



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding GALAXY VA 21 PRIDEAUX APARTMENTS
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.

Landlord's counsel confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. The Landlord provided an affidavit dated September 9, 2024, stating that on August 22, 2024, an agent of the Landlord posted to each rental unit door the Notice of Hearing together with a copy of a letter providing information to the Tenant to access and download evidence submitted by the Landlord to the RTB. I find the Tenants were served with the required materials in accordance with the Act.

Tenant K.G. submitted written documentation in support of her position that the installation of the water-efficient toilet for which the additional rent increase had been completed in her unit prior to her taking possession of the unit in June 2022.

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 the following capital expenditures:

- Installation of water-efficient toilets (certain units excepted) - \$18,971.40; and,
- LED lighting upgrade in common areas - \$1,638.00

The residential rental property was constructed in 1976 and consists of 51 units. Landlord's counsel stated the Landlord had not made an application for an additional rent increase in the preceding 18 months from the submission of this application on August 6, 2024.

Landlord's counsel stated the water-efficient toilets in certain units (8 were exempted) replaced toilets that were likely original to the building and used more water per flush. The Landlord provided documentation regarding the low water-usage of the upgraded toilets that were installed. The work commenced in August 2022 for the 43 remaining units, and the Landlord made the last payment on April 3, 2023. The Landlord provided copies of the invoices and proof of payment. Landlord's counsel confirmed this expense was not anticipated to recur for at least 5 years, and there was no other source of payment for the work (such as, rebates, insurance proceeds or similar).

The Landlord's application also includes a request for a capital expenditure regarding an LED lighting upgrade from fluorescent lighting for the common areas in the rental property. These common areas included exterior lighting of the building and grounds. The interior lighting upgrade for the common areas also included the storage room (where Tenant storage lockers are located) as well as the elevator maintenance room (not accessible by tenants but used by contractors when conducting maintenance). The work was undertaken in December 2022 and payment was made February 6, 2023. The Landlord submitted documentation regarding the energy efficiency of the LED lighting installed. Landlord's counsel confirmed there was no rebate or other source of payment for the lighting upgrade and the replacement LED lighting is expected to last more than 5 years. The Landlord's representative noted that the exterior lighting upgrade also enhanced the security for the building. Landlord's counsel noted that there had been a 337 kilowatt hour savings after the installation of the LED lighting.

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

I find there have been no prior applications for an additional rent increase within the last 18 months before the present 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 43 dwelling units to be used for calculation of the additional rent increase for the water-efficient toilets (8 units not receiving the replacement toilet); and, 51 specified dwelling units for purposes of calculating the LED lighting upgrade (notwithstanding that 6 units were vacant at the time of the application, as vacancy concerns whether the Landlord issues a notice of additional rent increase to that unit).

4. Amount of Capital Expenditure and Date Capital Expenditure was Incurred

The Landlord claims the total amount of **\$20,609.40** as detailed in the Landlord's itemized capital expenditure set forth above, there being no collateral source or rebates to off-set this cost fully or partially.

The expenditure must be incurred in the 18 months prior to the Landlord filing the application. The Landlord filed this application on August 6, 2024. As the Regulation provides the cost is incurred no later (less) than 18 months "prior to" (or preceding) the filing of the application, the day of filing the application would not be included in the 18-month period as that period is based upon the preceding time from the date of the application. This is in contrast to the prior of filing of an application "within" the 18-month period. Thus, the prior 18-month period with respect to the date the capital

expenditure was incurred in this case is from the date of the application and is February 5, 2023 to August 5, 2024.

The last payment by the Landlord for the water efficient toilets occurred April 3, 2023, and the LED lighting upgrade was paid for on February 6, 2023. I find the capital expenditures were incurred in the 18-month prior to the date of the Landlord filing this application.

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.”

Water-Efficient Toilets

I find toilets to be a major component of a major system; namely, plumbing and sanitary system. 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 counsel’s confirmation there was no other source of payment (such as insurance proceeds or rebates) to pay for some or all of this capital expenditure.

The Landlord takes the position the water-efficient toilets are an eligible capital expenditure under the Regulation as the toilets qualify as energy efficient. The Landlord references a prior arbitration decision in another matter which granted an additional rent increase for the capital expenditure of water-efficient toilets.

As a threshold matter, pursuant to section 64(2) of the Act, an arbitrator is not bound by a decision rendered by another arbitrator regarding another application, although it is noted that consistency in application of the Act and Regulation is generally beneficial.

The reduction in energy use is not defined but the terms have a plain, unambiguous meaning. Energy efficiency is qualified by the subsequent terms relating to the reduction in greenhouse gas emissions. Policy Guideline 37C provides:

Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and another substance prescribed in the regulations to the *Climate Change Accountability Act*.

Any reduction in energy use or greenhouse gas emissions established by a landlord will qualify the installation, repair, or replacement for an additional rent

increase. Some examples of installations, repairs, or replacements of major systems or major components that may reduce energy use or greenhouse gas emissions include:

- replacing electric baseboard heating with a heat pump,
- installing solar panels, and
- replacing single-pane windows with double-paned windows

In this case, the toilets installed by the Landlord conserve water by reducing the number of gallons used per flush based upon the design and increased velocity on the flush on the newer toilet. The toilet does not utilize energy as it does not require an energy source (such as, a fossil fuel or electricity) in order to operate nor does it use heated water that would require the expenditure of energy in order to raise its temperature (as with domestic hot water systems). Rather, gravity and velocity of water make the toilet functional. While the toilets installed by the Landlord are water-efficient, this efficiency is not equivalent to a reduction in energy. It is noted that energy is traditionally measured in kilowatts, joules, degrees or similar units; whereas, in contrast, water usage is measured volumetrically. Additionally, insofar as the reduction in water usage may be attributed to lower energy consumption as less energy may be expended in acquisition and/or transportation of the water, I find these factors too tangential and indirect to support a finding the toilets energy-efficient as the term is used in the Regulation.

Therefore, I decline to accept the Landlord's position that water-efficient toilets qualify as energy-efficient under the Regulation. I dismiss this capital expenditure as a qualifying capital expenditure under the Regulation for purposes of an additional rent increase.

LED Lighting in Common Areas

I find the Landlord's replacement of the fluorescent lighting with LED lighting throughout the common areas as well as the exterior lighting was incurred to reduce energy consumption. The lighting system in the common areas, including the "running man" signage, and the exterior lighting also improves the security of the building for the tenants, occupants and guests. The Landlord presented evidence at the hearing regarding the decreased usage in electricity after the installation of the LED lighting.

Furthermore, Policy Guideline 37C states that if a replaced system or component of a major system "better protects people and property at the residential property, the security of the residential property has been improved" for purposes of the Regulation. I find the LED lighting replacement improves security of Tenants and their property for purposes of an additional rent increase.

I accept that the Landlord's position this cost is not expected to recur in 5 years, and there was no rebate or other source of payment for the 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.

Tenant K.G. made written submissions that both the water-efficient toilet and LED lighting upgrades had been accomplished to the unit they moved into prior to the filing of the Landlord's application.

Landlord's counsel stated the Landlord's position was any additional rent increase would only apply to Tenants who occupied units on or before the application date of August 6, 2024.

I find Tenant K.G.'s objections are not those within the scope of objections under the Regulation upon which an application for additional rent increase may be dismissed.

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 capital expenditure related to the installation of energy efficient LED lighting in common areas of the rental unit in the amount of **\$1,638.00**.

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 **\$1,638.00**, for the LED lighting upgrade.

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 51 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$1,638.00**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$0.27** (**$\$1,638.00 \div 51 \text{ units} \div 120 \text{ months} = \0.27**). 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 **\$1,638.00**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord serve the Tenants with a copy of this decision in the manner required by 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 25, 2024

Residential Tenancy Branch