

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

The Landlord's Agent (the Agent) and the Director of the Landlord attended the hearing for the Landlord.

Tenant M.C., Tenant A.R., Tenant D.K., and Tenant S.H. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Agent testified that the Tenants were each served with the Proceeding Package and the Landlord's Evidence via posting on February 23, 2024, with the exception of one tenant who was served via posting on February 24, 2024. Witnessed proof of service documents for same were entered into evidence.

All Tenants in attendance at this hearing confirmed receipt of the Proceeding Package and Landlord's Evidence via posting in February of 2024.

Based on the testimony of the Agent, the Tenants and the proof of service documents entered into evidence, I find that the Proceeding Package and Landlord's evidence were served in accordance with the Director's February 17, 2023 Standing Order.

The only Tenant to submit evidence for consideration was Tenant S.H. whose evidence was uploaded to the Residential Tenancy Branch the day before this hearing. Tenant S.H. testified that he did not serve the Landlord with his evidence. As the Tenant did not serve the Landlord with his evidence at least 15 clear days before this hearing in accordance with the Rules of Procedure, I exclude Tenant S.H.'s evidence from consideration. I find that to accept evidence that was not served on the Landlord would prejudice the Landlord who was not afforded an opportunity to review it prior to today's hearing.

Issues to be Decided

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

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The Agent explained there are 8 residential buildings on the property and each building consists of the following number of units:

3955 – 6 Units
3957 – 6 Units
3959 – 6 Units
3961 – 6 Units
3963 – 6 Units
3965 – 6 Units
3967 – 6 Units
3969 – 6 Units

There are a total of 48 units throughout the 8 buildings. I was advised this application was only filed against 45 units, as 2 unit have new Tenants whose rent already reflects the additional rent increase requested and one is a manager unit.

The Agent further explained these rental buildings were built in 1960. The Agent testified that the Landlord has not previously applied for an additional rent increase for capital expenditure against of the Tenants prior to this application.

The Agent applied to impose an additional rent increase for capital expenditures relating to replacing 85% of the plumbing in all 8 rental buildings. The Agent testified that in April and May of 2023 two plumbing backups occurred and so the Landlord decided to investigate and clean the buildings' sanitary pipe stacks. The Agent testified that the original plan was to hydro flush and auger the pipes where feasible for each section and repair wherever necessary. The Agent testified that it was soon discovered that the sanitary piping was in very poor condition in many sections and required replacement. The Agent testified that the pipes were over 60 years old and repairs were not feasible due to the age.

The Agent testified that during investigations it was discovered that multiple crawlspaces in the basements of the buildings, which house long length of the horizontal sanitary stack, had leaks and were additionally suffering from water ingress due to local drainage of the property. Rot was found in the wooden foundational

supports, and severe sanitary issues that needed to be addressed by professional restoration before the plumbing work could commence. The Agent testified that the restoration work has not been claimed in this application for an additional rent increase.

The Agent testified that in order to reach the plumbing that required replacement, the bathtubs, that were original to the rental property needed to be removed as did bathroom vanities and drywall in the bathrooms. The Agent testified that the bathtubs were rusting and failing at the time of their removal. The Agent testified that since the bathrooms required significant demolition to access the pipes, they were renovated after the plumbing was replaced. The Agent testified that the sanitary pipes exiting the buildings and connecting with the city sewer pipes had to be dug up and replaced. The Agent testified that the sanitary piping was in poor condition due to age and in some sections of terra-cotta piping, there were crushed and damaged sections from tree roots, shifting and settlement. The Agent's written submissions state that some of the piping and drywall contained asbestos which required special remediation.

The Agent's written submissions additionally state that a hot water tank failed during this project and had to be replaced and that all components replaced throughout this project have an expected lifespan well in excess of five years, and proactive measures such as many new cleanouts were installed in order to facilitate future maintenance on the piping systems.

The Agent testified that the bathroom demolition and construction invoices have different units in different buildings lumped together when the same work needed to be done in each unit and the same cost to each unit applied. The Agent testified that these invoices state which units in which buildings had the work outlined in the invoice completed and the invoices list the cost of work completed for each unit.

The Agent testified that the following invoices apply equally to each building because the work completed was on common areas or were equally divisible amongst the buildings:

- gravel fill for new horizontal sanitary lines connecting the buildings to the City sanitary system
- plumbing work in common areas
- project management costs for entire project in all 8 buildings

The Agent testified that the Landlord hired a property management company to coordinate and monitor the entire plumbing project. The Agent testified that the property management company organized and coordinated all the different contractors.

The Landlord applied to impose an additional rent increase for capital expenditure that were incurred as follows on each building:

3955

Description	Date Invoice Paid	Amount
Bathroom demolition and re-construction	June 1, 2023	\$2,595.87
	July 12, 2023	\$2,595.87
	February 1, 2024	\$8,808.42
	December 18, 2023	\$8,808.42
Plumbing –copper supply and drainage replacement	November 10, 2023	\$863.10
Gravel fill for new horizontal sanitary lines connecting the buildings to the City. 1/8 of invoice applied to each building.	May 19, 2023	\$24.94
	June 1, 2023	\$31.94
Project management fee. 1/8 of each invoice applied to each building	June 12, 2023	\$329.43
	July 6, 2023	\$755.16
	August 8, 2023	\$174.37
	September 7, 2023	\$468.27
	October 18, 2023	\$701.70
	November 6, 2023	\$115.61
	December 27, 2023	\$126.24
	January 4, 2024	\$542.33
	January 16, 2024	\$28.90
	February 15, 2024	\$231.22
	Total	\$ 27,201.79

Invoices for same were entered into evidence.

3957

Description	Date Invoice Paid	Amount
Plumbing- install new hot water tank for building	July 6, 2023	\$12,180.00
Plumbing – unit repairs and copper supply and drainage replacement	September 21, 2023	\$14,535.94
		\$13,843.75
Bathroom demolition and re-construction	June 1, 2023	\$2,595.87
	June 22, 2023	\$2,595.87
	June 22, 2023	\$3,497.92
	July 12, 2023	\$2,595.35
	July 12, 2023	\$3,397.92
	October 5, 2023	\$4,404.21

Gravel fill for new horizontal sanitary lines connecting the buildings to the City. 1/8 of invoice applied to each building.	May 19, 2023	\$24.94
	June 1, 2023	\$31.94
Project management fee. 1/8 of each invoice applied to each building	June 12, 2023	\$329.43
	July 6, 2023	\$755.16
	August 8, 2023	\$174.37
	September 7, 2023	\$468.27
	October 18, 2023	\$701.70
	November 6, 2023	\$115.61
	December 27, 2023	\$126.24
	January 4, 2024	\$542.33
	January 16, 2024	\$28.90
	February 15, 2024	\$231.22
	Total	\$49,333.19

Invoices for same were entered into evidence.

3959

Description	Date Invoice Paid	Amount
Plumbing- copper supply and drainage replacement	September 11, 2023	\$604.80
Bathroom demolition and re-construction	July 12, 2023	\$2,595.87
	September 21, 2023	\$13,212.63
	October 5, 2023	\$8,808.42
	February 1, 2024	\$13,212.42
Gravel fill for new horizontal sanitary lines connecting the buildings to the City. 1/8 of invoice applied to each building.	May 19, 2023	\$24.94
	June 1, 2023	\$31.94

Project management fee. 1/8 of each invoice applied to each building	June 12, 2023	\$329.43
	July 6, 2023	\$755.16
	August 8, 2023	\$174.37
	September 7, 2023	\$468.27
	October 18, 2023	\$701.70
	November 6, 2023	\$115.61
	December 27, 2023	\$126.24
	January 4, 2024	\$542.33
	January 16, 2024	\$28.90
	February 15, 2024	\$231.22
	Total	\$41,964.25

Invoices for same were entered into evidence.

3961

Description	Date Invoice Paid	Amount
Plumbing- copper supply and drainage replacement	November 10, 2023	\$756.00
Bathroom demolition and re-construction	September 7, 2023	\$8,808.42
	October 5, 2023	\$4,404.21
	November 6, 2023	\$8,808.42
	January 1, 2024	\$4,404.21
Gravel fill for new horizontal sanitary lines connecting the buildings to the City. 1/8 of invoice applied to each building.	May 19, 2023	\$24.94
	June 1, 2023	\$31.94
Project management fee. 1/8 of each invoice applied to each building	June 12, 2023	\$329.43
	July 6, 2023	\$755.16
	August 8, 2023	\$174.37
	September 7, 2023	\$468.27
	October 18, 2023	\$701.70
	November 6, 2023	\$115.61
	December 27, 2023	\$126.24
	January 4, 2024	\$542.33
	January 16, 2024	\$28.90
	February 15, 2024	\$231.22
	Total	\$30,711.37

Invoices for same were entered into evidence.

3963

Description	Date Invoice Paid	Amount
Plumbing- bathroom re-build	August 17, 2023	\$9,030.00
Plumbing – unit repairs and copper supply and drainage replacement	September 21, 2023	\$10,027.50
Bathroom demolition and re-construction	July 12, 2023	\$3,397.92
	September 21, 2023	\$1,404.30
	December 18, 2023	\$13,212.63
Gravel fill for new horizontal sanitary lines connecting the buildings to the City. 1/8 of invoice applied to each building.	May 19, 2023	\$24.94
	June 1, 2023	\$31.94
Project management fee. 1/8 of each invoice applied to each building	June 12, 2023	\$329.43
	July 6, 2023	\$755.16
	August 8, 2023	\$174.37
	September 7, 2023	\$468.27
	October 18, 2023	\$701.70
	November 6, 2023	\$115.61
	December 27, 2023	\$126.24
	January 4, 2024	\$542.33
	January 16, 2024	\$28.90
	February 15, 2024	\$231.22
	Total	\$40,602.46

Invoices for same were entered into evidence.

3965

Description	Date Invoice Paid	Amount
Plumbing- exterior dig	August 17, 2023	\$4,599.00
Plumbing –copper supply and drainage replacement	September 7, 2023	\$2,898.00
Bathroom demolition and re-construction	June 22, 2023	\$5,191.74
	July 12, 2023	\$6,795.84
	September 7, 2023	\$8,808.42
Gravel fill for new horizontal sanitary lines connecting the buildings to the City. 1/8 of invoice applied to each building.	May 19, 2023	\$24.94
	June 1, 2023	\$31.94

Project management fee. 1/8 of each invoice applied to each building	June 12, 2023	\$329.43
	July 6, 2023	\$755.16
	August 8, 2023	\$174.37
	September 7, 2023	\$468.27
	October 18, 2023	\$701.70
	November 6, 2023	\$115.61
	December 27, 2023	\$126.24
	January 4, 2024	\$542.33
	January 16, 2024	\$28.90
	February 15, 2024	\$231.22
	Total	\$31,823.11

Invoices for same were entered into evidence.

3967

Description	Date Invoice Paid	Amount
Plumbing- exterior dig	August 17, 2023	\$4,599.00
Bathroom demolition and re-construction	June 1, 2023	\$2,595.87
	June 22, 2023	\$2,595.87
	July 12, 2023	\$2,595.87
	September 21, 2023	\$4,404.21
	February 1, 2024	\$8,808.42
Gravel fill for new horizontal sanitary lines connecting the buildings to the City. 1/8 of invoice applied to each building.	February 1, 20224	\$4,404.21
	May 19, 2023	\$24.94
Project management fee. 1/8 of each invoice applied to each building	June 12, 2023	\$329.43
	July 6, 2023	\$755.16
	August 8, 2023	\$174.37
	September 7, 2023	\$468.27
	October 18, 2023	\$701.70
	November 6, 2023	\$115.61
	December 27, 2023	\$126.24
	January 4, 2024	\$542.33
	January 16, 2024	\$28.90
	February 15, 2024	\$231.22
	Total	\$33,533.56

Invoices for same were entered into evidence.

Description	Date Invoice Paid	Amount
Plumbing- exterior dig	August 17, 2023	\$4,599.00
Plumbing- copper supply and drainage replacement	August 17, 2023	\$4,154.85
	September 11, 2023	\$907.20
Bathroom demolition and re-construction	June 1, 2023	\$2,595.87
	July 12, 2023	\$2,595.87
	September 7, 2023	\$1,313.16
	November 6, 2023	\$8,808.42
	December 18, 2023	\$4,404.21
Gravel fill for new horizontal sanitary lines connecting the buildings to the City. 1/8 of invoice applied to each building.	May 19, 2023	\$24.94
	June 1, 2023	\$31.94
Project management fee. 1/8 of each invoice applied to each building	June 12, 2023	\$329.43
	July 6, 2023	\$755.16
	August 8, 2023	\$174.37
	September 7, 2023	\$468.27
	October 18, 2023	\$701.70
	November 6, 2023	\$115.61
	December 27, 2023	\$126.24
	January 4, 2024	\$542.33
	January 16, 2024	\$28.90
	February 15, 2024	\$231.22
	Total	\$32,908.69

Invoices for same were entered into evidence.

The Agent testified that the plumbing invoices outlined above for each building were not the main project of replacing the sanitary lines but incidental additional costs incurred over the course of the project. The main project cost was an additional \$266,227.50 which was billed to the Landlord in lump sum intervals over the course of the project. The lump sum invoices entered into evidence are as follows:

Description	Date Invoice Paid	Amount
Deposit for operating costs	May 10, 2023	\$25,000.00
	May 29, 2023	\$25,000.00
	June 12, 2023	\$40,000.00
	June 27, 2023	\$40,000.00
	August 8, 2023	\$40,000.00
	September 7, 2023	\$40,000.00

	December 27, 2023	\$56,227.50
	Total	\$266,227.50

The Agent testified that included in the above costs were some restoration work that the Landlord is not seeking to include in this application for an additional rent increase. The Agent entered into evidence a spreadsheet tracking the main plumbing costs. The spreadsheet shows that of the \$266,227.50, \$4,358.00 are attributable to work that the Landlord is not seeking to include. The total amount the Landlord is seeking to include therefore amounts to \$261,869.50. The Agent entered into evidence a spreadsheet tracking these costs as follows:

Description	Building	Amount
Original estimate- inspection, horizontal drain line and sewage line replacement with excavation, exterior frost free hose bib installation, sewer connections in crawlspaces for first floor units	3955	\$5,250.00
	3957	\$5,250.00
	3959	\$5,250.00
	3961	\$5,250.00
	3963	\$5,250.00
	3965	\$5,250.00
	3967	\$5,250.00
	3969	\$5,250.00
Foundations- foundational supports in the crawl spaces	3955	\$2,425.50
	3957	\$2,425.50
	3959	\$2,425.50
	3961	\$2,425.50
	3963	\$2,425.50
	3965	\$2,425.50
	3967	\$2,425.50
	3969	\$2,425.50
Shoring and fencing- shoring materials and fencing for dig	3955	\$656.25
	3957	\$656.25
	3959	\$656.25
	3961	\$656.25
	3963	\$656.25
	3965	\$656.25
	3967	\$656.25
	3969	\$656.25
Extended dig	3955	\$3,281.25
	3957	\$3,281.25
	3959	\$3,281.25
	3961	\$3,281.25
	3963	\$3,281.25

	3965	\$3,281.25
	3967	\$3,281.25
	3969	\$3,281.25
Security	3955	\$131.25
	3957	\$131.25
	3959	\$131.25
	3961	\$131.25
	3963	\$131.25
	3965	\$131.25
	3967	\$131.25
	3969	\$131.25
Minor leak abatement	3955	\$131.25
	3957	\$131.25
	3959	\$131.25
	3961	\$131.25
	3963	\$131.25
	3965	\$131.25
	3967	\$131.25
	3969	\$131.25
Crawlspace connection	3965	\$3,150
Vanities	3957	\$1,180.20
	3963	\$1,180.20
	3965	\$2,360.40
	3969	\$1,180.20
Toilets	3955	\$696.30
	3957	\$580.25
	3959	\$580.25
	3961	\$580.25
	3963	\$464.20
	3965	\$580.25
	3967	\$464.20
	3969	\$464.20
Bathtub replacement (no asbestos)	3955	\$13,125.00
	3959	\$15,750.00
	3961	\$15,750.00
	3963	\$15,750.00
	3965	\$13,125.00
	3967	\$13,125.00
	3969	\$15,750.00
Bathtub replacement (asbestos drywall)	3955	\$5,670.00

	3957	\$34,020.00
	3965	\$5,670.00
	3967	\$5,670.00

The total cost per building for the above table for main plumbing costs is as follows:

- 3955: \$31,366.80
- 3957: \$47,655.95
- 3959: \$28,205.75
- 3961: \$28,205.75
- 3963: \$29,269.90
- 3965: \$36,761.15
- 3967: \$31,134.70
- 3969: \$29,269.90

The total cost per building for all Landlord claims is as follows:

- 3955: \$58,568.59
- 3957: \$96,989.14
- 3959: \$70,170.00
- 3961: \$58,917.12
- 3963: \$69,872.36
- 3965: \$68,584.26
- 3967: \$64,668.26
- 3969: \$62,178.59

Total: \$549,948.32

The Agent testified that all work was completed by December of 2023; however, invoices continued to come in after the physical work was completed. The Landlord did not enter into evidence any reports opining on the useful life of the plumbing or whether or not the useful life of the plumbing had elapsed. The Landlord made no submissions on what the useful life of the plumbing at the rental buildings were, just that the useful life had expired. I note that that Residential Tenancy Branch Policy Guideline #40 does not state what the useful life of copper pipes is.

Tenant Responses

Tenant M.C. testified that:

- he didn't understand why all units were not served with this application for dispute resolution
- he moved in almost 6 years ago and doesn't understand why he is included in this application for dispute resolution
- he was a tenant at the time the application for dispute resolution was served
- the landlord never came to repair the rental buildings before

- he was told he would not have to pay increased rent when the bathroom were renovated
- he has already been served with a yearly notice of rent increase

The Agent testified that:

- showers and plumbing do not need to be replaced each year
- all tenants except the new tenants who moved in after the work was completed have been served with this application

Tenant D.K. testified that:

- the work completed by the Landlord was needed
- the previous building manager was aware of the plumbing problems long before they were fixed
- his shower was left gutted and open for approximately one year
- the property has a history of drainage issues
- the property management company must have been aware of how bad the problems were long before the repairs were made
- the Landlord is not eligible to raise the rent for the repairs because the repairs should already have been done.
- the Landlord didn't do the repairs earlier because the Landlord wanted to sell the property

The Agent testified that:

- the work needed to be done because the plumbing was over 60 years old, not because of inadequate repairs
- the pipes were worn through due to age
- the photographs of the pipes entered into evidence show their disrepair due to age
- due to the age of the pipes, they had to be replaced and could not be repaired

Photographs of the pipes were entered into evidence which show that they are in disrepair.

Tenant S.H. testified that:

- invoice 28/23 states that the ceiling, toilet and drywall in his bathroom were replaced but these repairs did not occur
- he has resided at the rental property since 2014 and has brought up plumbing issues multiple times and nothing was done
- the Landlord knew that repairs were needed
- the pipes only needed to be replaced because of neglect and their rent should not be increased because of neglect

- the caretaker should not have been hired to do the bathroom demolition and renovation, the quality of the work is poor

The Agent testified that:

- Tenant S.H. wanted repairs made earlier, this application was filed after repairs were made
- The caretaker was hired to do bathroom demolition and restoration to keep costs low
- if Tenant S.H. has proof that certain work was not completed in his unit the Landlord is happy to remove that portion of the claim from the rent increase application

Tenant A.R. testified that:

- If the repairs were made earlier, before they moved it, it would not have affected their rent
- It's the Landlord's obligation to maintain the rental property, if the Landlord made repairs earlier the project would not have been as big and expensive as it was
- the tenancy agreement does not make reference to additional rent increases and so they should not be permitted
- the tenants should have been given the choice of who completed the work
- the caretaker did not do a good job
- the plumber told her that the only reason the repairs were made was because the Landlord applied to re-zone the property, but the application was denied and now the Landlord is forced to maintain the property.

The Agent testified that:

- the Landlord has never applied for a development permit and has nothing to do with the repairs made
- any deficiencies with the caretakers work will be addressed and the cost of same will not be part of the rent increase

The Landlord did not enter into evidence any maintenance records for any of the rental buildings.

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.

Rule 11.4 of the Residential Tenancy Branch Rules of Procedure states that Applicants must submit with their application any documents in their possession at the time they made their application that relate to the maintenance of the major system or component that was repaired or replaced (e.g., maintenance records). The Landlord did not enter into evidence any maintenance records for the rental properties. I find that the Landlord has failed in their evidentiary duty to supply maintenance records. I find that without the maintenance records it is nearly impossible for the Tenants to meet their onus under section 23.1(5)(a) of the Regulation, to prove, on a balance of probabilities, that the plumbing repairs were incurred because of inadequate repair or maintenance on the

part of the landlord. I therefore dismiss the Landlord's Application for an additional rent increase with leave to reapply for failure to meet their evidentiary requirements.

In any future application for dispute resolution the Landlord must fulfill their disclosure obligations under Rule 11.4 of the Residential Tenancy Branch Rules of Procedure.

Conclusion

The Landlord's application for dispute resolution is dismissed with leave to reapply.

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*.

Conclusion

This interim 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 8, 2024

Residential Tenancy Branch