Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding KELSON GROUP
nd [tenant name suppressed to protect privacy]

DECISION

Dispute Code ARI-C

Introduction

Kelson Group applied for an additional rent increase for capital expenditures, under section 43 of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

Kelson Group, represented by agents LS (the Landlord), KL, KF and CD attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I left the teleconference connection open until 9:54 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing.

Service

The Landlord affirmed that he served the notices of application and evidence on July 11, 2024 by registered mail sent to each tenant at their unit's address. The Landlord submitted the tracking numbers.

The Landlord confirmed receipt of the response evidence from tenant VS and that he had time to review it.

Based on convincing testimony and tracking number, I find the Landlord served the notice of application, and the evidence in accordance with section 89(1) of the Act and that tenant VS served the response evidence in accordance with section 88 of the Act.

Application for Additional Rent Increase

The Landlord is seeking an additional rent increase for 3 expenditures in the total amount of $556,224.87. The expenditures are:

1. Ventilation system
2. Boilers
3. Patio doors

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. The onus to prove the case is on the person making the claim.

Regulation 23.1 sets out the framework for determining if a landlord is entitled to impose an additional rent increase for expenditures.

Regulation 23.1(1) and (3) require the landlord to submit a single application for an additional rent increase for eligible expenditures “incurred in the 18-month period preceding the date on which the landlord makes the application”.

Per Regulation 23.1(2), if the landlord “made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.”

Regulation 23.1(4) states the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all the following:

> (a) the capital expenditures were incurred for one of the following:
>
> > (i)the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [landlord and tenant obligations to repair and maintain] of the Act;
> > (ii)the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;

(iii)the installation, repair or replacement of a major system or major component that achieves one or more of the following:

(A) a reduction in energy use or greenhouse gas emissions;

(B) an improvement in the security of the residential property;

(b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;

(c) the capital expenditures are not expected to be incurred again for at least 5 years.

Per Regulation 23.1(5), tenants may defeat an application for an additional rent increase for expenditure if the tenant can prove, on a balance of probabilities, that the expenditures were incurred:

(a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or

(b) 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 in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

Regulation 21.1 defines major component and major system:

"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;

"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 will address each of the legal requirements.

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the Landlord’s claim and my findings are set out below.

Number of specified dwelling units

The Landlord affirmed the 70-rental unit building was built in 1980 and that all the expenditures benefit all the tenants.

Based on the uncontested testimony, I find the rental building has 70 rental units and that they all benefit from the expenditures. In accordance with Regulation 21.1(1), I find there are 70 specified dwelling units.

Prior application for an additional rent increase and application for all the tenants

The Landlord testified he did not submit a prior application for an additional rent increase and that the Landlord is seeking an additional rent increase for all the tenants, except 3 units that moved in after the improvements were completed.

Based on the Landlord's undisputed and convincing testimony, I find that the Landlord has not imposed an additional rent increase in the 18 months preceding the date on which the landlord submitted this application, per Regulation 23.1(2).

Based on the Landlord's convincing testimony, I find the Landlord submitted this application against all the rental units on which the Landlord intends to impose the rent increase, per Regulation 23.1(3).

Expenditures incurred in the 18-month prior to the application

The Landlord submitted this application on June 24, 2024.

Regulation 23.1(1) states the Landlord may seek an additional rent increase for expenditures incurred in the 18-month period preceding the date on which the landlord applied.

Thus, the 18-month period is between December 23, 2022 and June 23, 2024.

The Landlord said the expenditures for the:

- ventilation system happened on May 10, 2024.
- boiler happened in October 2023.
- patio doors happened between February 8, 2024 and May 28.

The Landlord submitted into evidence the invoices with the dates mentioned in the above paragraph.

Based on the Landlord's convincing and undisputed testimony and the invoices, I find the Landlord incurred all the expenditures in the 18-month period, per Regulations 23.1(1) and 23.1(4)(b).

Expenditures expected to occur again for the next 5 years

The Landlord stated that the expenditures are not expected to occur again for at least 5 years, as the life expectancy of all the expenditures is more than 5 years.

Based on the Landlord's undisputed convincing testimony, I find that the life expectancy of all the expenditures is more than 5 years and they are not expected to be incurred again for at least 5 years. Thus, I find that the capital expenditures incurred are eligible capital expenditures, per Regulation 23.1(4)(c).

Expenditures because of inadequate repair or maintenance

The Landlord testified that the expenditures were not necessary because of inadequate repair or maintenance.

Based on the Landlord's convincing testimony, I find the Landlord proved that the expenditures were not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Payment from another source

VS argues the Landlord could possibly have been aware of these improvements when he purchased the building in 2022 and paid the asking price for the building taking into

account the necessary improvements for the building: “They certainly had their experts examine all aspects of [rental property] before agreeing to buy it”.

The Landlord testified that he is not entitled to be paid from another source for the expenditures claimed.

The Landlord explained he could not be paid from another source,

I find VS’ arguments were not convincing, as she did not explain how the Landlord could have paid less for the building in 2022 and assumes that the Landlord was aware of the necessary improvements. VS does not provide reports or convincing submissions about her ‘assumption’ that the Landlord could have paid a lower price for the rental property in 2022.

Based on the Landlord’s convincing testimony, I find the Landlord is not entitled to be paid from another source, per Regulation 23.1(5)(b).

Type and reason for each expenditure

I will individually analyze the expenditures claimed by the Landlord.

Ventilation system – expenditure 1

The landlord replaced the previous ventilation system that provides fresh air and heat during the winter to all the hallways and common areas of the building in May 2024 because the previous equipment from 2009 was not energy efficient and the new one is. The Landlord paid the $25,389.00 invoice submitted for the new ventilation system.

The Landlord submitted the ventilation invoice: “Description of work and recommendations: Remove and replace 3 failed MUA’s, as per quoted price….New hydronic air handlers ties in to existing boiler system, adjusted, and tested to all provide equalized air flow.”

RTB Policy Guideline 37C states:

> The Regulation defines a “major system” as an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants. A “major component” is a component of

the residential property that is integral to the property or a significant component of a major system.

Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. **Examples of major systems or major components include, but are not limited to, the foundation**; load-bearing elements (e.g., walls, beams, and columns); the roof; siding; **entry doors;** windows; primary flooring in common areas; subflooring throughout the building or residential property; pavement in parking facilities; electrical wiring; **heating systems;** plumbing and sanitary systems; security systems, including cameras or gates to prevent unauthorized entry; and elevators.

A major system or major component may need to be repaired, replaced, or installed so the landlord can meet their obligation to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Laws include municipal bylaws and provincial and federal laws. For example, a water-based fire protection system may need to be installed to comply with a new bylaw.

Installations, repairs, or replacements of major systems or major components will qualify for an additional rent increase if the system or component has failed, is malfunctioning, or is inoperative. For example, this would capture repairs to a roof damaged in a storm and is now leaking or replacing an elevator that no longer operates properly.

Installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of or has exceeded its useful life. A landlord will need to provide sufficient evidence to establish the useful life of the major system or major component that was repaired or replaced. This evidence may be in the form of work orders, invoices, estimates from professional contractors, manuals or other manufacturer materials, or other documentary evidence.

Repairs should be substantive rather than minor. For example, replacing a picket in a railing is a minor repair, but replacing the whole railing is a major repair. Cosmetic changes are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or

component. For example, a landlord may replace carpet at the end of its useful life with porcelain tiles even if it costs more than a new carpet.
The following is a non-exhaustive list of expenditures that would not be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:
• repairing a leaky faucet or pipe under a sink,
• routine wall painting, and
• patching dents or holes in drywall.

(emphasis added)

Based on the Landlord's convincing testimony and the invoice, I find the landlord proved that he replaced the ventilation system which provides heat to all the tenants and is more energy efficient than the prior system.

I find that the ventilation system is a major component of the rental building, as ventilation is integral to the rental buildings and provides heat to the tenants, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of $25,389.00 to replace the ventilation system is in accordance with Regulation 23.1(4)(a)(iii)(A).

Boilers – expenditure 2

The Landlord replaced the previous boiler from 1980 in 2023 because it was beyond its useful life and because the new one is more energy efficient. Besides the 1980 boiler, the Landlord also replaced two secondary boilers installed in 2011. The Landlord installed a modern energy efficient boiler and indicates that the boilers provide heat and hot water for all the tenants. The Landlord said that he paid the invoice submitted in the total amount of $195,772.50 for the new boiler.

The Landlord submitted the invoice: "Revamp entire heating and hot water system in mechanical room. Installed as above/attached quote", a gas installation permit dated October 5, 2023, a boiler installation permit dated October 18, and photographs of the old and new boilers.

Based on the Landlord's convincing testimony, the invoice, permits and photographs, I find the Landlord proved that he replaced the boilers which provide heat and hot water

to all the tenants and is more energy efficient than the prior system for more energy efficient boilers.

I find that the boilers replaced are a major component of the rental building, as boilers are integral to the rental buildings and provide heat to the tenants, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of $195,772.50 to replace the boilers is in accordance with Regulation 23.1(4)(a)(iii)(A).

Patio doors – expenditure 3

The Landlord replaced the previous patio doors from 1980 in 2024, as the previous doors were beyond their useful life and the seals were not efficient anymore. The Landlord said that he paid the two invoices submitted in the total amount of $335,063.37 for the 70-units patio doors.

The Landlord submitted photographs of the old and new doors and two invoices for 71 doors. They state: “supply + install patio doors”.

VS argues: “Owners make improvements to building partly to increase their dollar value. Replacing the patio sliding doors, especially before addressing the more seriously, deteriorating windows, seems to be this type of investment. The new sliding doors are visually more attractive than the old ones, but from a tenant’s point of view they have only a little extra utility, i.e., they fit more snuggly and do not have the foggy patches that wear and tear had affected on the originals. Kelson Group had every right to do anything it wishes to increase the value of its building, but there is no justification for asking the tenants to pay any of those costs over and above the tenants’ monthly rental payments”.

Policy Guideline 40 states:

> A landlord may apply for an additional rent increase in an amount greater than the basic Annual Rent Increase in extraordinary circumstances. One of those circumstances is when a landlord has completed significant repairs or renovations that could not have been foreseen under reasonable circumstances and that will not recur within a reasonable time period. When reviewing applications for additional rent

> increases, the director may use this guide to determine whether the landlord could have foreseen the repair or renovation.
> […]
> Useful life of doors: 20 years

I accept the landlord's uncontested testimony that the doors replaced in 2024 were from 1980. The parties did not submit testimony or evidence regarding the boiler's useful life contrary to the policy guideline. I find the previous doors were beyond their useful life, as they were 44 years old when the Landlord replaced them, and Policy Guideline 40 provides the useful life of doors is 20 years.

VS admits the prior doors had wear and tear and the new ones are an improvement to the rental building.

Based on the Landlord's convincing testimony, the invoices and the photographs, I find the Landlord proved that he replaced the 70-units patio doors.

I find that the patio doors replaced are a major component of the rental building, as the doors are integral to the building, per Regulation 21.1 and Policy Guideline 37C.

Unlike VS' arguments, and as explained in this decision, the Landlord has the right to seek this additional rent increase for the new patio doors.

Considering the above, I find that the expenditure of $335,063.37 to replace the doors in accordance with Regulation 23.1(4)(a)(ii).

Outcome

The Landlord has been successful in this application, as the Landlord proved that all the elements required to impose an additional rent increase for expenditure and the Tenants failed to prove the conditions of Regulation 23.1(5).

In summary, the Landlord is entitled to impose an additional rent increase for the following expenditures:

Expenditure	Amount $
01.Ventilation system	25,389.00
02. Boilers	195,772.50
03. Patio doors	335,063.37
Total	**556,224.87**

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 specified dwelling units divided by the amount of the eligible expenditure divided by 120. In this case, I have found that there are 70 specified dwelling units and that the amount of the eligible expenditure is $556,224.87.

The Landlord has established the basis for an additional rent increase for expenditures of $66.22 per unit ($556,224.87/ 70 units / 120). If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with Regulation 23.3.

The parties may refer to RTB Policy Guideline 37, Regulations 23.2 and 23.3, section 42 of the Act (which requires that a landlord provide a tenant 3 months' notice of a rent increase), and the additional rent increase calculator on the RTB website (http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1) for further guidance regarding how this rent increase may be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for expenditures of $66.22 per unit. The Landlord must 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: October 15, 2024

Residential Tenancy Branch