			\$167,998.16			

Submission of Tenants

The Tenants argued that the previous system separated heating and hot water. They stated that with the new system, should there be any deficiencies, both heating and hot water would be impacted, which is a disadvantage for the residents of the building.

The Tenants argued that there was lack of information and skewed results related to any gas consumption and rating results. They argued that the Landlord failed to provide

a consumption analysis, showing a baseline of carbon output and reductions, and did not provide adequate information to prove efficiency. The Tenants argued that they were not given any information about water quality and related treatment, despite their request for such information.

Further, the Tenants stated that the Landlord did not provide heating calculations. The Tenants stated that the heating in the building was reliable until the installment of the new system.

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));
- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- 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 30 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 **\$519,869.44** 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 past 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.

A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

I accept the Landlords evidence that the final payment for the Work has the invoice date of November 8, 2022, which was within the past 18 months of the Landlord making this application on September 27, 2023. The Landlord filed the invoice with the payment status of fully paid and this claim is part of their original application. As such, I accept that the cheque was held and deposited in December 2023. I find that the other invoices are in relation to the same project and Work.

I find it is reasonable to conclude that this capital expenditure is not expected to recur for least 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 raise issue with the last payment of \$24,497.55, which says the payment is held and no cheque number is provided. I addressed this argument above, and accept the invoice of November 8, 2022.

The Tenants raised the argument that that new lighting and mirrors should not be part of this claim. The Tenants stated that they were without an elevator for four months when they waited for the Work to be completed, and the Landlord failed to provide a rent reduction.

The Tenants stated that they asked for additional information about the scope of services, such as the contractors hired, however, the Landlord failed to provide them with this information.

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 **\$252,197.31.**

Item 2 - Renovations and Repairs to Hallways and Lobby

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 Tenants stated that the Work was not completed within an 18 month period and there were delays with the Work. Further, they stated that these recommendations were optional as per the Commission Deficient Report filed by the Landlord. I have already found that the Work was completed for reasons that satisfy the requirements of the Regulation.

Further, 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 is not expected to recur for at least five years.

The Tenants consider this Work to be general maintenance and not a major component, that was at the end of its useful life.

The Tenants argued that they asked for additional information, however, the Landlord stated that there is no requirement for them to provide such documentation.

The Tenants stated that the main door to the building did not present as a security issue, and that the Landlord neglected safety and security when the main door remained open during the renovation period.

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 **\$53,993.77**.

Item 3 - Exterior Lighting

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 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 is not expected to recur for at least five years.

The Tenants submit that this work is repair and maintenance, and not the replacement of a major component.

Further, the Tenants argued, and submitted as part of their documentary evidence, that the new lights are not functioning properly, and they have sent multiple complaints to the property manager.

As stated above, 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 accept MF's testimony that there is ongoing maintenance, but the Work was completed and this capital expenditure is not expected to recur for at least five years.

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 **\$2,504.90**.

Item 4 – Intercom and Security System

I find the intercom and security system to be a major component of the building. I find the Work was done to improve access, safety and security, such as by installing cameras throughout all common areas. I find this 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 is not expected to recur for at least five years.

The Tenants argued that the old intercom was reliable and the Landlord could have remedied any issues by adding a power supply. Further, the Tenants stated that they were not provided with quotes or information for the work completed. The Tenants stated that the new system is unreliable.

I find the alternate arguments presented 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 **\$43,175.30**.

Item 5 – Installation of New Boiler and Building Automation System

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 is not expected to recur for at least five years.

The Tenants argued that the previous system separated heating and hot water, and with the new system, should there be any deficiencies, both heating and hot water would be impacted, which is a disadvantage for the residents of the building.

The Tenants argued that there was lack of information and skewed results related to any gas consumption and rating results. They argued that the Landlord failed to provide a consumption analysis, showing a baseline of carbon output and reductions, and did not provide adequate information to prove efficiency. The Tenants argued that they were not given any information about the water quality and related treatment, despite their request for such information.

Further, the Tenants stated that the Landlord did not provide heating calculations, and that the heating was reliable and problems started with the installment of the new system.

As the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure, I find the Tenants presented 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 **\$167,998.16**.

Outcome

The Landlord has been successful with their application. They have proven, 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 **\$519,869.44**.

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 30 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$519,869.44**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$144.41** (**$519,869.44 \div 30 \div 120 = 144.41$**). 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 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 **\$519,869.44**. 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: April 24, 2024

Residential Tenancy Branch