



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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Dispute Code

ARI-C

DECISION

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 21, 2024.

The Landlord submitted an affidavit of service to confirm each Tenant was served the proceeding package by posting to the rental unit door on September 5, 2024. The Landlord's affidavit referenced and attached a letter to each Tenant providing information on accessing copies of the Landlord's evidence. Upon written communication from Tenant J.S. that some of the evidence may pertain to a different rental property, the Landlord's counsel issued a correction to the evidence and this letter was made available to each Tenant. The Landlord provided a copy of the letter with updated information regarding documents submitted in support of the application. I find the Tenants were served with the required materials in accordance with the Act.

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 the parties, the documentary evidence as well as the testimony of the participants attending each hearing. However, not all details of the respective submissions are set forth in this Decision. Rather, 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 made by it:

- Replacement of all common area lighting with energy efficient LED lighting - \$59,741.68
- Replacement and installation of a security system, including cameras and an FOB system for entry to the rental building and parking lot - \$65,063.20

- Replacement of the building's boiler and installation of a building automation system - \$250,610.85 – less – energy efficiency rebate of \$16,464.00

The residential rental property was constructed in 1974 and consists of 5-storeys with a total of 136 rental units. Landlord's counsel states the capital expenditures were incurred in relation to the projects within 18 months preceding the date of filing this 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 that each capital improvement was expected to last for at least 5 years and with the exception of the energy rebate noted above, there was no other source of payment for these expenditures.

Landlord's counsel explained the LED lighting was energy efficient. Documents in support of this position were submitted in evidence. The energy efficient lighting upgrade was installed in common areas throughout the rental building including, the gym/weight room area, laundry room, garage, maintenance office, hallways and entrance area. The installation consisted of new fixtures (as LED lighting cannot be retrofitted into existing fixtures) and the lightbulbs. Also upgraded were the exit signs with "running man" exit signs. The Landlord noted that since installation there had been an approximate 30,000 kw reduction in energy use with a corresponding energy savings of \$11,467.37. The Landlord submitted corroborating documentation. The last payment for the LED lighting was made by the Landlord on February 20, 2023.

The security upgrade consisted of the installation of security cameras, a new entry intercom system for guests and licensees, and a FOB system for entry including for the garage. The replaced security cameras were estimated to have been in excess of 8 years old and the new cameras provided better imaging. The Landlord replaced 6 cameras and added two additional security cameras at the north and southeast entrances to the building. Landlord's counsel stated the replaced system for access was a telephone system that was original to the building and was approximately 50 years old. Landlord's counsel also noted the FOB's were superior to keys as the former could not be duplicated. The last payment on the security upgrade was made by the Landlord on April 17, 2023.

The boiler for heating and domestic hot water use in the rental building was estimated by the Landlord to be 46 years old. Prior to the Landlord purchasing the rental property in June 2021, the Landlord commissioned a condition report which was issued on April 20, 2021. The Landlord provided relevant pages from that report which stated the boiler had reached the end of its useful life. The report provides the boiler is of unknown age and only 5 of 10 burners were operational. The Landlord replaced the boiler system within the term of the condition report and installed an automation system to increase the energy efficiency for the use of the boiler to provide heat in the building. The Landlord submitted documents regarding the boiler replacement as well as photographs of the installed system. The Landlord explained the automation system installed as part of the new heating system was more sensitive to outdoor temperature changes and

thereby could automatically operate the boiler system in a more efficient manner by using less heat from the boiler system for when the temperature dropped slightly and increasing use as temperatures would continue to decline during winter months. The Landlord noted the energy efficiency of the units as the utility company provided a rebate upon their installation. The Landlord's last payment for this expenditure occurred on June 17, 2024.

Several Tenants noted deficiencies in the new security system. The Tenants stated there remained in circulation old keys for access to the building and storage lockers as well as for access to the common area gym. The Tenants stated the old keys remained in circulation and thus could be used to access various parts of the building which resulted in a decrease to their security. Tenant C.B. clarified the keys for the gym remained in use as the key was only issued to a tenant upon the tenant signing a liability waiver for use of the gym equipment. Tenant C.B. also explained there was a separate key for use in the elevator to access the parking garage. Some Tenants also noted the FOB system did not always work and access doors sometimes "popped open," leaving the building open to unwelcome guests or intruders. Another Tenant noted the rental building is L-shaped with an entrance at each end. The Tenant stated the new intercom system did not provide for full access at one end of the building. One Tenant stated the new intercom directory was not properly updated for Tenant names as an emergency response team was unable to locate her on the directory when she contacted them.

The Tenants attending the hearing objected to the Landlord's ability to purchase an admittedly older building, with knowledge the boiler would require replacement and at a presumptively lower price for this reason, and then pass that cost along to the Tenants. One Tenant described this as the Landlord "double-dipping" and essentially reaping the benefits of the lower purchase price and then passing along to Tenants the cost of the replacement boiler. A few Tenants questioned whether the new boiler system was working properly as there had been multiple water shut-off's since the installation.

The Landlord's property manager responded the water shut-off's the Tenants had experienced were unrelated to the installation of the new boiler system.

Counsel stressed the boiler system upgrade was installed for energy efficiency reasons, in addition to the fact the boiler was past its useful life and beyond repair. As well, he reiterated the LED lighting upgrade was done for energy efficiency purposes as well, notwithstanding that the Landlord may pay lower energy rates as a result but request the capital expenditure cost as provided by the Regulation (one Tenant stating there was no pass-through to Tenants for the money saved with the energy efficient lighting installed).

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 Regulation provides 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 136 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 **\$358,951.73** (which takes into account the rebate received by the Landlord for the energy efficient boilers in the sum of \$16,464.00) 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.

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.”

1. LED Lighting Upgrade in Common Areas

I find the LED lighting in the common areas, including exit signage, and exterior of the rental building is a major component of the building. I accept the Landlord’s evidence that final payment for the Work was made February 20, 2023, within the preceding 18 months of the Landlord making this application on August 20, 2024. 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 and that the lighting upgrade is not expected to recur for at least 5 years. Finally, I find the LED lighting upgrade evidence submitted by the Landlord establishes that it is an energy efficient system and results in the reduction of energy use.

2. Security System Upgrades

Policy Guideline 37C provides that security systems, including cameras and other mechanisms to prevent unauthorized entry, are a major system and major component “essential to support or enclose a building...or support a critical function of the residential property.” I find the upgraded security system, including upgraded security cameras and the addition of 2 security cameras at the exterior entrances of the building, and the FOB system replaced an older approximate 50-year old system that had reached the end of its useful life. Policy Guideline 40 provides that intercom systems have a useful life of 15 years, which the replaced system in the rental building had exceeded. While the old intercom and access key system may have remained functional, the Landlord explained the new cameras had a superior video resolution, and the FOB system was virtually impossible to duplicate. Policy Guideline 37C states the replacement of a keyed entry with a FOB system is considered an improvement to security. I accept that it is not anticipated this work will be required again within 5 years.

I accept the Landlord’s payment for this work occurred on April 17, 2023, as documented by the Landlord. This is within the 18 months preceding the Landlord’s application. I accept the Landlord’s submission there was no other source of payment for this work.

3. Boiler System Replacement with Energy-Efficient Boiler

I find the boilers that provide domestic hot water and heat for the building is a major component and major system of the rental building. I further accept the Landlord’s evidence the boiler system had reached the end of its useful life. Policy Guideline 40 states that commercial hot water tanks have a useful life of 20 years, which was

exceeded in this case as it was estimated by the Landlord the replaced boilers were approximately 46 years old, even if the condition report could not attribute a specific age to the boiler system. The condition report noted that the system had reached its useful life, and only 5 of the 10 burners were operational.

Furthermore, the Landlord has provided sufficient evidence to establish the new boiler is energy efficient, as demonstrated by the gas utility offering a rebate for installation of a gas-efficient model upon its installation. I find the Landlord is not expected to incur the cost for this work again for at least 5 years.

I accept the Landlord's payment for this work occurred on June 17, 2024, as documented by the Landlord, within the 18 months preceding the Landlord's application.

I accept the Landlord's evidence it received an energy efficiency rebate for the boiler installed totaling \$16,464.00.

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.

Although the Tenants' objections concerned the necessity or efficacy of a replaced system, these nevertheless fall outside the scope of factors outlined by the Regulation to defeat an application for additional rent increase.

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.

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 expenditures set forth in its application in the total amount of **\$358,951.73**.

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 **\$358,951.73**, for those major components and systems 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 (representing the number of months in 10 years). In this case, I have found that there are 136 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$358,951.73**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$21.99 (= \$358,951.73 ÷ 136 units) ÷ 120 months = \$21.99**. 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.

Landlord's counsel stated that although the number of specified dwelling units was a fixed denominator in the calculation under the Regulation, the Landlord intended to only serve notice of an additional rent increase to those Tenants who were residing in their rental unit before February 20, 2023 (the earliest date for the last payment made for a capital expenditure subject to this application). Stated otherwise, the Landlord would not impose an additional rent increase for any Tenant who moved in on or after February 20, 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 **\$358,951.73**. 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.

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 25, 2024

Residential Tenancy Branch