



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding CAMSTA 3255 COOK APARTMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Code 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 11, 2024.

The parties confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. The Landlord submitted an affidavit confirming service to each Tenant by posting the proceeding material to the rental unit doors on September 7, 2024. I find the Tenants were served with the required proceeding 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 written submission of the Landlord, the documentary evidence as well as the testimony of the participants attending the hearing. However, not all details of the respective submissions are reproduced in this Decision. This Decision includes that 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:

- Installation of water-efficient toilets totaling \$50,855.70 (last payment made on February 20, 2023)
- Installation of an upgraded security system totaling \$51,471.00 (last payment made on June 12, 2023)
- LED lighting upgrade in common areas in the sum of \$45,904.75 (last payment made on June 26, 2023)
- Installation of an automation system for the domestic hot water heating system in the amount of \$26,695.70 (payment made by the Landlord on February 12, 2024)
- Insulation of hot water pipes in the amount of \$16,380.00 (last payment made on May 1, 2023)

The residential rental property was constructed in 1971, has 4-storeys and a total of 122 rental units. Landlord's counsel stated the capital expenditures were incurred in relation to the work outlined above with final payment made for each improvement 18 months preceding the application and these items. 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 there was no other source of payment for these expenditures, such as rebates or insurance proceeds.

The Landlord's counsel explained the water-efficient toilets were installed at a cost of \$50,855.70, with the final payment for the capital improvement occurring on February 20, 2023. Counsel explained the replaced toilets used approximately 4.8 to 12 litres of water per flush, whereas the newly installed water efficient toilets used only 3 litres per flush. The Landlord submitted documents from the manufacturer confirming the lower-water usage for these toilets. The toilets come with a lifetime warranty. Landlord's counsel stated the water-efficient toilets qualify as energy-efficient, where energy efficiency is deemed to encompass products that conserve environmental resources.

The Landlord also incurred a capital expenditure in the amount of \$51,471.00 for security system upgrades to the residential rental building. The work was billed in one invoice, paid by the Landlord on June 12, 2023. The replaced system utilized an entry phone for guest communication with tenants to gain entry to the building and there were a few security cameras in the common area. The security system upgrade includes an access control system for tenants to admit guests, as well as the upgrade of existing cameras and the addition of security cameras in other common areas of the building. The Landlord's representative stated that due to previous property damage at the rental building, additional security cameras were installed in the lobby area, exit doors, pool, laundry, visitor parking and other similar common areas.

The common area lighting in the building was upgraded by the Landlord from fluorescent to LED lighting, which is energy efficient. The total cost for the lighting upgrade was \$45,904.75, which the Landlord paid in full by June 26, 2023. The LED lighting is 75 per cent more energy efficient in comparison to fluorescent lighting based

upon utility company estimates. The Landlord's evidence estimates that LED lighting has a 22-year life expectancy. Landlord's counsel explained the lighting upgrade occurred in the stairwells, hallways, and other common areas, and included "running man" sign upgrades. Counsel noted the lighting required new fixtures as the existing fixtures for fluorescent lighting could not be retrofitted for the LED lighting. The Landlord submitted documentation in support of its position. Landlord's counsel additionally noted that not only was the lighting upgrade energy efficient, but was better in its illumination and thus offered increased safety to Tenants.

The Landlord's application includes a request for additional rent increase for the capital expenditure in the amount of \$16,380.00 paid by the Landlord on May 1, 2023, for insulating the hot water pipes in the mechanical room of the rental building. The Landlord's representative G.W. explained the insulation was for pipes that provided heating and domestic hot water. The insulation operates to reduce heat transfer (heat loss) from the hot water to the ambient air and also acts as a vapor barrier to preclude condensation from pooling in the mechanical room. The Landlord provided photographs of the insulated pipes. The cost for this capital expenditure is not expected to reoccur for at least 5 years, and the Landlord represented there were no rebates or other source of payment for this expenditure.

Lastly, the Landlord requests an additional rent increase for a building automation system that provides a direct digital control system for the hot water in the building (both for heating and domestic hot water use). The cost of this capital improvement was \$26,695.70 and final payment was made by the Landlord on February 12, 2024. The Landlord's counsel explained the building automation system improved energy efficiency as the system auto-adjusts to ambient air temperature through sensors placed on the north-facing exterior of the building. This method provides for more sensitive and responsive heating resulting in overall reduced energy consumption. Counsel stated the best evidence for the system's energy efficiency could be found in the manufacturer's documents submitted by the Landlord in this proceeding. He explained there was no method to directly meter the energy consumption of the hot water system in the building, and thus the manufacturer's documentation regarding the energy efficiency of the system was relied upon. Although the system is energy efficient, counsel stated there were no available rebates. The cost for system was represented to last in excess of 5 years.

Tenants in attendance at the hearing raised objection to the Landlord's application. Tenants were generally opposed to the upgrade to the security system, noting the replaced system worked well and an upgrade was unnecessary. Tenants also stated the rear door to the rental building had an intercom "buzzer" system which was removed with the upgrade and access is now only by FOB. A Tenant stated the rear entry system was now less secure than with the previous intercom system.

Tenants stated the lighting upgrade, although energy efficient, provided the Landlord with the cost saving while shifting the burden to pay for the expenditure to the Tenants,

which was considered inequitable. Similar objection was made to the water-efficient toilets and the building automation system, with the cost-shifting to the Tenants for the expenditure while the Landlord paid lower utility costs. The Tenants noted the capital expenditures would place a financial burden on them which many were least able to afford, as the tenant composition in the building consisted mainly of the elderly and young families with children. It was noted by a few Tenants that parking at one time had been offered at no cost to Tenants and the Landlord had since required payment for parking spots, as evidence of the Landlord's continuing price escalation for rental units.

A Tenant stated the Landlord when purchasing the rental property should have conducted a proper condition inspection which would have alerted the Landlord to deficiencies of the building for which the Landlord is now requesting the Tenants bear the cost.

The Landlord stated during the hearing that although the number of specified units for the determination of the additional rent increase was fixed by the Regulation, it would not impose the additional rent increase on Tenants who moved into a rental unit on or after February 20, 2023. The Landlord submitted a list of rental units that it would not impose the additional rent increase upon, several of those units indicated as vacant. Landlord's counsel also stated that information had been provided to Tenants for whom any additional rent increase would cause a financial hardship to contact the Landlord.

Landlord's counsel advised the security system offered more security cameras which increased Tenant security as there were fewer "blind spots." Landlord representative A.S. stated the FOB system was superior to the rear-access intercom as the FOB provided digital information of the person entering the building. He also stated the rear access intercom system was set-up for those using parking in the back of the building. A Tenant stated a tech savvy individual could duplicate a FOB whereas keys are stamped with a "no duplication" restriction.

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 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 accept the Landlord's representations and find there have been no prior applications for an additional rent increase within the 18 months prior to the filing of this application.

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 122 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 **\$191,307.15** as detailed in the Landlord's itemized capital expenditure set forth above, there being no collateral sources for payment 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.”

Water-Efficient Toilets

I find toilets to be a major component of a major system; namely, the 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 litres used per flush based upon the design and increased velocity on the flush of the newer toilet. The toilet does not consume energy as it does not require an energy source (such as, a fossil fuel or electricity) to operate nor does it use heated water that would require the expenditure of energy necessary to raise the water 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 are 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 in the amount of \$50,855.70 as a non-qualifying capital expenditure under the Regulation for purposes of an additional rent increase.

LED Lighting Upgrade in Common Areas

I find the LED lighting in the common areas qualifies as an energy efficiency capital expenditure permitted under the Regulation for an additional rent increase. Based upon the evidence, I find the LED lighting installed by the Landlord is an energy efficient system and results in the reduction of energy use.

I accept the Landlord's evidence the final payment for the lighting upgrade was made June 26, 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.

Based upon the evidence, the Landlord's capital expenditure in the amount of **\$45,904.75** qualifies for an additional rent increase as the lighting upgrade reduces energy use.

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." Policy Guideline 37C further states: "A landlord is not required to establish that additional or better security was necessary for the director to grant an additional rent increase." Policy Guideline 37C provides the replacement of a keyed entry with a FOB system is considered an improvement to security.

I find the Landlord's installation of the new security system, including upgraded security cameras and the addition of security cameras at the exterior entrances of the building as well as the intercom system qualify under the Regulation for an additional rent increase. I accept the Landlord's representation it is not anticipated this work will reoccur within 5 years.

I accept the Landlord's payment for this work occurred on June 12, 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.

I find the Landlord is entitled to an additional rent increase pursuant to the Regulation in the amount of **\$51,471.00** for the security system.

Installation of Building Automation System

In this case, I find the installation of the building automation system which monitors the outdoor ambient temperature to initiate heating to constitute a major component of the building. Based upon the Landlord's documentary evidence and testimony, I find this capital expenditure increases energy efficiency. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure and the final payment on February 12, 2024, was incurred within 18 months prior to the Landlord submitting this application. I accept the Landlord's statement and therefore I find it is reasonable to conclude that this capital expenditure is not expected to reoccur within five years.

Based on the above, I find the Landlord is entitled to recover the amount of **\$26,695.70**.

Hot Water Pipe Insulation

I find the hot water pipes in the mechanical room of the rental building to meet the criteria of a major component or major system. I find the Landlord has presented evidence to establish that the insulation of these pipes reduces energy use by reducing external heat transfer from the hot water pipes thereby improving thermal efficiency.

I accept the Landlord's submission that this capital expenditure is not anticipated to reoccur within 5 years and there were no available rebates or other sources of payment. The Landlord submitted invoices and proof of payment in the amount of \$16,380.00, the Landlord paying for this improvement on May 1, 2023, within the 18-months preceding the Landlord's application.

I find the Landlord is entitled to recover the cost of **\$16,380.00** for the hot water pipe insulation.

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.

In this case, the Tenants' objections regarding the efficacy of the upgraded security system do not meet the Regulation criteria for dismissal of this capital expenditure. Similarly, the Tenants position that the Landlord's application operates to pass to Tenants the cost of the capital expenditure while the Landlord retains the benefits of lower energy prices is not a basis under the Regulation to dismiss the application.

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 of those items found to meet the Regulation for an additional rent increase.

I find the Landlord completed the work set forth in the application, has paid for the capital expenditures and is bound only by the statutory framework in requesting the additional rent increase.

Based on the above, I find the Landlord is entitled to recover the amount of **\$140,451.45** for capital expenditures in accordance with the Regulation.

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 **\$140,451.45**, for those major components or systems 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 122 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of \$140,451.55.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$9.59 (\$140,451.45 approved capital expenditures ÷ 122 specified rental units) ÷ 120 = \$9.59 per month additional rent increase per unit)**. 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 **\$140,451.45**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve all Tenants with this Decision, in accordance with section 88 of the *Act* within two weeks of this Decision. I authorize the Landlord to serve each Tenant by email if the Tenant has provided the Landlord with an email address for service. The Landlord must also be able to provide a copy to any Tenant that requires a printed copy.

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 29, 2024

Residential Tenancy Branch