Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding CAPREIT LIMITED PARTNERSHIP, YORKSON GROVE HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing concerned 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 Landlord confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence to each Tenant by posting to each rental unit door on July 30, 2024. I find the Tenants were served with the required materials in accordance with the Act.

The parties listed on the coverage page attended the hearing on October 1, 2024.

Issue for Decision

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

Background and Evidence

I have considered the submissions of Landlord's counsel, the documentary evidence as well as the testimony of the participants at each hearing. Not all details of the respective submissions, testimony and evidence are set forth in this Decision. Rather, only relevant and material evidence necessary to my findings are included in my analysis.

The Landlord's application requests an additional rent increase from the Tenants for a capital expenditure for repairs to the building's foundation that also provides both parking and storage space for Tenants' use. The repair to the foundation totaled $199,491.92. The Landlord provided a copy of the invoices as well as establishing proof of payment.

The residential rental property was constructed in 2014; the Landlord purchasing the property and taking possession on July 31, 2015. The property consists of 6 storeys and has a total of 58 rental units. There are 86 parking stalls in the underground parking facility and each unit has available to it a storage unit as well.

The Landlord submitted evidence the underground parking facility concrete floor required extensive repairs to prevent catastrophic failure of the foundation if left unrepaired. Landlord's counsel stated the underground parking facility acts as the foundation for the rental building. Counsel further stated that although the foundation had not exceeded its useful life, repairs were necessary. The Landlord provided the report of a licensed professional engineer to support its application. The professional engineer concluded in his assessment of the foundation that reinforcement and support were required. The Landlord provided photographs depicting the condition of the concrete foundation before, during and upon completion of the repair work. At the time of purchase of the property, Landlord's counsel confirmed an inspection was conducted, and the foundation showed no signs of cracking.

The Landlord began obtaining bids for the work in February 2022. After selection of a contractor and project manager, work was completed in January 2023. The documents submitted by the Landlord indicate there is a 5-year warranty on the repairs undertaken and counsel stated it is not anticipated that repairs to the foundation will recur within a 5-year timeframe. Observation reports completed during the course of repairs were also submitted into evidence by the Landlord.

Landlord's counsel provided its contract with the contractor retained to perform the repairs. He explained there was an overage on the contract price resulting from delays associated with Tenants removing their personal property from storage lockers.

Tenant J.B. stated his impression was the work was more akin to "routine maintenance." He further stated the Landlord should have a contingency fund (similar those funds raised by strata management) to cover this type of expense. He also indicated that no work was done where his storage locker was located. Landlord's counsel noted the legislative purpose of an additional rent increase for capital expenditures contemplates landlords to avail itself of this remedy exclusively rather than through the imposition of fees to tenants for a contingency fund. Landlord's counsel further noted the repair work was not routine maintenance and was not insignificant as an engineer was required to evaluate and assess the repairs to be made. Landlord's counsel also stated the cost for the work was not covered by the annual rent increases and there was no collateral source for payment.

Tenant K.B. stated she has resided in the building for 8 years. She noted the Landlord provides better maintenance of the building overall than the previous owner. Tenant K.B. expressed her concern over the short notice provided for tenants to clear out their storage lockers (48 hours) as this occurred during the Christmas holiday season. She also noted there was no compensation provided for lack of storage while the repairs

were undertaken. Landlord's counsel replied the disruption to tenants in removing their personal property from the storage lockers was minor and any request for compensation for temporary loss of use of the storage space was beyond the scope of this proceeding and would require a separate application. Tenant K.B. stated she was "not looking for money," but wanted to inform the Landlord the disruption was not insignificant to several tenants some of whom were elderly in removing and storing personal property elsewhere during a hectic holiday season.

Landlord's counsel argued all tenants' units were included in the application, regardless of whether they utilized a parking space or a storage locker as the repairs were to the foundation of the building. Counsel stated no additional surcharge was involved in the delay resulting from tenants moving their items out of storage while the repair work was in process.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, meaning it is more likely than not 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 establishing sufficient evidentiary support for 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. In summary, 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 successfully defend against an application for an additional rent increase for capital expenditure if they can prove on a balance of probabilities 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 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, I accept the Landlord's submission 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 58 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 **$199,491.92** as detailed in the Landlord's submissions and evidence provided as described herein.

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.

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.

Landlord's counsel stressed the work to the foundation of the building was necessary to repair a major system of the residential rental building, acknowledging the work did not arise by virtue of the foundation reaching end of its useful life. Additionally, given the nature of the repair undertaken, it was necessary in order to comply with safety standards as a failure to repair could result in catastrophic damage to the building.

I find the foundation is a major system and major component of the building. I find the repair work was done to increase safety of the foundation and the rental building. I find this is sufficient to satisfy the requirements of the Regulation. I accept the Landlord's submission the repair work to the foundation is expected to last for 5 years or more as evidenced by the warranty it received for the repair work.

Residential Tenancy Branch Policy Guideline 37 states:

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

I further accept the Landlord's evidence the final payment for the Work was made April 5, 2023, and within 18 months of the Landlord making this application on July 10, 2024.

The Landlord provided the invoices, contract and proof of payment for the capital expenditure, permitting the finding that final payment was incurred less than 18 months prior to making the application. I find it is reasonable to conclude this capital expenditure will not be expected to recur within five years.

The Regulation limits the reasons 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 establish:

- 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 Tenants arguments generally concerned inconvenience and/or a lack of contingency funding. I find these arguments insufficient to successfully oppose the Landlord's application. I find the Landlord completed the necessary repairs to a major system/component of the building, was required to and paid for such repairs, and is

bound only by the statutory framework in seeking the capital expenditures, rather than the objections raised during the hearing.

Based on the above, I find the Landlord is entitled to recover for the elevator modernization in the amount of **$199,491.92.**

Summary

The Landlord has provided sufficient evidence, on a balance of probabilities, to meet the elements required to impose an additional rent increase for total capital expenditures in the amount of **$199,491.92,** for the repair to the foundation of the residential tenancy building.

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 and then divided by 120 (to represent the 10 year time permitted to recoup the expenditure). In this case, I have found there are 58 specified dwelling units and the total amount of the eligible capital expenditure is the amount of **$199,491.92.**

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **$28.66 (= 199,491.92 ÷ 58) ÷ 120).** 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 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 Landlord's application for an additional rent increase for capital expenditures totaling **$199,491.92.** 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: November 03, 2024

Residential Tenancy Branch