Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding HORIZON TOWERS HOLDINGS LTD. and [tenant name suppressed to protect privacy

DECISION

Introduction

On June 13, 2024 (the "Application date"), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the "*Act*") for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Residential Tenancy Regulation* (the "*Regulation*").

The Landlord attended the hearing at the scheduled hearing time. A number of Tenants from the rental unit property were present at the hearing on September 24, 2024.

Preliminary Issue – service and disclosure of evidence

The Landlord provided a 'Certificate of Personal Service' from their counsel that outlined their service of the hearing package containing the Notice of Dispute Resolution Proceeding, to all tenants of the rental property. This was on July 12, 2024, by posting the Notice of Dispute Resolution Proceeding to each tenant's door for all rental units in the rental unit property. In the hearing, the Landlord clarified that this was 46 individual units.

The Landlord provided a letter to each Tenant that set out the enclosed documents, and a link for each tenant to download material.

I find the Landlord served each tenant at the rental unit property in accordance with the *Act*. Those Tenants present in the hearing did not raise an issue with the timelines or service of the evidence in the Landlord's possession.

Various tenants provided evidence to the Residential Tenancy Branch. I reviewed the separate evidence packages with the Landlord in the hearing. I confirm that any evidence not served to the Landlord – which the Landlord verified as not served in two instances – does not receive my consideration.

Some tenants filed individual inquiries to the Landlord for more records and provided this communication on that to the Residential Tenancy Branch in advance of the scheduled

hearing. The Landlord responded to inquiries directly, and was not able to obtain further records that did not form part of their evidence package. I find the Landlord completed disclosure in this matter as required. I cannot compel the Landlord to produce records that do not exist, nor can I compel the Landlord to produce records that deal with any subject of maintenance or repair in the entire lifespan of the rental unit property.

Issue(s) to be Decided

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

Background and Evidence

The rental unit property consists of a single building with 46 rental units. As shown in the BC Assessment document presented by the Landlord in their evidence, the rental property was constructed in 1969. The title for the rental unit property was transferred to the Landlord on November 26, 2021.

The Landlord provided a written submission dated June 12, 2024. This was with 32 separate documents attached as evidence.

In the scheduled September 24 hearing, the Landlord presented each of the four capital expenses, which they submit are related to major systems of major components of the rental property – as follows:

	Description	paid date range	paid
1.	elevator replacement/modernization	Feb 2/22 – July 25/23	$204,040.51
2.	replace intercom/access control	May 31/22 – Mar 22/23	$43,378.12
3.	garage restoration	Nov 15/22 – Mar 12/24	$635,905.37
3.	hallways/lobby renovation	Apr 5/22 – Mar 1/23	$224,325.30
		Total	**$1,107.649.30**

For each item, the Landlord presented written submissions, evidence in the form of professional reports, and invoices. In the hearing, an agent for the Landlord attested to the need for each capital expenditure.

As set out in paragraph 23 of the Landlord's written submission, applying the formula comes to $200.66 per rental unit per month. This amount, if more than the 3% of the current monthly rent for any rental unit, must have the remaining portion (*i.e.*, that which is exceeding the 3%) applied in a later year.

Tenants present in the hearing, as well as via written submissions, responded to the Landlord's capital expenditures, as set out below.

1. *elevator replacement/modernization*

The Landlord summed up the work completed in their written submission:

> The elevator was installed in approximately 1973 and had exceeded its estimated useful life. The Elevator Condition Assessment noted that the existing elevator was "nearly 50 years old with the equipment having surpassed its engineered life expectancy."

Further: "the elevator did not include important safety features", as listed in the Landlord's submission on page 10.

The Landlord submits the elevator is a major system that "was close to the end of its useful life of 20 years. . . and therefore an eligible capital expenditure." In the hearing, the Landlord clarified that the elevator used 50-year-old equipment that was past its life expectancy. The Landlord reiterated that the cost involved relates to modernization, and not maintenance.

The assessment completed with the elevator inspection in 2021 specifically recommended modernization to increase safety and security where there was a likelihood of elevator downtime due to lack of replacement parts, and a lack of safety features. The Elevator Condition Assessment in the Landlord's evidence was very particular on technical details.

The Landlord presents their final payment for this capital expenditure was on July 25, 2023, within the 18-month statute-based timeline of their Application date of June 13, 2024.

The Landlord provided a series of 9 invoices, with evidence of their payment. These invoices total $204,040.51. They submit that all capital expenditures made for this replacement/modernization should be considered as having been incurred during the 18-month period, based on the final payment date.

A Tenant in the hearing raised the issue of the Landlord's knowledge of the elevator's age at the time of purchase, and whether that could serve as some sort of discount on the building's cost, which would constitute payment from another source. The Landlord clarified they received no payments for this capital expense from any other source, and the Tenant had not met the onus to show this as such.

The Landlord submits this particular expenditure is not expected to recur in the next 25 years, with reference to the Residential Tenancy Policy Guidelines[1] on the useful life of this particular component, set at 20 years.

2. *replace intercom/access control*

The intercom and security/access control systems were replaced, including additional fob access.

The Landlord's reason for this work was for the provision of better security in the rental unit property, because "the software used to operate the intercom system was connected to the internet", not providing encryption. Simply stated, this improved the security.

In the evidence, the Landlord provided a statement from the Landlord's Chief Information Officer, noting the software relied on a version of MS Windows that was no longer supported and past its lifespan, with no continuing support. This poses a risk to cyberattack. The hardware was a dial-up modem, with the telecom carrier updating to VoIP which no longer handles dial-up data applications. In sum, the intercom system relied on "obsolete software which was reliant on an obsolete operating system running on obsolete hardware."

The Landlord submits this is a major system/major component of a system, and the installation/replacement was done to improve security at the rental property. This is a specific category provided for in the *Regulation*.

The Landlord made the final payment for this expenditure on March 22, 2023, within the 18-month statute-based timeline of their June 13, 2024 Application.

The Landlord provided a series of 4 invoices as evidence of their payments. These total $43,378.12.

The Landlord submits this particular expenditure is not expected to recur "for at least 15 years."

3. *garage restoration*

This was:

[1] *40. Useful Life of Building Elements*, provided by the Landlord at Tab 4

- rebar installed as needed, reinforcing existing concrete wall and supporting new concrete wall as per structural engineering specifications
- a new concrete curb poured to anchor a new railing
- a new reinforced concrete wall at the inside face of the south concrete foundation's buckling concrete
- new larger floor drains installed to allow for better drainage
- louver parking facility vents replaced
- perforated drain tile, storm sump, and additional underground piping installed

The Landlord presented that the parkade was original to the building (*i.e.*, over 50 years old). Not having records prior to their purchase, the Landlord, as set out in their written submission, estimated "it has been well over 5 years since any similar work was done at the Building".

The Landlord presented clearly, with reference to the Building Condition Assessment: "This capital expenditure was not due to a lack of maintenance at the Building, but was due to age and missing waterproofing at the Building." Specific to the underground parking garage, the assessment noted active water infiltration (requiring a specialist review to determine extent of concrete repairs and replacement of waterproof membrane), and "deteriorated expansion joint sealants" requiring replacement.

The Landlord provided an account from the project manager, dated May 14, 2024, wherein that manager set out:

> The remediation work to the underground parking facility was not due to inadequate maintenance as the type of damage evident was structural due to age and missing waterproofing.

While two Tenants who attended the hearing pointed to incidents in the underground parking garage (namely, drilling in an adjacent property 5/6 years ago, and a leak), the Landlord pointed to the independent report, wherein the contractor emphasized that the required work was due to age, and not a lack of maintenance.

The Landlord made the first payment for this expenditure on November 15, 2022, and the final payment on March 12, 2024. The Landlord submits this is within the 18-month statute-based timeline of their June 13, 2024 Application.

The Landlord provided a series of 21 invoices as evidence of their payments, totaling $635,905.37.

The Landlord submits this particular expenditure is not expected to recur “for at least 15 years.”

4. *hallways and lobby renovations*

As set out in the Landlord’s written submission:

- enhancement to lighting in lobby/hallways – to renew lifecycle of fixtures/replace non-LED fixtures/improve lighting levels for security
- fire safety/exit signs/emergency lights updated to comply with code
- door hardware updated for common area doors
- flooring/drywall/millwork replaced
- common areas painted
- exterior entrance flooring replaced/stucco painted/lighting replaced.

This is set out in the June 4, 2024 letter from the renovation specialist. The Landlord provided a copy of the work contract that included an estimate dated March 1, 2022 that set out a full list of the scope of the work, separate for corridors and lobby. The Landlord provided a number of before/after photos to show the scope and nature of the work involved.

The Landlord submits this is new lighting that is more energy efficient that the old lighting, and increased overall security within the building. They propose that the lobby and corridors are a major system that was close to the end of its useful life.

The Landlord made their first payment for this capital expenditure on April 5, 2022 and the final payment on March 1, 2023. The Landlord submits this is within the 18-month statute-based timeline of their June 13, 2024 Application.

The Landlord provided a series of 11 invoices as evidence of their payments and the nature of the work completed, totaling $224,325.30.

The Landlord presented various useful life cycles for separate components of this expenditure. As set out in the renovation specialist letter, “The Landlord will not need to undertake a similar project for at least 10 years.”

In the hearing, tenants who attended questioned the overall lifespan of certain parts of this piece of work, stating their recall on certain aspects of the hallway and lobby areas.

Analysis

The *Residential Tenancy Regulation* (the "*Regulation*"), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
    - to repair, replace, or install a major system or a component of a major system; and
    - undertaken:
        - to comply with health, safety, and housing standards;
        - because the system/component was either:
            - close to the end of its' useful life, or
            - failed, malfunctioning, or inoperative
        - to achieve either:
            - a reduction in energy use or greenhouse gas emissions; or
            - an improvement in security at the residential property

    and

    - the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
      and
    - the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;

or

- the landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

In this case, there was no evidence that the Landlord made a prior application, for any of their capital expenditures, for an additional rent increase within the previous 18 months.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

> "dwelling unit" means:
>
> (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.

I find there are 46 dwelling units, of which all 46 are eligible. The *Act* makes no distinction based on the recentness of a starting tenancy. The focus of the legislation for this is a "specified dwelling unit" affected by an installation made, or repairs/replacement carried out in the property where the dwelling unit is located.

Eligibility and Amounts

For each of the Landlord's submitted expenditures 1 through 4 above, I address whether each expenditure was *eligible*, and each expenditure *amount*. I also make findings on whether each expenditure will be incurred again within 5 years.

1. *elevator replacement/modernization*

I find this was work undertaken to replace a major system, as defined in the *Regulation* s. 21.1(1).

I find the reason for this work was the replacement of a major system in order to maintain the residential property in a state of repair that complies with health, safety, and housing standards. Additionally, this was replacement of a major system that was past the end of its useful life. This is in line with the *Regulation* s. 23.1(4)(a)(i) and (ii).

The *Regulation* s. 23.1(4)(b) sets out that I must grant an application for the portion in question in which the Landlord establishes that "the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application."

The *Residential Tenancy Policy Guidelines: 37C. Additional Rent Increase for Capital Expenditures* addresses the 18-month requirement:

> A "capital expenditure" refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted . . . As such, the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made.

Though payments began preceding the 18-month timeline, the legislation provides for recovery of capital expenditures in this way, and the timeline was driven by the logistics of the length and engineering-driven detailed project completion.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years. This is with regard to the system itself, commonly given a useful life of 20 years.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of $204,040.51.

2. *replace intercom/access control*

I find this work was undertaken to replace a major system, as defined in the *Regulation* s. 21.1(1).

I find the reason for this was to maintain the residential property in a state of repair that complies with health and safety standards, as well as an improvement in security of the residential property.

I find the Landlord made 4 payments for this work. I find this work will not recur within 5 years.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of $43,378.12

3. garage restoration

I find the Landlord showed this was work undertaken to replace a major system, as defined in the *Regulation* s. 21.1(1).

I find the reason for this work was to maintain a significant, well-traversed and tenant-focused part of the residential property in a state of repair that complies with health, safety, and housing standards.

The scenarios presented by Tenants in the hearing – where leaks/damage from the last few years were apparently not repaired – do not point to inadequate repairs or maintenance as being the chief cause or need for this project work. I accept the Landlord's submission that the age of the parking garage structure was the driving force for implementing the replacement/repair of this major system.

I find the Landlord made the 21 payments. I agree with the Landlord that the legislation provides for construction projects that take longer than 18 months, with the date of payment of the last invoice being the relevant deciding factor on the applicability of the legislation.

I find the Landlord has shown that this work will not reoccur within 5 years.

I grant this portion of the Landlord's Application for the capital expenditure of $635,905.37.

4. hallways and lobby renovations

The *Regulation* provides for "major system" installation/repairs/replacements – this is 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. These are "essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property."[2]

Moreover, installations/repairs/replacements will qualify for additional rent increase if the system has failed, malfunctioning, or inoperative, or close to or past its useful life.

[2] Policy Guideline 37C page 5

The Landlord made submissions on the replacement of lights in hallways and the lobby with LEDs. The Landlord did not show with sufficient evidence or convincing submissions that these renovations quality because of failure to an existing system, or components thereof that were past their useful life. Further, I find each invoice did not show critical functional systems that meet the criteria for "major system" as being the defining feature of eligible capital expenditures.

I find the increased electrical efficiency, and proposed increase in security are marginal in scope, and do not stand as qualifying factors in this type of expenditure by the Landlord. I find the changes are cosmetic in nature, and not related to any major system/component.

For these reasons, I dismiss this piece of the Landlord's Application for rent increase associated with this capital expenditure, without leave to reapply.

Outcome

The Landlord has proven all of the necessary elements for items 1 through 3 outlined above.

The Tenant did not meet the onus to establish, on a balance of probabilities, that the Landlord's capital expenditures are ineligible, showing neither inadequate repair/maintenance on the Landlord's part, or that the Landlord was paid from some other source.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditures outlined above:

1. $204,040.51 for elevator replacement/modernization
2. $43,378.12 for intercom/access control replacement
3. $635,905.37 for garage restoration

This is pursuant to s.43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation* referred to above.

The *Regulation* s. 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of dwelling units, divided by 120. In this case, I found there are 46 specified dwelling units, and that the amount of the eligible capital expenditure is $883,324.00.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of $160.02 ($883,324 ÷ 46 ÷ 120) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of any Tenant's monthly

rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year. The Landlord acknowledged this on the final page of their June 12, 2024 written submission.

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of $883,324.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by sending it to Tenants via email where possible. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a printed copy in person.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 11, 2024

Residential Tenancy Branch