Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding CAMSTA 707 ESQUIMALT APARTMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Code ARI-C

Introduction

Camsta 707 Esquimalt Apartment Ltd. applied for an additional rent increase for capital expenditures, under section 43 of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

Camsta 707 Esquimalt Apartment Ltd., represented by legal counsel AAG (the Landlord), the other landlord's agents and the respondents (all named on the cover page of this decision), attended the hearing on December 11, 2024. All the parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Service

The Landlord affirmed that he served the notices of dispute resolution proceeding and evidence (the materials) on October 18, 2024 by attaching individual packages to the rental unit's front doors of all the named respondents. The Landlord submitted a proof of service affidavit dated October 24 indicating service of the materials on October 18.

The attending Tenants confirmed receipt of the materials.

The Landlord confirmed receipt of the response evidence and that he had time to review it.

Based on convincing testimony of the parties and affidavit, I find the Landlord served the materials in accordance with section 89(1) of the Act and that the Tenants served the response evidence in accordance with section 88 of the Act. Thus, I accept service of all the evidence.

Application for Additional Rent Increase

The Landlord is seeking an additional rent increase for 2 expenditures in the total amount of $80,186.56. The expenditures are:

1. Security upgrades
2. Roof fan replacement (ventilation system)

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.

Regulation 23.1 sets out the framework for determining if a landlord is entitled to impose an additional rent increase for expenditures.

Regulation 23.1(1) and (3) require the landlord to submit a single application for an additional rent increase for eligible expenditures “incurred in the 18-month period preceding the date on which the landlord makes the application”.

Per Regulation 23.1(2), if the landlord “made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.”

Regulation 23.1(4) states the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all the following:

> (a) the capital expenditures were incurred for one of the following:
> (i)the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [landlord and tenant obligations to repair and maintain] of the Act;
> (ii)the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
> (iii)the installation, repair or replacement of a major system or major component that achieves one or more of the following:

(A) a reduction in energy use or greenhouse gas emissions;
(B) an improvement in the security of the residential property;
(b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
(c) the capital expenditures are not expected to be incurred again for at least 5 years.

Per Regulation 23.1(5), tenants may defeat an application for an additional rent increase for expenditure if the tenant can prove, on a balance of probabilities, that the expenditures were incurred:

(a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
(b) for which the landlord has been paid, or is entitled to be paid, from another source.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed for the reasons set out in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

Regulation 21.1 defines major component and major system:

"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;
"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;

I will address each of the legal requirements.

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claim and my findings are set out below.

Number of specified dwelling units and benefited units

The Landlord stated the 149-rental unit building was built approximately 40 years ago and that all the expenditures benefit all the Tenants.

The Landlord submitted a fire and line safety assessment dated March 25, 2022 (the Report) signed by an engineer. It states:

> Our assessment involved visual survey of public areas of the building and no access to suites. The site review took place on March 17, 2022. [page 2]
> The building was built circa 1972. It has 149 units in total [page 3].
> The building is ventilated by a pressurized hallway system. Units are provided with fresh air via the hallways which are pressurized by five Make Up Air (MUA) units on the roof. Fresh air coming from the hallways through grilles. The MUA units appear original to the building and are beyond their service life of 20 years.[page 6]

Tenant ABR testified he is an army engineering technician and tenant ROS was responsible for maintaining the building. Both of them, and also tenant JHO, said the air from the roof fans does not benefit the units on the first and second floors, as there are a lot of fire safety doors which prevent the air from arriving on the first and second floors.

Landlord GWI affirmed he works in energy systems and that the air captured by the fans funnels down the stairwells and reaches all the floors.

Based on the Landlord's agent GWI and the Report, I find the ventilation from the roof fans benefits all the units in the building, as the report indicates the fans provide pressurized air to the hallways and do not exclude specific floors.

Thus, I find the rental building has 149 rental units and that they all benefit from the expenditures.

In accordance with Regulation 21.1(1), I find there are 149 specified dwelling units.

<u>Prior application for an additional rent increase and application for all the tenants</u>

The Landlord stated he did not submit a prior application for an additional rent increase and that the Landlord is seeking an additional rent increase for all the tenants, except 7 units that were empty when he submitted this application.

Based on the Landlord's undisputed and convincing testimony, I find that the Landlord has not submitted a prior application for an additional rent increase in the 18 months preceding the date on which the landlord submitted this application, per Regulation 23.1(2).

Based on the Landlord's convincing testimony, I find the Landlord submitted this application against all the rental units on which the Landlord intends to impose the rent increase, per Regulation 23.1(3).

Expenditures incurred in the 18-month prior to the application

The Landlord submitted this application on October 3, 2024.

Regulation 23.1(1) states the Landlord may seek an additional rent increase for expenditures incurred in the 18-month period preceding the date on which the landlord applied.

Thus, the 18-month period is between April 2, 2023 and October 2, 2024.

The Landlord testified the expenditures for the security systems happened between January 17, 2024 and April 4 and for the ventilation system happened on April 6, 2023.

The Landlord submitted into evidence the invoices with the dates mentioned in the above paragraph.

Based on the Landlord's convincing and undisputed testimony and the invoices, I find the Landlord incurred all the expenditures in the 18-month period, per Regulations 23.1(1) and 23.1(4)(b).

Expenditures not expected to occur again for the next 5 years

The Landlord said the expenditures are not expected to occur again for at least 5 years, as the life expectancy of the expenditures is more than 5 years.

The Tenants affirmed the security systems are not up to code and they do not believe it will last 5 years, and that the security cameras are not installed in accordance with technical requirements.

I find the Tenants' testimony about technical requirements vague, as they did not explain these requirements.

Based on the Landlord's more convincing testimony, I find that the life expectancy of all the expenditures is more than 5 years, and they are not expected to be incurred again for at least 5 years. Thus, I find that the capital expenditures incurred are eligible capital expenditures, per Regulation 23.1(4)(c).

Payment from another source

The Landlord stated that he is not entitled to be paid from another source for the expenditures claimed.

The Tenants testified the Landlord could possibly have been aware of these expenditures when he purchased the building in 2022 and paid the asking price for the building, taking into account the necessary improvements for the building.

I find the Tenants' arguments not convincing, as they did not explain how the Landlord could have paid less for the building in 2022 and assumed that the Landlord could have obtained a price reduction when he purchased the building. The Tenants did not provide reports or convincing submissions about their assumption that the Landlord could have paid a lower price for the rental property in 2022.

Based on the Landlord's convincing testimony, I find the Landlord is not entitled to be paid from another source for the expenditures, per Regulation 23.1(5)(b).

Type and reason for each expenditure

I will individually analyze the expenditures claimed by the Landlord.

Security Upgrades

The Landlord said he installed 9 new cameras, which provide better images to protect the rental building, the associated new computer systems and cable to use the new cameras, and some fob readers around the property (including the laundry and yoga

rooms and some entrance doors). The Landlord submitted 3 photographs showing the new cameras and affirmed he paid $66,454.66 for this improvement.

The Tenants stated:

- with the prior cameras, they could see who was trying to enter the building, and they cannot do this with the new cameras
- the new fobs are not working
- the new cameras are not an upgrade
- the new cameras are not monitored and their parcels have been stolen after the security upgrades were installed

The Landlord testified the Tenants did not inform him about any issues with the new fobs or stolen parcels prior to the hearing and that the security cameras are monitored.

RTB Policy Guideline 37C states:

> The Regulation defines a “major system” as an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants. A “major component” is a component of the residential property that is integral to the property or a significant component of a major system.
> Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. **Examples of major systems or major components include, but are not limited to, the foundation**; load-bearing elements (e.g., walls, beams, and columns); the roof; siding; **entry doors;** windows; primary flooring in common areas; subflooring throughout the building or residential property; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; **security systems**, including cameras or gates to prevent unauthorized entry; and elevators.
> **A major system or major component may need to be repaired, replaced, or installed so the landlord can meet their obligation to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.** Laws include municipal bylaws and provincial and federal laws. For example, a water-based fire protection system may need to be installed to comply with a new bylaw.
> Installations, repairs, or replacements of major systems or major components will qualify for an additional rent increase if the system or component has failed, is malfunctioning, or is inoperative. For example, this would capture repairs to a roof

damaged in a storm and is now leaking or replacing an elevator that no longer operates properly.

Installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of or has exceeded its useful life. A landlord will need to provide sufficient evidence to establish the useful life of the major system or major component that was repaired or replaced. This evidence may be in the form of work orders, invoices, estimates from professional contractors, manuals or other manufacturer materials, or other documentary evidence.

Repairs should be substantive rather than minor. For example, replacing a picket in a railing is a minor repair, but replacing the whole railing is a major repair. Cosmetic changes are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or component. For example, a landlord may replace carpet at the end of its useful life with porcelain tiles even if it costs more than a new carpet.

The following is a non-exhaustive list of expenditures that would not be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:

• repairing a leaky faucet or pipe under a sink,
• routine wall painting, and
• patching dents or holes in drywall.

(emphasis added)

Based on the Landlord's more convincing testimony, the invoices and the photographs, I find the security equipment improves the rental building's security, as it is less likely that someone will be able to break-in a building equipped with the 9 new cameras and extra fobs.

The Landlord was not aware of the alleged issues about the fobs. The Tenants are at liberty to submit a request for repairs regarding the fobs alleged malfunctioning.

The Act does not require that security systems be perfect. In fact, a perfect security system likely does not exist. I find that adding 9 cameras increases the property's security, as cameras deter criminal activity.

Policy Guideline 37C states the security system is a major system. I find that security cameras and fobs are part of the building's security system.

Considering the above, I find that the expenditure of $66,454.66 to install the security equipment is in accordance with Regulation 23.1(4)(a)(iii)(B), as the security equipment improves the rental building's security.

The Landlord said that the expenditures were not necessary because of inadequate repair or maintenance.

Tenant TWA affirmed he is a licensed technician to install security systems and the Landlord did not have a permit to install the security system. TWA submitted photographs showing old wires used in the system.

Landlord ASO stated the photographs submitted by TWA show the wires used in the previous system.

Based on the Landlord's more convincing testimony, I find the Landlord proved that the security upgrades were not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a). The Act does not require the Landlord to present a permit for the installation of security upgrades.

Ventilation system

The landlord replaced the previous ventilation system that provides fresh air to all the hallways and common areas of the building because the previous equipment was 40 years old. The Landlord paid the $13,731.90 invoice submitted for the new ventilation system.

The Tenants testified there were 5 fans and now there are 6. The Tenants asked to see maintenance records and did not receive them. The Tenants said the Landlord did not prove he properly maintained the old fans and that this expense was not unforeseen, as the Landlord purchased the building in 2022 knowing it was built in 1972.

The Landlord affirmed he does not have maintenance records prior to 2022, as he only purchased the building that year. The Landlord stated there is no evidence indicating

the prior fans were not properly maintained, as they lasted 40 years and their useful life is 15 years.

Based on the Landlord's convincing testimony and the invoice, I find the Landlord proved that he replaced the ventilation system which provides fresh air to all the tenants and the prior fans were 40 years old.

I find that the ventilation system is a major component of the rental building, as ventilation is integral to the rental building, per Regulation 21.1 and Policy Guideline 37C.

Policy Guideline 40 states that the ventilation systems' useful life is 15 years.

I accept the undisputed testimony that the prior fans were 40 years old when the Landlord replaced them.

I find the discrepancy raised in the number of fans (from 5 to 6) is not relevant, as it is a discrepancy of only 1 fan.

Considering the above, I find that the expenditure of $13,731.90 to replace the ventilation system is in accordance with Regulation 23.1(4)(a)(ii).

Based on the Landlord's more convincing testimony, I find the Landlord proved that the prior fans did not need to be replaced due to inadequate maintenance, as they were 40 years old, and their useful life is 15 years, per Regulation 23.1(5)(a).

Outcome

The Landlord has been successful in this application, as the Landlord proved that all the elements required to impose an additional rent increase for expenditure and the Tenants failed to prove the conditions of Regulation 23.1(5).

In summary, the Landlord is entitled to impose an additional rent increase for the following expenditures:

Expenditure	Amount $
Security upgrades	66,454.66
Ventilation system	13,731.90
Total	**80,186.56**

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 specified dwelling units divided by the amount of the eligible expenditure divided by 120. In this case, I have found that there are 149 specified dwelling units and that the amount of the eligible expenditure is $80,186.56.

The Landlord has established the basis for an additional rent increase for expenditure of $4.48 per unit ($80,186.56 / 149 units / 120). If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 37C, Regulations 23.2 and 23.3, 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 (http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1) for further guidance regarding how this rent increase may be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for expenditures of $4.48 per unit. The Landlord must impose this increase in accordance with the Act and the Regulation.

The Landlord must 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 *Act*.

Dated: December 20, 2024

Residential Tenancy Branch