



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HORIZON TOWERS HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Introduction

On July 12, 2024 (the “Application date”), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”).

The Landlord attended the hearing at the scheduled hearing time. A number of Tenants from the rental unit property were present at the hearing on October 7, 2024.

Preliminary Issue – service and disclosure of evidence

The Landlord provided a copy of each Notice of Dispute Resolution Proceedings separate to each individual rental unit in the rental unit property. They served this to all individual units in this rental unit building by sending all printed notice documents to the building. The building manager either attached the Notice of Dispute Resolution Proceedings to the door of a rental unit, or served it to a tenant in person.

In the hearing, the Landlord clarified that they served the documentation to 167 of 185 total units, with the difference accounting for tenants who had moved out after completion of the capital expenditure work that is the subject of the Landlord’s Application.

I find the Landlord served each tenant at the rental unit property in accordance with the *Act*. Those Tenants present in the hearing did not raise an issue with the timelines or service of the evidence in the Landlord’s possession.

Various tenants provided evidence to the Residential Tenancy Branch. This took the form of a signed printed form stating basic points in response to the Landlord’s Application.

One tenant provided pictures to the Residential Tenancy Branch on the day of the scheduled hearing. They had the chance to speak to this in the hearing. The Landlord stated they did not receive this material. Given that the pictures don’t appear to address the points raised by

this Tenant who presented them, I exclude them from consideration, as well as the fact that they did not disclose this evidence directly to the Landlord within a reasonable amount of time prior to the scheduled hearing date.

Another Tenant served a ledger form containing 63 tenants' signatures; the Landlord confirmed they received this individual piece with more detailed submissions attached.

Issue to be Decided

- Is the Landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

The rental unit property consists of a single building with 185 units in total on 20 floors. In the hearing the Landlord attested to the rental unit property being built in the late 1960s era.

The Landlord filed this Application on July 12, 2024. In the Application (disclosed to each Tenant as the Notice of Dispute Resolution Proceedings) the Landlord provided for "scope of work to include: concrete spalling repairs window & door seal caulking balcony glass frame and insert repairs":

	Description	date completed	paid
1.	exterior work advance payment	Jan 19/2023	\$59,535
2.	payment for work	Mar 6/2023	\$39,690
3.	payment for work continued	Apr 28/2023	\$99,225
4.	payment	Jul 9/2023	\$99,225
5.	payment	Jul 18/2023	\$99,225
Total			\$396,900

For each item, the Landlord presented an invoice to show they paid the amounts listed.

The Landlord provided a series of photos showing the need for work at the rental unit property. They provided a series of photos to show repair to damaged areas.

The Landlord provided a pre-project description (not included as part of the Landlord's capital expenditures) which is the project proposal. This was the quote provided by one firm for clean/prepare surfaces, concrete repair, and painting. This was for walls and 65 balconies,

set at a price of \$22,680. The Landlord provided this as the maintenance record they had from 2015 as part of the evidence consideration for an application of this type.

In the hearing, the Landlord described the entirety of the work taking place within 3 – 4 months for the whole building. They noted: concrete deterioration everywhere; rebar exposed; chips of concrete gone; caulking on balconies; and framing of some glass patio doors had deteriorated and required replacement. They reiterated that concrete was deteriorating to the point where rebar was being exposed; hence this was an issue of repair. The Landlord also clarified that any painting in the building was due to the work involved with reinforcing concrete, and not a fresh coat of paint over the entire building.

Miscellaneous tenants who attended in the hearing raised points of concern or consideration, and some provided written submissions, in one instance signed by 63 tenants:

- their own balcony was only cleaned/painted – no substantial work completed
- washing and general cleanliness of the exterior of the building
- the general hardship renters face in the existing market
- work was not structural in that it involved windows, *i.e.*, “basic and cosmetic maintenance”
- building exterior is not a major component/major system, window/door seal caulking is not major system/component
- the actual ordering and organization of the Landlord's document evidence
- lack or repair records or maintenance records.

Analysis

The *Residential Tenancy Regulation* (the “*Regulation*”), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;

- whether the work was an *eligible* capital expenditure, specifically:
 - to repair, replace, or install a major system or a component of a major system;
and
 - undertaken:
 - to comply with health, safety, and housing standards;
 - because the system/component was either:
 - close to the end of its' useful life, or
 - failed, malfunctioning, or inoperative
 - to achieve either:
 - a reduction in energy use or greenhouse gas emissions; or
 - an improvement in security at the residential property
- and
- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
- and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;

or

- the landlord was paid, or entitled to be paid, from another source.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

“dwelling unit” means:

- (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.

I find there are 185 dwelling units, of which all 185 must be factored into the allowed rent increase as a percentage. For the purpose of calculating an allowed rent increase, the *Act* makes no distinction based on the recentness of a starting tenancy. The focus of the legislation for this is a “specified dwelling unit” affected by an installation made, or repairs/replacement carried out in the property where the dwelling unit is located.

Eligibility and Amounts

For the Landlord’s submitted expenditure, in total, I address whether it was *eligible*, and the expenditure *amount*. I also make findings on whether each expenditure will be incurred again within 5 years.

Overall, I find the Landlord did not provide sufficient detail on all of the work involved in order to determine whether it was work involving a major system or a major component thereof. Tenants raised the issue of only balconies cleaned or caulking re-done on windows or patio doors. This is not specified in the invoices the Landlord provided for the work. I find that is maintenance work, not involving a major system or component. This is not specified in detail in the Landlord’s invoices. What *may* be considered work on a major system/component – which I some structural piece of the building itself – is not set out in abundant detail involving the expense thereof.

I find the Landlord did not meet the burden of proof to show that all work was undertaken to replace/repair a major system or a component thereof.

In sum, there are elements of the Landlord's evidence that involve work on repairing a major component/system; however, I cannot delineate that eligible work specifically from other evidence that points to more routine work that is more likely *not* eligible as per the *Regulation*.

More specifically, the 8 photos the Landlord provided to show the state of some areas of the building prior to work starting are few in number, and don't justify the amount of the expenditure involved. As I stated above, there is a lack of detail on the invoices the Landlord provided, and the work is not itemized by unit, e.g. It is unclear whether work on balconies was that of a major system/component, in light of other details showing that possibly other work involving building concrete was work of that type. I cannot grant even partial consideration for compensation to the Landlord based on this evidence.

The Landlord did not prove all of the necessary elements to show *eligible* capital expenditures. For this reason, I dismiss the Landlord's Application; however, I am granting leave to reapply for an eligible capital expenditure associated with this work.

Conclusion

I dismiss the Landlord's Application for an additional rent increase for the capital expenditure. The Landlord has leave to reapply.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by sending it to Tenants via email where possible. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a printed copy in person.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 6, 2024

Residential Tenancy Branch