



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding TRIUMPH DEVELOPMENT 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 17, 2024.

The parties confirmed service of the Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord by posting to each rental unit door or by hand-delivery to the Tenant. 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 at each hearing. However, not all details of the respective submissions are set forth 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 replacement of the plumbing system servicing the rental property. The residential rental property consists of 8 separate buildings, each building is 3 storeys and has 6 units. The rental buildings were constructed in 1960 and, prior to the plumbing replacement, each building had its original plumbing. Additionally, the units each had original bathtub/showers enclosures with metal frames. The property manager explained that a

contractor had tested water flushing through the plumbing and determined the system failed due to the pipes. When water pressure was restored, more leaks from the plumbing pipes resulted. In May 2023 work began on replacing the plumbing pipes for each of the buildings. The work lasted to late December 2023, and the Landlord made payment on the final invoice on February 1, 2024.

The cost for the plumbing system replacement totals \$549,838.05. The Landlord's representative testified the cost per building was allocated based upon the scope of work done for each building. Invoices were submitted in evidence. The Landlord allocated cost of the pipe replacement per building based upon the invoices as follows:

Unit	Building	Invoice Numbers	Allocated Amount	Total Work Sum
Cost Allocation Per Building				
Building	Invoice Numbers			Total Work Sum Applied For
3955	Inv 104, Inv 106, Inv 108, Inv 111, Inv 118, Inv 131, Inv 209, Inv 134, Inv 12/23, Inv 19/23, Inv 29/23, Inv 30/23, Inv 11810, Inv 11876, Inv 2023-05-9530, Inv 15399, Inv 15455, Inv 15513, Inv 15579, Inv 15635, Inv 15702, Inv 15759, Inv 15761, Inv 15825			\$59,919.11
3957	Inv 104, Inv 106, Inv 108, Inv 111, Inv 118, Inv 131, Inv 209, Inv 113, Inv 132, Inv 13/23, Inv 17/23, Inv 18/23, Inv 19/23, Inv 20/23, Inv 26/23, Inv 11810, Inv 11876, Inv 2023-05-9530, Inv 15399, Inv 15455, Inv 15513, Inv 15579, Inv 15635, Inv 15702, Inv 15759, Inv 15761, Inv 15825			\$85,520.99
3959	Inv 104, Inv 106, Inv 108, Inv 111, Inv 118, Inv 131, Inv 209, Inv 138, Inv 19/23, Inv 25/23, Inv 26/23, Inv 31/23, Inv 11810, Inv 11876, Inv 2023-05-9530, Inv 15399, Inv 15455, Inv 15513, Inv 15579, Inv 15635, Inv 15702, Inv 15759, Inv 15761, Inv 15825			\$63,092.42
3961	Inv 104, Inv 106, Inv 108, Inv 111, Inv 118, Inv 131, Inv 209, Inv 174, Inv 23/23, Inv 26/23, Inv 28/23, Inv 35/23, Inv 11810, Inv 11876, Inv 2023-05-9530, Inv 15399, Inv 15455, Inv 15513, Inv 15579, Inv 15635, Inv 15702, Inv 15759, Inv 15761, Inv 15825			\$64,900.76
3963	Inv 104, Inv 106, Inv 108, Inv 111, Inv 118, Inv 131, Inv 209, Inv 124, Inv 132, Inv 20/23, Inv 22/23, Inv 30/23, Inv 11810, Inv 11876, Inv 2023-05-9530, Inv 15399, Inv 15455, Inv 15513, Inv 15579, Inv 15635, Inv 15702, Inv 15759, Inv 15761, Inv 15825			\$70,048.18
3965	Inv 104, Inv 106, Inv 108, Inv 111, Inv 118, Inv 131, Inv 209, Inv 115, Inv 133, Inv 17/23, Inv 20/23, Inv 23/23, Inv 11810, Inv 11876, Inv 2023-05-9530, Inv 15399, Inv 15455, Inv 15513, Inv 15579, Inv 15635, Inv 15702, Inv 15759, Inv 15761, Inv 15825			\$60,548.54
3967	Inv 104, Inv 106, Inv 108, Inv 111, Inv 118, Inv 131, Inv 209, Inv 115, Inv 15/23, Inv 17/23, Inv 19/23, Inv 25/23, Inv 29/23, Inv 31/23, Inv 11810, Inv 11876, Inv 2023-05-9530, Inv 15399, Inv 15455, Inv 15513, Inv 15579, Inv 15635, Inv 15702, Inv 15759, Inv 15761, Inv 15825			\$75,928.59
3969	Inv 104, Inv 106, Inv 108, Inv 111, Inv 118, Inv 131, Inv 209, Inv 115, Inv 125, Inv 138, Inv 14/23, Inv 19/23, Inv 21/23, Inv 28/23, Inv 30/23, Inv 11810, Inv 11876, Inv 2023-05-9530, Inv 15399, Inv 15455, Inv 15513, Inv 15579, Inv 15635, Inv 15702, Inv 15759, Inv 15761, Inv 15825			\$69,879.46
				\$549,838.05

The Landlord's property manager testified that approximately 85 per cent of the original plumbing pipes were replaced with PEX pipes. The remaining 15 per cent was inaccessible; the property manager stated the horizontal stack in the laundry room area ran through concrete which made it impractical to expose and replace. The Landlord provided photographs of the failed plumbing pipes, which evidence that some pipes remained embedded and not subject to replacement. A hot water tank was replaced as part of the replacement project as it had malfunctioned and was inoperative. The cost further included the replacement of bathtub/shower and metal enclosures that was present in each unit.

Due to the age of the buildings, additional costs were incurred for testing the drywall for asbestos. The Landlord's property manager testified the pipe and bathtub/shower replacement project was delayed, and the cost consequently increased, as the Landlord

elected to have Tenants remain in their units while the work was undertaken rather than displacing Tenants.

The Landlord submitted copies of its general ledger entries for plumbing repairs that had occurred on the buildings between September 2002 and March 2023. The general ledger entries provided information on the scope of the repair and maintenance work completed at that time. Upon inquiry, the Landlord's representative confirmed the general ledger was audited and payments for the maintenance work was made as entered into the ledger.

The Landlord's property manager stated that all pipe replacement, bathtub/shower unit replacements and the hot water tank were expected to last more than 5 years. The representative testified that the pipes, water tank and bathtub fixtures had each exceeded their useful life. The property manager confirmed there was no collateral source of payment (such as insurance) for the plumbing pipes, bathtubs and hot water tank replacement.

Tenant S.H. testified as to an alleged general lack of maintenance in the rental building, and his unit in particular, as evidence that the plumbing pipes were not properly maintained. Tenant S.H. testified the Landlord had owned the rental building complex for approximately 30 years and there was an overall general lack of maintenance, including stained carpeting, bowed floors, pest control issues and damaged windows in units.

Tenant S.H. also noted the invoices included the Landlord's payment to its caretaker for work done as part of the bathtub/shower installation. The Landlord's representative testified the work performed by the caretaker was outside the scope of the caretaker's duties, which consisted of acting as a tenant-liaison and doing minor repairs. Therefore, the representative testified, the payments to the caretaker were not for labor undertaken by the Landlord itself.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that 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 has the evidentiary burden to support their 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 of these regulatory sections, 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 tenants may prevail on dismissal of an application for an additional rent increase for capital expenditure 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 tenants fail to establish the an additional rent increase should not be granted (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, there have been no prior applications for an additional rent increase within the last 18 months before the application was filed. Although the Landlord submitted a prior application for the same work (file no. provided on the cover page to this Decision), that application was dismissed with leave to re-apply.

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 8 rental buildings each having 6 specified dwelling units to be used for calculation of the additional rent increase. The Landlord's application provided for 43 rental units as "specified dwelling units," however, this included units that had 4 new tenants (to which the Landlord stated the additional rent increase would not be imposed) and the caretaker unit. While these 5 units may not be the subject of an additional rent increase, they nevertheless are included as "specified dwelling units" in calculating the additional rent increase for the remaining units. Otherwise, the 43 units would be assessed a larger share of the cost of the work.

4. Amount of Capital Expenditure

The Landlord is claiming the total amount of **\$549,838.05** as detailed in the Landlord's summaries for each capital expenditure set forth above, with allocation to each building as provided 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.

I find the plumbing pipes to be a major component of the building. I find the Work was required as the plumbing pipes had failed and had exceeded its useful lifespan as the plumbing pipes were approximately 63 years old. I find this is sufficient to satisfy the requirements of the Regulation. Additionally, given the plumbing pipes were contained within original drywall used in the construction of the building, I further find it was reasonable that asbestos testing was necessary to accomplish the replacement of the plumbing pipes and fixtures given the age of the structures.

Policy Guideline 40 provides that the useful life for bathtub/shower fixtures is 20 years and the fixtures at issue in this application were approximately 63 years old. Having exceeded the useful life for these items, I find the capital expenditure by the Landlord to replace these fixtures is within the Regulation as the bathtubs are part of the major plumbing system.

With regard to the hot water tank that was replaced, the Landlord stated the tank had failed and required replacement. I accept the Landlord property manager's testimony that the hot water tank required replacement as it was inoperative. I find the hot water tank is necessary for health and safety and inclusion of the cost for this item is within the Regulation.

Residential Tenancy Branch Policy Guideline 37 states:

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

I accept the Landlords evidence that the final payment for the Work was made February 1, 2024, and within 18 months of the Landlord making this application on August 21, 2024.

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. I find it is reasonable to conclude the capital expenditure for each of these items will not be expected to be incurred again within five years. I accept the Landlord's cost-allocation for each building based upon the invoices submitted.

Tenant Objections

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 S.H. took the position the work for which the additional rent increase is sought was the result of generally poor maintenance as demonstrated by maintenance standards in other parts of the building or his unit. The Tenant also objected to payment by the Landlord of the caretaker performing some of the work in the units.

I find these arguments are insufficient to defeat the Landlord's application. I find the Landlord completed necessary repairs, was required to pay for such repairs, and is bound only by the statutory framework in seeking the capital expenditures, and not the

arguments described above. I further find the Landlord did not include an amount for its own labor, by retaining and using the on-site caretaker for some of the work. I accept that the work done by the caretaker was beyond the scope of the caretaker's duties.

I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover for the replacement of plumbing pipes throughout the buildings including the cost associated with the asbestos testing, the replacement of the bathtub/shower units in each unit and the replacement of a hot water tank in the amount of **\$549,838.05**.

Summary

The Landlord's application is granted. The Landlord has established, on a balance of probabilities, the necessary elements required to impose an additional rent increase for total capital expenditures in the amount of **\$549,838.05**, 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 make the following finding for each residential rental building:

- Building 3955 - \$59,919.11 (total allocated cost): \$83.22 per month additional rent increase (calculated as – $(\$59,919.11 \div 6) \div 120 = \83.22)
- Building 3957 - \$85,520.99 (total allocated cost): \$118.78 per month additional rent increase (calculated as – $(\$85,520.99 \div 6) \div 120 = \118.78)
- Building 3959 - \$63,092.42 (total allocated cost): \$87.63 per month additional rent increase (calculated as – $(\$63,092.42 \div 6) \div 120 = \87.63)
- Building 3961 - \$64,900.76 (total allocated cost): \$90.14 per month additional rent increase (calculated as – $(\$64,900.76 \div 6) \div 120 = \90.14)
- Building 3963 - \$70,048.18 (total allocated cost): \$97.29 per month additional rent increase (calculated as – $(\$70,048.18 \div 6) \div 120 = \97.29)
- Building 3965 - \$60,548.54 (total allocated cost): \$84.10 per month additional rent increase (calculated as – $(\$60,548.54 \div 6) \div 120 = \84.10)
- Building 3967 - \$75,928.59 - (total allocated cost): \$105.46 per month additional rent increase (calculated as – $(\$75,928.59 \div 6) \div 120 = \105.46)

- Building 3969 - \$69,879.46 - (total allocated cost): \$97.05 per month additional rent increase (calculated as – $(\$69,879.46 \div 6) \div 120 = \97.05)

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 Landlord's application for an additional rent increase for capital expenditures totaling **\$549,838.05**. 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 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 02, 2024

Residential Tenancy Branch