Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding BASRA BROS INVESTMENTS LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Code ARI-C

Introduction

This hearing dealt with the Landlord's application submitted February 27, 2024, 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. It is noted Tenant B.C. excused himself from participating in the hearing when, at the outset, he stated he had no objection to the Landlord's application.

The parties confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. I find the Tenants were served with the required materials in accordance with the Act on March 22, 2024.

Issue for Decision

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

Background and Evidence

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants at each hearing. However, not all details of the respective submissions are reproduced in this Decision. Only relevant and material evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The Landlord's application requests an additional rent increase from the Tenants as a result of certain capital expenditures made by it:

- Intercom system replacement and upgrade to modern system - $2,745.00. Work on this system was completed June 6, 2023

- Carpet replacement to hallways, landing and stairways (floors 2, 3 and 4 of the residential tenancy building) - $16,572.94. Work completed February 8, 2024.
- Carpet replacement for lobby and main floor hallway - $2,940.00. Work completed January 29, 2024.
- Replacement of wood to polished metal thresholds for each rental unit - $3,150.00. Work completed January 31, 2024.

The Landlord's representative property manager H.B. testified that the residential tenancy building was constructed in 1999 and the items listed above were all original to the building's construction. The residential tenancy building is 4-stories and has a total of 33 units, which the representative stated are all currently occupied.

Landlord's representative property managers take the position these capital expenditures were incurred by the Landlord 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, 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 the residential rental property. Landlord's representatives state the Landlord was not entitled to be paid from another source for the any of the work subject to this application. The Landlord provided copies of all invoices for work completed and included in the application.

The Landlord's representative stated that several tenants in the building had no objection to the requested rent increase or the work done, and that many tenants "seemed happy" with the improvements.

There were two objecting Tenants to the Landlord's application who were represented by an agent/advocate at the hearing.

Analysis

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. In summary of those sections, 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)).

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 present 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 33 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 **$25,407.94** as detailed in the Landlord's summaries for each capital expenditure set forth above.

5. Is the Work an Eligible Capital Expenditure?

As stated above, 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.

Each item of capital expenditure will be reviewed under this analysis.

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.

Residential Tenancy Branch Policy Guideline 37 states:

> A capital expenditure is considered “incurred” when payment for it is made.

I accept the Landlords evidence that the final payment for the Work was made February 8, 2024, and within 18 months of the Landlord making this application on February 27, 2024.

The Landlord provided invoices and receipts for the capital expenditure, and I find 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 will not be expected to incur again within five years.

Intecom System

I find the intercom system for the building to be a major system. It functions, in part, as a security system in permitting tenants the option to permit only authorized individuals into the building. The Landlord's representative testified that the system was modernized such that a tenant could operate it remotely. For instance, if a tenant was out of town but required a friend to check on their unit, the tenant could allow access to the friend without being present in the unit (as with traditional systems). Additionally, the Landlord's representative testified that the intercom system was original to the building's construction (1999) and was past its useful life.

Carpeting of Common Areas (hallways, stairs, landings, lobby and main floor hallway); and, Replacement of Wood Thresholds

I find the replacement of carpet throughout common areas of the residential tenancy building (hallways, stairways, landing and lobby area) is a major component of the tenancy building. The Landlord's representative testified the carpet in the common areas was original to the building (1999) and was past its useful life. Carpet improves safety for people walking, particularly when coming in with wet footwear. The Policy Guideline recognizes that common area flooring is a major component of a residential tenancy building.

Additionally, the Landlord's representative testified that the door thresholds between the common area to each rental unit was wood and over the years had deteriorated and cracked, posing a safety risk to tenants as the wood could splinter. I find the door thresholds to be an integral part of the major component comprised of the common area carpeting. I find that the thresholds increase tenant safety, assuring a safe transition for tenants and occupants from hallway to their units. I find the Landlord's replacement of the wood thresholds for each rental unit to polished metal is part of a major component system of the residential tenancy building.

Tenant Objections

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.

Essentially, the objecting Tenants do not consider any of the capital improvements to qualify for an additional rent increase. The agent for these Tenants stated that each

requested component was replaced due to reasonable wear and tear, which the agent stated was not a responsibility of the Tenants under section 32(4) of the Act.

Section 32 of the Act provides:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.
>
> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

This section applies to both the parties' respective obligations for the care and upkeep of the common areas and the rental unit. While the objecting Tenants' agent focuses on subsection (4) of this provision, this position ignores subsection (1) which obligates a landlord to maintain the premises in a state of repair that "makes it suitable for occupation." This would reasonably be considered to include keeping common areas in a state of repair and decoration that is safe for tenants and occupants, as well as insuring that major components and major systems in the tenancy building – such as the intercom and security systems – are updated when past their useful life. There was no evidence presented by the objecting Tenants that the repairs were a result of the Landlord's failure to maintain these major systems or component parts. To the contrary, the Landlord's representative stated that these items were all original to the building from 1999 and were past their useful life. I accept the Landlord representative's statements as to the age of these major component systems and parts thereto.

The objecting Tenants' agent also stated that the Tenants she represents had resided in the building for only a few years yet the rental rate increase is applied equally to all tenants regardless of the length of their occupancy in each unit. I note that the regulations do not provide for an apportionment of a rental increase for capital expenditures based upon a tenant's term of occupancy in the building.

Therefore, I find the objecting Tenants' arguments insufficient to prevail over the Landlord's application. I find the Landlord completed necessary replacement and upgrade to major component systems, were required 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 those Tenants who have objected to these capital expenditures 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 for the replacement of the intercom with a modernized system as well as replacement of the carpet in the common areas in the total amount of **$25,407.94.**

Summary

The Landlord has been successful in its application. The Landlord has established, on a balance of probabilities, the elements required in order to be able to impose an additional rent increase for total capital expenditures of **$25,407.94** for those major components as described herein.

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 33 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **$25,407.94.**

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **$6.42 [calculated as: (25,407.94 ÷ 33) ÷ 120=6.42)].** 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 expenditures totaling **$25,407.94.** 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 issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 16, 2024

Residential Tenancy Branch