DECISION

Introduction

This hearing dealt with the Landlord's April 11, 2024, application 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.

Landlord S.R.K. attended the hearing and made submissions on behalf of the Landlord.

Tenants R.C., J.M. and J.P. attended the hearing and were primarily represented by M.B. as the Tenants Advocate, an employee of the BC Tenant Resource and Advisory Centre (TRAC).

All parties were given the opportunity to provide sworn testimony and refer to evidence.

Preliminary Matters

The Landlord requested to amend their application by removing the following project claims from their total ARI-C application:

- Hot Water Tank Replacement for Unit 104 $3,080.43
- New Appliances - Range and Fridge (Spare for emergency) $1,440.53
- Renovation unit # 303, Replace window casing + Paint $703.17
- Building a new shed $734.71

The Tenants consented to the withdrawal of this project specific claims from the application and so I amended the Landlords' application to reflect these changes as permitted by RTB-Rule of Procedure 7.12 and 7.12.1.

I do not give leave to the Landlord to reapply for any of these items.

Service of Notice of Dispute Resolution and Service of Evidence

The Landlord indicated that Tenants were served in person or to the door with physical packages of on April 18, and April 19, 2024. The Landlord provided a written table

documenting proof of service, with signatures from Tenants provided who received the packages in person.

The Tenants present at the hearing confirmed that these packages were received more than 30 days in advance of the hearing and contained the documents as described.

The Landlord confirmed that they received evidence packages as described and uploaded by the Tenants R.C, T.B. and J.M.

Regarding RTB Rule of Procedure 11.4, this rule requires the Landlord submit maintenance records in their possession for each component or system identified on this application. The Landlord indicated that no maintenance records were submitted to the Tenants as part of the evidence package.

The Tenants' Advocate referred to their request for a subpoena that was submitted to the RTB prior to the June 11, 2024, hearing.

I reviewed the Interim Decision dated May 27, 2024, associated with this subpoena request, and find that the Arbitrator originally assigned to this file, ordered the following:

Conclusion

I Order the Landlord to produce to Tenant R.C. the maintenance and inspection record in their possession at the time this Application for Dispute Resolution was made pertaining to:

- the siding
- the windows
- the hot water tanks
- air conditioning units for which replacements were purchased

I Order the Landlord to serve Tenant R.C. with the above documents at the email address located on the cover page of this Interim Decision by June 3, 2024.

I Order Tenant R.C. to upload any of the Landlord's maintenance and inspection records they wish to rely on to the Residential Tenancy Branch by June 10, 2024.

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 27, 2024

The Landlord testified that the residential property, an 18-unit property, was built in 1970 and purchased by the Landlords in October 2020. The Landlord testified that they provided the evidence they had related to maintenance records and that they experienced a computer issue one month prior to the June 11, 2024, hearing, that wiped out their internal records.

The Tenants Advocate M.B. and Tenant R.C. agreed that they did not upload copies of this evidence to the RTB as instructed.

In sum, I find that the Landlords sufficiently served the Tenants with all relevant document as required by RTB Rule of Procedure 3.1 and 11.2, and that service occurred more than 30 days in advance of the hearing.

The parties agreed that the Landlord did not serve copies of the rent roll that was uploaded to the RTB for consideration, on the Tenants.

Issues to be Decided

Is the landlord entitled to impose an additional rent increase for capital expenditures costing $154,974.93 as shown in the following projects:

Window replacement Project = $72,965.80
Exterior Upgrade = $52,080.00
New Appliances = $1,644.83
Renovation to Unit 203 = $7,461.59
Renovation to Unit 307 = 7,625.88
Renovation to Unit 305 = $9,011.26
Renovation to Unit 301 = $2,404.71
Renovation unit 303 = $703.17
Replace hallway baseboards = $1,077.69

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 claims from the parties and my findings are set out below.

As noted above, the 18-unit property was constructed in 1970s and is operated as an apartment building by the corporate entity identified as the Landlord in this dispute. The Landlord indicated that the property is a mix of 1-bedroom and 2-bedroom units.

The Landlord testified that they have made multiple improvements to property since they purchased it in October 2020, and the property was previously an item of community concern with various undesirable individuals often hiding behind the bushes and engaging in undesirable behaviour in and around the residential property.

The Landlord referred to a September 29, 20219, news article provided in the Tenant's evidence package that identified the residential property as a suspected drug house.

The Tenant's Legal Advocate M.B. referred to their written submission that was submitted as evidence, and testified, that Additional Rent Increase for Capital

Expenditure provisions of the Act were not intended to be applied to requests for extra funding from Landlords who purchased a run-down, disrespected property, such as a drug house, to then fix up and secure new tenants.

M.B. testified that this is because the Landlords likely purchased the property for a discount and that any savings from purchase, should be applied to making necessary upgrades to the residential property.

M.B. also testified that the Landlord should have evidence of inspection and other documents they surely would have generated prior to purchasing this property in October 2020 and that these documents would and should be used by the Landlord to dictate their planning and coordination of capital projects going forward.

The parties agreed that the Landlord did provide the RTB or Tenants with copies of property specific inspection or assessment reports on the property as a whole, or specific building components such as the building envelope.

The Landlord argued that they incurred costs of $72,965.80 for window replacement because the windows in the residential property were all original and over 50 years old.

The Landlord referred to proof of invoices, payment of invoices, and some pictures confirming that the windows have been replaced. The Landlord testified that all window frames were replaced at the same time because the residential property had shifted over the years and some windows were experiencing problems.

The Landlord also testified that this project was undertaken for energy efficiency reasons because the Tenants pay their own utilities and new windows will reduce their costs. The Landlord testified that no grant or other funding was available for this project.

The Tenants J.M. and R.C. testified that not all window frames were replaced.

The Tenant's Advocate referred to evidence from the Landlord of a professional assessment of the condition of the windows in a specific rental unit of the property, and read into the record, that the windows were found to be in good repair despite their age.

A copy of this report was not provided by the Landlord to the RTB.

The Tenant's Advocate requested that the RTB not rely just on the serviceable life as identified in RTB policy guideline 40 and that I, as the assigned Arbitrator use discretion as enabled by RTB Policy Guideline 37(c).

The Landlord argued that they incurred costs of $52,080.00 for an exterior upgrade project at the residential property and referred to proof of invoices, payment, and photos confirming the project is complete. The Landlord stated that they replaced stucco with hardie-plank because it is part of their corporate energy and environmental

sustainability initiative. The Landlord argued that new exterior siding would also save Tenants money for utility costs.

The Tenant J.P. testified that they live on the side of the residential property that faces another building and does not face their street. J.P. stated that the stucco on this side of the building was not replaced, and is cracked in multiple locations, but that it was just painted over by the Landlord.

The Landlord confirmed that their completion of three sides of the 4-sided exterior of the project, represents a completed exterior replacement project. The Landlord testified that no grant or other funding was available for this project.

The Tenant's Advocate M.B. referred to the Tenants' evidence which includes reference information from a stucco contractor in the area and argued that the expected serviceable life of stucco should really be 80-100 years when properly cared for and not 20 years as set out within RTB-Policy Guideline 40.

The Tenant's Advocate M.B. testified that the Landlord provided no verifiable evidence from a qualified professional to establish that their stucco replaced, was in fact needing replacement for any number of reasons.

Regarding the remainder of the Landlord's claim:

- New Appliances = $1,644.83
- Renovation to Unit 203 = $7,461.59
- Renovation to Unit 307 = 7,625.88
- Renovation to Unit 305 = $9,011.26
- Renovation to Unit 301 = $2,404.71
- Renovation unit 303 = $703.17
- Replace hallway baseboards = $1,077.69

The Landlord referred to specifically identified pictures of before and after, as well as proof of costs and payment for each of the projects. The Landlord stated that they are claiming them as capital projects, because these projects are not expected to reoccur within 5 years and that they are all major projects.

The Tenants' Advocate M.B. testified that these projects simply do not qualify as major system or major components of the residential property and therefore do not qualify as eligible projects on an additional rent increase for capital expenditures.

Regarding the renovation projects, the Tenant's Advocate also testified that, the Landlord has other means of recovering the costs, such as, going after the previous tenant for damages, and or charging the new tenant higher rent because the new tenant would be occupying a freshly renovated unit.

The Landlord testified that they claimed compensation for baseboards because they replaced the hallway carpet more than 18 months prior to making this application, and so they were unable to claim the costs of the carpet. However, the baseboard was purchased and installed within 18 months prior to the application.

The Tenant's Advocate argued that this project is not an eligible capital 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)).

A landlord can be successful in their application, if they discharge their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed (for the reasons set out above).

2. 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:

- 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 Tenant's Advocate argued that the application should be dismissed in its entirety because:

- The ARI-C application process was built into the legislation to provide landlords who dutifully maintain their buildings a means for recovering major capital costs that are not otherwise accounted for through monthly rent.
- The Landlords purchased the residential property, a previously run down property, likely at a discount which would provide the Landlords with the financial room necessary to make required repairs.
- The Landlords did not meet their evidentiary burden to provide maintenance or other reports from professionals that justified the exterior replacement project or their window replacement project.
- The report provided by the Landlord regarding windows, suggests the windows were in relatively good shape despite their age.
- Landlords are expected to recover costs of general damages in a unit from prior tenants and new Tenants and existing tenants should not be responsible for these costs.
- Unit renovations are not a major system or building component under RTB Policy guideline 37(c).
- Costs for appliances are not an eligible project.
- Costs for baseboards are not an eligible project.
- Landlords are expected to set rent at what the market will bear because there are no restrictions in BC for how much rent change for a unit between Tenants.

Other Tenant submissions included:

- If the Landlord is arguing for energy efficiency, whey did they not replace the siding on all 4 sides of the building? The building side that faces another property and is not publicly visible, has not been restored.
- Not all window frames have been replaced as claimed.

- The Landlord has already given Notice of 2024 rent increases in the maximum claimable annual amount which is problematic because the Landlord is also looking to impose the additional rent increase for capital expenditures.
- The Landlord has indicated that the roof of residential property will also be replaced soon.

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 18 dwelling units in the residential property.

The Landlord testified that there are 18 specified dwelling units.

The Landlord acknowledged in response to questioning, that:
- 6 of the 18 units started new tenancy agreements in 2024
- 4 of the tenancy agreements started in 2023 with two in July 2023 and two in December 2023

Tenant J.M. argued that the Landlord is attempting to increase their rent too soon because their tenancy only started in December and the Hearing occurred June 11, 2024, which is contrary to the 12-month restriction in the Act for increasing rents.

The Tenant's Legal Advocate M.B. observed that:
- It is expected that Landlords increase rent when starting new tenancy agreements and so it is unfair that Tenants paying higher rates of rent, also get their rents increased to reflect costs of work that occurred prior to their tenancy s tarting.
- It is unfair that long-term tenants, with lower rates of rent are responsible for the costs of capital upgrades.

I reviewed the copy of the rent roll provided by the Landlord as evidence and find that it supports testimony offered by the parties.

I find that the Landlord failed to identify a particular number of eligible specified dwelling units as contemplated by the legislative and regulatory framework for these applications.

4. 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 find that the following projects are not eligible capital expenditures:

- New Appliances = $1,644.83
- Renovation to Unit 203 = $7,461.59
- Renovation to Unit 307 = 7,625.88
- Renovation to Unit 305 = $9,011.26
- Renovation to Unit 301 = $2,404.71
- Renovation unit 303 = $703.17
- Replace hallway baseboards = $1,077.69

I make this finding because none of these projects qualify as a major system or major component of a major system as described within RTB Policy Guideline 37(c).

Regarding the Landlord's other two projects, the window replacement and exterior upgrades, I find that the Landlord failed to establish on the balance of probabilities that these two projects are eligible capital expenditures despite being major components of the residential property.

I make this finding because:

- The Landlord did not provide necessary supporting documentation, such as expert reports, as required by RTB Policy Guideline 37(c) to support their claim that the projects were undertaken to enhance energy efficiency.
- The Landlord did not provide verifiable documentation to the RTB to support their claim that the windows and exterior siding exceeded its actual useful life (and not just expected serviceable life) and need replacement due to them malfunctioning or being inoperative.
- The Landlords agreed that they bought a neglected problem property (a suspected drug house) and have been making necessary improvements.
- Landlord improvements have included significant turn over in Tenants with 10 of the 18 units occupied by new tenancies agreements within the last 12 months.
- As reflected in the rent roll, these new tenancy agreements pay significantly more rent than the remaining long-term tenants in the residential property.
- The Tenant's Advocate M.B. spoke to how these increased rental rates provide the Landlords with increased revenue and how the Landlord's likely bought the residential property at a discount providing them with financial room for making necessary improvements.
- As cited by the Tenant's Advocate and shown in Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257 ("Berry") in paragraph 11:

  "I start from the accepted rules of statutory interpretation. I conclude that the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See (Canada Attorney General) v. Abrahams, [1983] 1 S.C.R. 2: Henricks v. Hebert, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:

  > I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain."

- I reviewed 2021 communications regarding the announcement of this new Additional Rent Increase for Capital Expenditure and note the following:

  "Given that landlords have been extremely restricted in their rent increase opportunities over the last several years (and entirely banned from increasing the rent between March 30, 2020, and January 1, 2022), the opportunity to offset

> significant building expenses comes as welcome news. The additional rent increase opportunity originates from early recommendations from the BC Rental Housing Task Force."
>
> The new ARI-applications are meant to "strike a balance between giving relief to renters while encouraging people to maintain their rental properties."

In sum, I find that the Landlord, as relatively new owners of a residential property with a significantly new base of Tenants, have various options for recovering costs incurred by the Landlord in completing the projects identified in this application.

I therefore find that their application for additional rent increases for capital expenditures does not satisfy the purposive interpretation of the legal framework for these application types.

Conclusion

The Landlord was not successful in this application. I do not give leave to reapply.

I order the Landlord 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 Act.

Dated: June 21, 2024

Residential Tenancy Branch