Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

This hearing addressed 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 November 21, 2024.

Service of Proceeding Materials

The Landlord confirmed service of Notice of Dispute Resolution Proceeding with correspondence providing Tenants with an on-line link to access the Landlord's evidence on September 5, 2024. Service was by posting to the door of each rental unit. The Landlord submitted an affidavit to confirm this service. I find the Tenants were served with the required materials in accordance with the Act.

Tenant J.H. submitted evidence on behalf of himself and 23 other Tenants. Landlord's counsel confirmed receipt of the Tenant's documents by email on November 12, 2024.

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 attending the 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 residential rental property was constructed in 1978, has 3-storeys and a total of 31 rental units.

The Landlord's application requests an additional rent increase for certain capital expenditures:

- Installation of water efficient toilets in the amount of $10,759.61 (the last payment made by the Landlord on March 6, 2023)
- Replacement of a hot water tank and boiler in the amount of $67,966.61 (after reduction for a $1,800.00 energy efficiency rebate; last payment made by Landlord for this work on August 12, 2024)

Landlord's counsel stated the capital expenditures were incurred in relation to these items 18 months preceding the application. These capital improvements are not expected to reoccur for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The representative further confirmed that each capital improvement was expected to last for at least 5 years and, with the noted exception of a rebate offered by a utility company for installation of an energy efficient product, there were no other sources of payment for these items.

Landlord's counsel explained the Landlord undertook the replacement of toilets in 19 units, installing water efficient toilets. Evidence was presented as to the reduced water consumption attributed to the installation of these toilets: 873 cubic water meters (or, 7.59 cubic meters/day) prior to installation compared to 861 cubic water meters (or, 6.62 cubic meters) after installation was complete, for an annual water savings of 12 cubic meters. The Landlord also provided the manufacturer's specifications for the water efficient toilets to confirm its lower water usage. The specifications sheet states that typical toilets use approximately 6 litres of water per flush but the water efficient model uses on 3 litres per flush. The Landlord paid one invoice for this work on March 14, 2023, in the amount of $10,759.61. There was no rebate or other source of payment and the toilets are expected to last more than 5 years. The invoice also included reference to the installation of showerheads. It was explained the showerheads for several units were replaced at no cost pursuant to a free program offered by the gas utility company to reduce hot water usage with low-flow showerheads and thereby reduce energy consumption.

The Landlord's director of energy, G.W., testified the hot water tanks in the rental building, which provide domestic hot water and heat, were approximately 17 years old at the time a property condition inspection was conducted when the Landlord purchased the building several years ago. As this was beyond the boiler system's useful life, the Landlord replaced the hot water tanks with energy efficient units. Information from the manufacturer regarding the energy efficiency of the boiler system tanks was provided in evidence. The Landlord received one invoice for the new boiler system, paying in full on August 12, 2024, the amount of $69,766.61. The installation company submitted

documentation to the gas utility directly regarding the system's energy efficiency, and the Landlord thereafter received a $1,800.00 rebate from the gas utility. Landlord's counsel submits the hot water tank replacement qualifies for an additional rent increase as the replaced system was both beyond its useful life and because the system is energy efficient.

Tenant J.H. raised objection to the installation of the water efficient toilets, taking the position the replacement of toilets was a voluntary upgrade choice made by the Landlord and were not necessary. He further noted the toilets were not shown to be energy efficient. Tenant J.H. referenced Policy Guideline 50 in his comments.

Landlord's counsel stated Policy Guideline 50 provides direction on compensation due to tenants upon the ending of a tenancy under certain prescribed contexts. Undersigned made inquiry as to the application of Policy Guideline 40 to the present case. Counsel stated the "extraordinary circumstances" referenced in relation to an additional rent increase for building components and other items set forth in the schedule applied to those circumstances where an unexpected destructive event occurs. For instance, counsel stated, a relatively new roof is destroyed in a bomb cyclone event and the landlord must replace the roof and may then request a rent increase to cover this expense. However, counsel continued, the Landlord's application was made pursuant to Regulation 23.1 and not Regulation 23, which applies more generally to rent increases. Tenant J.H. stated there was an ambiguity between the Policy Guideline 40, itemizing the useful life of certain building components, and the Regulation regarding rent increases. Tenant J.H. stated the Landlord knew or should have known of the condition of the building when it purchased the rental property and thus Tenants should not be responsible for the cost of the hot water tanks and boiler system.

Landlord's counsel closed his argument on the issue by stating the Policy Guideline was not ambiguous and under section 8 of the Interpretation Act, legislation was to be interpreted and construed liberally to best realize its objective or purpose. Counsel stated Regulation 23.1 was a result of a rental task force recommendation, which was joined by landlords and tenants in its development. He stated Tenant J.H.'s position would undermine the purpose of the additional rent increase framework provided in Regulation 23.1.

Tenant B.E. stated she was disappointed with the rent increase request and the landlord was aware of the condition of the building. Tenant H.Y.T.L. stated her position that the Landlord was responsible for making improvements to the rental property, not tenants, and the water efficient toilets functioned poorly.

Tenants J.D. and J.P. expressed agreement with Tenant J.H.'s submissions, the latter Tenant also stating rent had recently increased.

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.

As a threshold matter, I find Regulation 23.1 governs the Landlord's application for an additional rent increase. This Regulation sets forth specific grounds for a landlord's application for additional rent in certain defined circumstances. Where, as here, there is specific legislation addressing an issue, that legislation applies over more general legislation (in this case, Regulation 23). Regulation 23 applies to requests for additional rent increases other than those for capital expenditures. Furthermore, Policy Guidelines are not legislation but directives used in the application of the Act and Regulations.

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:
    - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
    - 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));
    - the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and

- 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 31 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 **$78,726.22** as detailed in the Landlord's itemized capital expenditure application and submissions, which includes the gas utility rebate in the amount of **$1,800.00** under a program of partial reimbursement for the installation of energy efficient hot water tanks and boiler systems.

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 framework.

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 for this improvement.

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.

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 decline to include this capital expenditure in the amount of $10,759.61 for purposes of an additional rent increase.

Hot Water Tanks and Boiler System

I find the domestic hot water and heating system for the residential property is a major system as defined by the Regulation. I further find the Landlord incurred the cost to replace this system within 18 months prior to the filing of this application.

I find the domestic hot water and heating system for the residential property is a major system as defined by the Regulation. I further find the Landlord incurred the cost to replace this system on August 4, 2024, within the 18 months' prior to the filing of this application by the Landlord on September 5, 2024. I find the Landlord's capital expenditure for this improvement is $67,966.61, inclusive of gas utility rebate.

I find the prior domestic hot water and heating system was at or near the end of its useful life as determined by the condition report conducted at the time the Landlord purchased the rental property. Additionally, I find the replaced system is an energy-efficient system evidenced by the manufacturer's documentation and the gas utility's grant of a rebate for energy efficiency.

I find it reasonable to conclude the system will not require replacement for at least five years, as demonstrated by the useful life for boilers and commercial hot water tanks set forth in Policy Guideline 40.

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.

I find the Tenants' objections, set forth above, do not address the issues provided for under the Regulation to object to the Landlord's 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 the capital expenditure associated with the installation of new hot water tanks and boiler system to provide domestic hot water and heat to the rental property.

Based on the above, I find the Landlord is entitled to recover for the hot water tanks and boiler system in the amount of **$67,966.61.**

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 **$67,966.61,** for the major system or 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 have found that there are 31 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **$67,966.61.**

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **$18.27 ($67,966.61 ÷ 31 specified units) ÷ 120 = $18.27).** 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 **$67,966.61.** The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord 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 a Tenant by email if the Tenant provided an email address for service and to provide any Tenant with a printed copy if requested by the Tenant.

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: December 7, 2024

Residential Tenancy Branch