



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding LAURENTIAN TOWERS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the Landlord's application 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 on October 7, 2024.

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.

The matter was previously scheduled for hearing on September 23, 2024. At that time the hearing was adjourned as several Tenants had requested additional information and documentation regarding the hot water tanks that were replaced by the Landlord. Furthermore, undersigned requested proof of service of the application to each Tenant be confirmed in writing, together with additional information on payment of asbestos removal regarding the window installation in the residential building. The Landlord was required to provide this information to the Tenants as well.

Prior to the rescheduled hearing, the Landlord submitted the required proof of service of the application on June 27, 2024 and with a letter providing a hyperlink to the Landlord's evidence to each Tenant (which was posted to each rental unit door) on August 21, 2024. The Landlord further provided proof of service of the additional information requested for the re-scheduled hearing; service made by posting to the Tenant's rental unit door. I am satisfied the Landlord has complied with service of the application and Landlord's evidence to each Tenant by posting to the rental unit door.

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 for certain capital expenditures made by it:

- Replacement of all windows and sliding glass doors to each rental unit totaling \$602,007.56
- Replacement of two (2) hot water heaters totaling \$32,303.00
- Repair of a sewer line in the amount of \$43,228.50

The residential rental property was constructed in 1966 and consists of 4-storeys with a total of 41 rental units (11 on the first floor). Landlord's representative states the capital expenditures were incurred in relation to the projects within 18 months preceding the application and these are not expected to recur for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The representative further confirmed that each capital improvement was expected to last for at least 5 years and there was no other source of payment for these expenditures.

The Landlord's representative stated the window and sliding glass doors were original to the building and required replacement as the aluminum frames were corroding at the joints, resulting in leaks into the units. Additionally, the corrosion was increasing the heating and cooling costs. The representative testified the Landlord obtained the first quote for this work in 2019 and signed the contract with the provider on April 8, 2019. However, due to the Covid-19 pandemic, work did not commence until early 2022. The contractor obtained the building permit from the City on October 5, 2021, but the City later required asbestos testing for the building prior to the removal of the windows and sliding doors when asbestos was discovered in the exterior seal of the windows. The representative testified, between 2019 and the replacement of the windows, the City's building code changed to require upgraded glass. The cost of the upgraded glass together with the asbestos testing increased the overall cost of this capital improvement to \$602,007.56. The documents provided by the Landlord establish the last payment for this work was made June 21, 2023. The representative testified the window and glass sliding doors were expected to last approximately 50 years.

The representative explained the sewer line stack from the basement to the third floor was blocked and water began to back-up in the boiler room. The Landlord retained a plumber who opened the pipe in the basement area and determined the blockage emanated above. The Landlord provided a report which determined the sewer line

stack was found blocked by sediment on several floors. It was further found the pipe was made of cast iron and was original to the building. The cast iron pipes were estimated to have a useful life of 40 to 50 years. The pipe was replaced at a cost of \$43,228.50, with the payment made on May 30, 2024. The representative advised the new pipe was PVC and had an expected useful life of 30 to 40 years.

Finally, the Landlord's application requests an additional rent increase for the cost of replacement of two hot water tanks in the building. The Landlord states the hot water tanks were leaking due to a failure of the inside sleeve of the tank and replacement was necessary. The representative testified the replaced tanks were installed in 2004 and had exceeded their useful life as evidenced by the failure of the tanks. The first tank failed on May 29, 2023 and was replaced at a cost of \$15,877.50, paid by the Landlord on June 7, 2023. The second tank failed on November 27, 2023 and was replaced for \$16,425.50, which the Landlord paid November 29, 2023. To establish maintenance of the hot water tanks, the Landlord's accountants provided a list of payments derived from the Landlord's general ledger made to plumbers, each with a brief description of the work done, for plumbing and maintenance work done at the rental building, including the hot water tanks, dating from 2012. The representative stated the general ledger entries established regular maintenance of the hot water tanks were regularly maintained, pointing to entries in 2012-2013 and in 2020.

The Tenants in attendance did not object to the replacement of the sewer stack pipe in the building.

Several Tenants stated the cost for the window and sliding door replacement, as well as the asbestos testing and remediation, was in excess of the 18-month period before the Landlord's application filed on June 7, 2024. Additionally, a Tenant noted the Landlord sought to undertake the work in 2019 which was prior to the enacted legislation providing landlords an additional rent increase for capital improvements.

The Tenants noted the maintenance records for the hot water tanks were less than useful as the general ledger entries did not provide sufficient detail as to the maintenance work completed for the tanks. A few of the Tenants also stated the building remained without heat after the installation of the new tanks.

Generally, the Tenants expressed concern the Landlord could commence work before the regulations allowed for the Landlord to off-set the cost through an additional rent increase; and the work completed was part of the Landlord's obligation under the tenancy agreement and the Landlord should not be entitled to shift the cost to Tenants. The Tenants noted they had been assessed an annual rent increase of 3 percent, and the Landlord had also raised the cost for parking.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means 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 bears the burden of proof in support of its 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. 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:
 - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
 - o 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));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

The Regulations provide tenants may have an application for an additional rent increase for capital expenditure dismissed 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 its evidentiary burden and the tenant fails to establish the 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, I find there have been no prior applications for an additional rent increase within the last 18 months before the 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 41 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 **\$677,539.06** as detailed in the Landlord's itemized 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.

Policy Guideline 37C provides “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.”

Window and Sliding Glass Door Replacement including Asbestos Testing

I find the windows and sliding glass doors in each unit is a major component of the building. I find the replacement work was necessary as the existing windows and sliding glass doors were original to the building and at the end of their useful lifespan. I find this is sufficient to satisfy the requirements of the Regulation. Policy Guideline 40 provides that the useful life for windows is 15 years and the useful life for aluminum frames is 20 years.

I accept the Landlords evidence that the final payment for the Work was made June 21, 2023, within 18 months of the Landlord making this application on June 7, 2024. Although the Tenants stated the asbestos testing was incurred in excess of the 18-month period, the Landlord's representative noted the asbestos testing was required by the City's work permit and was undertaken as part of the window and sliding door replacement project. As it was not a stand-alone work item but was necessary by virtue of the City's permit requirement for the work, I find the cost for the asbestos testing was part of the capital expenditure for the windows and sliding doors and thus, in accordance with the Policy Guideline, to have been paid for within the 18-months prior to the application.

The Landlord provided the 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. I further accept the Landlord's representative's testimony there was no other source of payment (such as insurance proceeds or rebates) to pay for some or all of this capital expenditure.

Sewer Pipe Repairs

I find the sewer pipe repairs meet the criteria for a capital expenditure as this work pertained to the repair and replacement of a major component system in the building, and additionally for a pipe that had reached or exceeded its useful life. The final payment for the work (May 30, 2024) was made within 18 months of the Landlord's application and the useful life of the replacement PVC pipe is estimated at 30 to 40 years. I find there was no other source of payment for this capital expenditure.

Hot Water Tank Replacements

I find hot water tanks are a component of a major system in a residential building, and are necessary for health and safety reasons for occupants. Policy Guideline 40 states domestic hot water tanks have a useful life of 10 years and commercial hot water tanks have a useful life of 20 years. The Landlord's representative stated both tanks had exceeded the useful life having been installed in 2004 and both had failed as demonstrated by each developing leaks not capable of repair. I accept the Landlord's

evidence that the hot water tanks were at or exceeded their useful life and required replacement due to each failing. The final payment for each tank was made on June 7, 2023, and November 29, 2023, respectively. I find these final payments are each within the 18-month period prior to the Landlord making this application. I further accept the representative's testimony that the replacement hot water tanks have a useful life of more than 5 years and there was no collateral source of payment for this expenditure.

Tenant Objections to the Capital Expenditures

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.

Several Tenants raised the issue of the sufficiency of the Landlord's maintenance records for the hot water tanks; however, the general ledger entries do provide information as to the regular maintenance provided by plumbers for the tanks. I find the Landlord's records of maintenance for the hot water tanks sufficient considering the approximate 20-year age of the tanks. I further find the hot water tanks, having reached or exceeded their useful life, and having failed in operation, it was necessary for the Landlord to replace the tanks.

Additionally, the windows and sliding door replacement are also a major component of the building, and had exceeded its useful life. The Landlord was required to replace these items which were a source of leaking and damage to rental units.

The Tenants did not object to the replacement of the sewer pipe, which I also find is a major component of the residential rental building, that had failed in operation as well as having exceeded its useful life, both reasons necessitating replacement.

I find the Landlord completed necessary repairs, had to pay for such repairs, and is bound only by the statutory framework in seeking the capital expenditures, and not

I find the Tenants have not provided sufficient evidence to support a dismissal of the Landlord's application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover for the hot water tanks, the sewer pipe repair and the window and sliding glass door replacements in the amount of **\$677,539.06.**

Summary

The Landlord has been successful with 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 **\$677,539.06**, 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 41 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$677,539.06**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$137.71** ($677,539.06 \div 41 \div 120 = 137.71$). 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

I grant the application for an additional rent increase for capital expenditures totaling **\$677,539.06**. 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 made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 12, 2024

Residential Tenancy Branch