



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding IMH 350 & 360 DOUGLAS APARTMENTS
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 parties listed on the cover page attended the hearing on October 9, 2024.

The Landlord submitted an affidavit of service confirming posting of the proceeding package to the door of each rental unit on August 21, 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.

Landlord's counsel noted that he had received a request from Tenant M.W. requesting the removal of co-Tenant M.W. from this matter. I find it appropriate to grant this amendment and the caption to this file has been amended accordingly.

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 attending the hearing. However, not all details of the respective submissions are set forth in this Decision. Rather, this Decision provides the 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 it has completed:

- Security system upgrade - \$11,397.12
- Electric transformer vault upgrade - \$127,822.81
- Emergency generator upgrade - \$97,529.18

The residential rental property was constructed in 1965 and consists of 2 buildings and with a combined total of 197 rental units. The south tower has 115 rental units and the north tower has 82 units. Landlord's counsel states the capital expenditures were incurred in relation to the projects within 18 months preceding the application and these expenditures are not expected to recur for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. Counsel further confirmed each capital improvement was expected to not reoccur for at least 5 years and there was no other source of payment for these expenditures.

The Landlord undertook the installation of a security system upgrade which replaced the entry phone system that was original to the building. The security system also included the installation of upgraded security cameras in common areas. The security system upgrade cost \$11,397.18 and was paid by the Landlord on May 6, 2024.

The Landlord also undertook an upgrade of the electrical vault. The Landlord's representative explained the Landlord owns this vault, it services both buildings, and houses the main electric equipment for the buildings. The Landlord's evidence provides the vault must meet fire resistance standards. The electric equipment itself is owned by the utility company. The Landlord submitted a report regarding the vault which states it was approximately 55 years old, was not in compliance with the current building code, and was at the end of its useful life. The report further stated the oil filled transformers were leaking in the vault. The cost for the replacement vault was \$127,822.81, and the last invoice for the work was paid by the Landlord on February 6, 2023.

Additionally, the Landlord also upgraded the rental property emergency generator. The replaced generator was also original to the rental buildings and was more than 50 years old and had reached the end of its useful life. It provides emergency back-up power to lighting and emergency signs in the rental buildings in the event of a disaster or other power outage. Work to replace the emergency generator commenced in early 2023, with the last invoice paid by the Landlord on June 26, 2023. The Landlord's representative stated the useful life for an emergency generator is 20 to 25 years and in this case the rental property's emergency generator was original to the building and approximately 50 years old at the time a report stating the generator had reached the end of its useful life was published and available to the Landlord. The representative noted that replacement parts become difficult to obtain for older generators and it was given the age of the generator it was considered best to replace it with an updated generator in the event the older generator failed at a time of emergency.

Tenants in attendance at the hearing raised objection to the security system, noting the replaced system was not often operational. Additionally, a Tenant commented the security cameras in the lobby/reception area of the building was a measure “too late,” as any intruder would have already gained access to the building. The Tenants also noted the security system often failed and/or was not operating properly. The Landlord representative stated the security cameras were capable of live-streaming in addition to recording, thus improving tenant security. After consultation, the Landlord through counsel determined after Tenant comment at the hearing not to pursue the cost of the upgraded intercom and camera system and withdrew this item of capital expenditure from its application.

Tenants also objected to the electrical equipment vault. The objection concerned the utility company’s responsibility for the vault and noted the report which the Landlord submitted states the utility company did not object to the condition of the vault such that replacement was required. A Tenant also stated the Landlord may have contributed to shortening the useful life of the vault as no maintenance information was provided. Furthermore, an issue arose that the utility company pays rent for the vault and this should be considered a subsidy or payment from a third-party for purposes of reducing the cost to tenants.

Counsel replied the rent is not a subsidy and cannot be used to off-set the cost of the capital expenditure as it does not pertain to the upgrade of the vault as would a rebate or an insurance payment. Furthermore, counsel stated the vault had reached the end of its useful life being more than 50 years old, and as such maintenance records were not relevant for purposes of the additional rent increase application under the Regulation which permits for replacement of a major component or system at the end of its useful life. The Landlord’s counsel stated the utility company’s feasibility report would require the vault be brought to Code compliance and the Landlord was thus “at the mercy” of the utility company’s demands as the utility was upgrading its equipment housed in the vault.

Discussion was also had on the determination of rental units which would be subject to the Landlord’s application given that several units were vacant. The Landlord has taken the position the additional rent increase will be applied to those tenants who were residing in their rental unit before the date of the earliest of the last invoice payment made by the Landlord for a capital expenditure. In this case, the earliest of the final payments on an invoice for a capital expenditure subject to this application was made by the Landlord on February 6, 2023 for the vault upgrade. Therefore, the Landlord has adopted the position that the additional rent increase shall apply to those tenants residing in their units prior to that date.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means 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 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 greater than the annual amount provided under the Regulations by submitting 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. 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.

Accordingly, pursuant to the Regulation I find there are 197 specified dwelling units to be used for calculation of the additional rent increase.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **\$225,351.99** as detailed in the Landlord's itemized capital expenditures for the electrical equipment vault and the emergency generator, there being no collateral source or rebates to off-set this cost fully or partially. I do not accept the Tenant's position that rent payments made by the utility for the electric vault may be considered a payment from another source. Policy Guideline 37C states, in pertinent part: "If an amount of a capital expenditure is recovered or could have been recovered through grants, rebates, subsidies, insurance plans, or claim

settlements, that amount becomes ineligible and must be deducted....To be considered a 'payment from another source,' a landlord must be reimbursed from a third party for some or all of the cost of the capital expenditure." Thus, tax treatment as a deduction or tax credits are not considered as a "payment from another source." I find that rent paid by the utility company for the vault is not an off-set to the cost of the capital expenditure.

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.”

Security and Intercom System Upgrade

I accept the Landlord’s withdrawal of this item of capital expenditure from its application. The cost of this capital expenditure (\$11,397.12) is not included in the additional rent increase at issue.

Electrical Equipment Vault Upgrade

I find the electrical equipment vault that houses the utility’s electrical equipment servicing the rental property is a major component of the rental property. I accept the Landlord’s evidence the vault was at or beyond its useful life and required replacement. Evidence of maintenance is not relevant when the replacement is undertaken as a result of the major system or major component’s end of useful life. I further find the vault was required to be upgraded to Code standards by the utility company which is based upon safety issues relevant to tenants residing in the rental buildings.

I accept the Landlords evidence the replacement vault cost was \$127,822.31 and final payment for the Work was made by the Landlord on February 6, 2023. The Landlord provided the receipts for the capital expenditure, and I find the final payment was incurred within the 18 months prior to the Landlord submitting this application on August 6, 2024. I find it is reasonable to conclude that this capital expenditure will not be expected to reoccur 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.

Emergency Generator Upgrade

I find the emergency generator for both rental buildings is a major system or major component of the rental property. Policy Guideline 40 provides that a generator has a useful life of 25 years. I accept the Landlord’s evidence the replaced emergency generator was original to the construction of the buildings, and was more than 50 years old and at the end of its useful life. I further find the emergency generator upgrade improves the safety of tenants in the event of power failure.

I accept the Landlord's evidence the cost of the replacement emergency generator was \$97,529.18 and the last invoice for this work was paid by the Landlord on June 26, 2023. I find final payment was incurred within 18 months prior to the Landlord's application. I accept the Landlord's evidence the expense to replace the emergency generator is not expected to reoccur in the next 5 years and there were no rebates or third-party payments applicable to off-set the cost of this capital 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.

Some Tenants objected to the cost of the electrical system vault on the basis the Landlord's maintenance of the vault could extend the useful life of the vault and/or the utility company did not require the vault upgrade. I find the replacement of the vault was due to it exceeding its useful life, and replacement improves the tenant safety by bringing the vault into compliance with the current Code as required by the utility company.

There were limited Tenant objections to the upgraded generator and these were related to the necessity of replacing a generator that was still operational. I find the generator had reached or exceeded its useful life as set forth in the Landlord's evidence and the replacement of the emergency generator, which protects tenant safety in the event of power outage or an emergency event, is warranted under the Regulation.

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.

Therefore, I find the Landlord is entitled to recover for the electrical equipment vault upgrade and emergency generator replacement in the total amount of **\$225,351.99**.

Summary

The Landlord has been successful with its application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$225,351.99** 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 197 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$225,351.99**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$9.53 ($\$225,351.99 \div 197 \text{ units} \div 120 \text{ months} = \9.53 per month)**. 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. I accept the Landlord's representation that the additional rent increase for capital expenditure will be imposed upon those Tenants residing in their units as of February 6, 2023.

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 **\$225,351.99**. 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 the manner required by section 88 of the Act. The Landlord must make service to the Tenants within two weeks of this Decision. I authorize the Landlord to serve Tenants by email if the Tenant has provided an email address to the Landlord.

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 28, 2024

Residential Tenancy Branch