



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Code: ARI-C

Introduction

This decision is in respect of the Landlord's application made pursuant to the *Residential Tenancy Act* (the "Act") and the *Residential Tenancy Regulation* (the "Regulation") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

Issue

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

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 aspects of the parties' claims, and my findings are set out below.

The building in which the rental units are located (hereafter the "Building") was built in 1959 and the Landlord assumed ownership and operation on January 28, 2021. The Building has 48 rental units that are affected by this matter.

The Landlord gave affirmed evidence that it has not applied for an additional rent increase for capital expenditures against any of the tenants prior to this application.

The Landlord provided evidence that they were seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done (“Work”) for the following:

The total capital expenditures relate to the following three projects:

1. modernization of the elevator;
2. renovations and repairs to the interior common areas of the building including the lobby and hallways; and,
3. installation of a new intercom and security system

Further, the capital expenditures were incurred in the 18-month period preceding the date of this application, are not expected to recur within the next 5 years and were incurred to repair or replace a major component or major system that had failed, was malfunctioning or inoperative, or was close to the end of its useful life, or to enhance building security. 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.

The Landlord paid the capital expenditures by cheque, and the final cheques for each capital expenditure were dated after March 28, 2021. The Landlord’s application was made on September 28, 2023, and the capital expenditures were, I find, incurred within the 18-month period preceding the Landlord’s application.

The capital expenditures are not expected to recur in the next 5 years. The estimated life expectancy for all three claims are between 5 and 20 years.

Last, the capital expenditures were incurred due to the total failure or malfunction of a major system or major component. The capital expenditures were required to be made to maintain the Building in a state of repair which complies with section 32(1)(a) of the Act.

The following is excerpted from the Landlord's written submissions regarding the individual components of the work (the "Work"):

1. Elevator Modernization

Scope of Work Completed: Major control modernization was completed including installation of a hands-free telephone, car door restrictor, hall door retainers, door unlocking devices, car top railings, barrier free access upgrades, cab finishes, emergency power operation, machine room cooling, and equipment guarding. Expenditure was recommended by an elevator consultant (see K.J.A. Report at Appendix C of Morrison Hershfield Report [Tab 6]).

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, hoist way 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 seems to be original with the Building and the Landlord is not aware of any major modernizations that had previously been completed (see K.J.A. Report at Appendix C of Morrison Hershfield Report [Tab 6]).

Anticipated Useful Life of Repair/Upgrade: The *Residential Tenancy Policy Guideline 40* sets out the estimated useful life for an elevator as 20 years. The Landlord does not anticipate making similar repairs or upgrades again for the next 20 years.

Total Cost of Work Completed (Capital Expenditures): \$320,173.84

2. Hallway and Lobby Renovation and Replacement

Scope of Work Completed: Lighting was added and replaced to ensure adequate visibility for tenants which required the installation of a drop ceiling, door hardware was updated, old and damaged mailboxes were replaced, and a new entrance door was installed.

Reason for Work: Improvements to visibility and safety with installation of additional lighting including emergency lighting, and door hardware was replaced to ensure tenants had uninterrupted access. The entrance door was replaced to allow for compatibility with new security system and increased insulation with double paned glass. The mailboxes had been original to building and easy to break into.

Timing of Last Repair/Upgrade: Unknown

Anticipated Useful Life of Repair/Upgrade: The RTB Guidelines estimate a useful life of 20 years for doors. The Landlord expects all components installed to last at least 5 years.

Total Cost of Work Completed (Capital Expenditures): \$63,625.78

3. Intercom and Security System

Scope of Work Completed: A new access control system and entry console were installed.

Reason for Work: A new access control system was installed which enhanced safety and security at the building and allows for remote access.

Timing of Last Repair/Upgrade: Unknown

Anticipated Useful Life of Repair/Upgrade: The RTB Guidance does not provide an estimated useful life for access control systems, but intercom systems have an estimated useful life of 15 years.

Total Cost of Work Completed (Capital Expenditures): \$29,843.41

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The landlord submitted copies of invoices supporting these amounts.

Analysis

1. Statutory Framework

Sections 21 and 23.1 of the Regulations sets 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 made an application for an additional rent increase against these tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- 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
 - o 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
 - because it 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.

The Tenants may *only* 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 (1) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or (2) for which the landlord has been paid, or is entitled to be paid, from another source.

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

Based on the undisputed evidence regarding this element, it is my finding that there has been no prior application for additional rent increase.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Act 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.

In this property there are 48 specified dwelling units.

4. Amount of Capital Expenditure

The evidence establishes that the total amount of the capital expenditures is \$413,643.03.

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
 - because it 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.

Having carefully considered the oral and documentary evidence of the Landlord, it is my finding that all of the Work done captured by the scope of this application meets the requirements as set out above. I find that the Work was undertaken to replace “major components” of a “major system” of the residential property.

I accept the Landlord’s evidence that the first and the final payments were incurred within 18 months of the Landlord making this application. With respect to the Tenants’ argument that the expenditures were incurred outside of the 18-month window, I must disagree. Rather, I conclude that, as argued and submitted by the Landlord, a capital expenditure is “incurred” when payment for it is made. If a landlord pays for a capital expenditure by cheque, the date the capital expenditure is considered to be “incurred” is the date the landlord issued the final cheque.

As stated above, the useful life for the components replaced all exceed five years.

There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at *RTB Policy Guideline 40*. For this reason, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

6. Tenants' Rebuttals

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: (1) 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 (2) the landlord has been paid, or is entitled to be paid, from another source.

At the start, I note that a few of the attending Tenants conducted a thorough and relatively effective cross-examination of the Landlord's witness. Cross-examination is a difficult skill that many lawyers hone over years of experience in the courtroom. It is not something that most laypersons can do; in this case, the Tenants, and one in particular, were rather adept at it, however. The witness was cross-examined on a comprehensive number of issues with the application. However, I will not reproduce most of what was covered, as it did not form the basis for the Tenants' ultimate objections to this application. That having been said, I will address several points (or objections) raised and presented by the Tenants.

The witness was questioned as to how any energy efficiency improvement was measured. He explained that replacing overall lower wattage LED fixtures would provide greater electrical efficiency.

The witness was also asked about why the final cost of part of the Work three times more than the original quoted amount was. He explained that the final Work simply encompassed an expanded scope of work, including a camera system, which was not included in the original quote. This was done, as explained in the witness' direct testimony, because the computer system was "ancient" and needed to be upgraded.

A significant component of the Tenants' objections to the elevator portion of the application revolved around the argument that there was insufficient maintenance logs of the elevator system. They argued that, in the absence of any such logs, that it therefore follows that the Landlord was not in compliance with required maintenance. It was further argued that the elevator could continue to operate, without the need for upgrades. And, that the existing records reflect a pattern of inadequate maintenance.

Regarding energy efficiencies being sought, the Tenants argued that if there are energy efficiency improvements that those should be measurable. They also argued that the Landlord has not adequately proven that there has been any safety and security improvements to the property because of the Work. They submitted that the access systems and the intercom were working "just fine" before the Landlord undertook the work on these components.

While I have carefully considered these, and the tertiary arguments raised both during the hearings and in the Tenants' written submissions, I am not, with respect, satisfied that the Tenants have provided sufficient counterevidence for me to be persuaded that the Landlord has not proven what it needs to prove with respect to sections 21 and 23.1 of the Regulation.

Respectfully, I must further decline to accept the Tenants' argument 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. Regarding the elevator, from the evidence, it appears to be the original elevator from when the building was built in 1959. In other words, the elevator was approaching 65 years of age when the modernization was undertaken. And it is thus no surprise that major components of the elevator were at the end of their useful life and required replacing. And that due to the age of the elevator, replacement parts were increasingly difficult to find.

Last, I have reviewed the Morrison Hershfield Report in its entirety and conclude that there is sufficient evidence for me to find that the elevator upgrade was necessary, that it meets the requirements of the Act and the Regulation in respect of a capital expenditure, and that the Work on the elevator was not borne out of inadequate maintenance.

7. Outcome

For these reasons, the Landlord has proven the necessary elements for this type of application, and I am not persuaded that the Tenants have raised sufficient, provable, reasons for why the application should not be granted.

Section 23.2 of the Regulate sets out the formula to be applied when calculating the amount of the addition 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 48 specified dwelling unit and that the amount of the eligible capital expenditure is \$413,643.03. Thus, the Landlord has established the basis for an additional rent increase for capital expenditures of \$413,643.03.

There are 48 rental units that are affected by this matter. The total amount of the increase sought, per unit, is determined by using a formula.

The formula takes the total amount of capital expenditures, divides that by 48 rental units, and then further divides it by 120 months (the cost is amortized over 10 years). This comes to \$71.81 per rental unit per month. In the event \$71.81 is more than 3% of the current monthly rent for a rental unit, then the remaining portion in excess of 3% must be applied in a later year and cannot be imposed all at once upon a tenant.

The parties may refer to *Residential Tenancy 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 Residential Tenancy Branch website for further guidance regarding how this rent increase may be imposed.

Conclusion

The application is granted for eligible capital expenditures in the amount of \$413,643.03. The Landlord must and may only 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 delegated authority under section 9.1(1) of the Act.

Dated: June 13, 2024

Residential Tenancy Branch