

## **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 pursuant to section 23.1 of the Regulation.

Landlord TW attended the hearing.

Tenants FW, JT, HS and KP also attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding and Evidence**

I find that the Tenants were deemed served on February 14<sup>th</sup>, 2024, by posting the Notice of Dispute Resolution and the Landlord's evidence on the Tenants' doors. Service by posting to the door of a rental unit is permitted for applications under section 43(3) of the Act pursuant to a director's order dated February 17<sup>th</sup>, 2023.

### **Preliminary Mattera**

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### **Issues to be Decided**

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

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord submitted that the rental property contains 11 units, and was built in 1959, by the Landlord's grandfather.

The Landlord's current application for an additional rent increase relates to three projects undertaken in 2022. A balcony deck was replaced, the mailboxes for the building were replaced, and a new drainage system was installed on the east side of the building, extending to the front of the building.

TW testified that a balcony of one of the suites in the building, above a storage area, was replaced due to a number of problems: a seam in the middle of the balcony was allowing water ingress and the deck was spongy to walk on. The deck was bowed and was pooling water. HS agreed that the deck was spongy. TW testified Cambie Roofing advised replacement of the balcony deck, and performed the job, replacing the plywood under the roofing material, and installing new torch-on roofing. TW testified that the balcony deck had been replaced approximately 10-15 years previously.

TW testified that the previous mailboxes for the building were original to the building, and were embedded in the wall. Many of the locks were broken and beyond repair. TW testified that the replacement of the mailboxes was part of a larger remodelling of the lobby due to a water leak.

TW testified that he undertook a replacement of the perimeter drainage on the east side of the rental property, wrapping around to the main entrance. He testified that after heavy rains, water was pooling at the entrance and side entrance. When excavated, he found that the original drainage was compacted with sand and clay. The work was difficult due to the fact that the building has a step-up foundation, placed on top of an existing foundation. Concrete supporting walls obstructed the drainage.

TW testified that he hired his two sons, AW & SW, to do much of the work, and that he did much of the work himself. TW testified that he agreed to pay his sons a flat fee, based on the nature of the job. He testified that they started in May 2022 and finished in September 2022. He testified that no records of hours worked were kept, but he paid them what seemed fair. He testified that he did a lot of the work himself.

TW testified that the amounts claimed in respect of each of the projects were not recoverable from any other source. He also testified that he does not believe the work will need to be repeated within five years.

FW testified that the balcony was part of suite 102, and that the lockers underneath it were used by the Landlord. She testified that both Simon and Adam Wyne had full-time summer jobs. She agreed that new mailboxes were necessary. FW testified further that the drainage project began on June 28<sup>th</sup>, 2022 and ended on September 12<sup>th</sup>.

The Landlords provided in their evidence a 15-year warranty for the new Duralast roof, invoices from the roofers, and proof of payment. BP testified that the Landlord did not obtain any repayment for any of their expenditures on the re-roofing project.

## **Analysis**

### *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:
  - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
  - 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. *Criteria Fulfilled*

I accept the uncontradicted evidence of the Landlord, which establishes that the rental property contains 11 units, that the capital projects are expected to last longer than five years, and that the Landlord is not entitled to recover any costs from any other source.

The Landlord's invoices and payment records are summarized below:

<i>Project &amp; Invoice</i>	<i>Amount</i>	<i>Date</i>	<i>Allowed</i>	<i>Date Paid</i>
Mailboxes – Marino	\$1,682.49	Dec. 12, 2022	\$1,682.49	Dec. 16, 2022
Balcony Deck – Cambie Roofing	\$8,190.00	Sept. 22, 2022	\$8,190.00	Oct. 6, 2022
Drainage – Rainforest Plumbing	\$945.00	Sept. 7, 2022	\$945.00	Sept. 12, 2022
Drainage – Honest Concrete	\$14,385.00	Sept. 12, 2022	\$14,385.00	Sept. 13, 2022
Drainage – SW	\$10,000.00	Nov. 18, 2022	<i>nil</i>	Nov. 16 & 22, 2022
Drainage – AW	\$12,000.00	Nov. 16, 2022	<i>nil</i>	Nov. 16, 22 & 25, 2022
<b>Total</b>	<b>\$47,202.49</b>		<b>\$25,202.49</b>	

I find that the amounts invoiced were paid on the dates indicated on the final invoices. All dates fall within the 18 month window permitted by the Regulation.

Major system is defined in the Regulation as:

**"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;

I find that the balcony deck is a component of the exterior envelope of the building, a major system, that drainage is a major system, and that the mailboxes are a mechanical system integral to providing services to the tenants, namely mail service, and therefore is a major system.

I accept the Landlord's undisputed evidence that the balcony deck, drainage system and mailboxes had each ceased to function properly and I thus find that each had "failed or [was] malfunctioning or inoperative or [was] close to the end of its useful life" pursuant to section 23.1(4)(a)(ii) of the Regulation.

Policy Guideline 40 sets out the expected useful lifetime for various building components. The useful lifetime of a flat roof is stated therein as 15 years, and the Landlords provided a 15-year warranty for the new roof. For these reasons, I find that the life expectancy of the balcony deck is likely to exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

I note that the previous drainage system and mailboxes were original to the rental property; on that basis, I find that the replacements are likely to endure beyond the required five years.

Most of the invoices are from professional firms, and I am satisfied that these expenses purely relate to the work undertaken. However, the payments made to TW's sons, AW and SW, are unsupported by any record of hours worked. Hiring family members may be an efficient, convenient and economical manner to undertake many projects, but where such work is the basis for seeking a rent increase, a Landlord must ensure that thorough records of the work undertaken are kept. AW and SW's invoices describe the work done, but do not provide hours or dates worked. In light of the lack of any specific documentation to support the amounts paid to AW & SW, I find that the Landlord has not provided sufficient evidence to support these expenses.

Based on the foregoing, I find that the capital expenditures, other than the payments to AW & SW, incurred to undertake the work are eligible capital expenditures, as defined by the Regulation.

### *3. Outcome*

The Landlord has been largely successful. I find that 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 \$25,202.49.

Section 23.2 of the Regulations sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditure divided by the number of specific dwelling units then divided by 120.

The parties may refer to RTB Policy Guideline 37, 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's application is hereby granted for an additional rent increase for capital expenditure in the amount of \$25,202.49. The Landlord may only impose this increase in accordance with the Act and the Regulation.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 28, 2024

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Residential Tenancy Branch