



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WELBEC CYPRESS MR HOLDINGS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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 December 2, 2024.

The Landlord's representative confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord to each Tenant by posting on the rental unit door on October 18, 2024. The Landlord provided copies of photographs of each package as posted to each rental unit door to confirm this service. I find the Tenants were served with the required materials in accordance with the Act.

The Tenants in attendance confirmed they had not submitted documentary evidence for this proceeding. No other Tenant submitted documentary evidence for this hearing.

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 1969, has 3-storeys and a total of 43 rental units. The Landlord's application requests an additional rent increase for a capital

expenditure in the amount of \$20,199.90 for the replacement of domestic hot water tanks with energy efficient tanks. The representative stated the Landlord purchased the property in March 2023. The water tanks were in a dilapidated state, rusty and leaking. The Landlord submitted photographs of the tanks to establish their poor condition. The representative testified that one tank was in very poor condition and he had been informed that it posed a safety issue. The second tank was operating sub-optimally and was providing only inconsistent heat to the building, leading to Tenant complaints. The Landlord consulted with a plumbing company and was informed the rusty, leaking tank was estimated to be 12 to 15 years old and past its useful life. The second tank was determined to be "firing" improperly and required replacement.

The Landlord's representative stated the two tanks were replaced with 4 on-demand hot water tanks and one storage tank. The representative stated the installation of the new tanks was completed on November 17, 2023 and payment for the in the total amount of \$20,199.90 was made on November 23, 2023. A copy of the plumbing company's invoice for the installation was provided in evidence. The invoice notes the on-demand water tanks are high-efficiency. The Landlord also provided photographs of the installed energy efficient hot water tanks and storage tank.

The representative stated the on-demand tanks have a 0.96 rating; meaning, that only 4 per cent of the energy used to heat the water was lost, whether in transmission or similar. The rusted and leaky tank had a 0.60 rating, with 40 per cent of energy to heat the water in the tank lost; and, the other tank had a 0.75 rating reflecting a 25 per cent energy loss. The representative further explained the older tanks required particularized disposal because of their composition whereas he had been informed the on-demand tanks were plastic and could be recycled.

The Landlord's representative testified the capital expenditure was incurred in relation to the work completed within 18 months preceding the application filed by the Landlord on September 17, 2024. Additionally, this expense was not anticipated to reoccur for at least five years. The representative further confirmed the new on-demand hot water and storage tank were expected to last for at least 5 years. The representative testified there was no other source of payment for these expenditures as the natural gas utility company that had previously offered rebates for the installation of energy efficient hot water systems had closed that program prior to the installation of these tanks and the electric utility company did not offer rebates.

The legal advocate for Tenants S.L. and J.M. inquired as to the status of any grants or rebates the Landlord could avail itself to off-set some or all of the cost for the hot water tanks. As noted, the representative stated the available program from the natural gas company had closed prior to the installation of the energy efficient tanks and the other utility company did not offer any rebates. The Tenants' advocate also noted the Landlord provided no maintenance records. The Landlord's representative advised the previous owner provided no maintenance records to the Landlord when the property

transferred ownership in March 2023 – approximately 7 or 8 months prior to the replacement of the hot water tanks.

Tenant G.Z. stated that only one tank required replacement (the rusty, leaky tank) and the Landlord did not need to instal an entirely new system. He further stated Tenants were not previously informed the Landlord was installing a new hot water system which the Tenants would be required to pay for and the system did not work well in any event. Tenant G.Z. noted he was elderly and on a fixed income, many tenants in the rental units were similarly situated and the increased rent would pose a hardship to those on fixed incomes.

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.

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));
- 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 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 find there have been no prior applications for an additional rent increase within the 18 months prior to filing 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 43 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 **\$20,199.90**, for the installation of the energy efficient on-demand hot water tanks. The Landlord's representative testified there is no collateral source, grants 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.”

High Efficiency On-Demand Hot Water Tanks

I find the hot water tanks are a major component or system of the rental building. I find the Landlord has provided sufficient evidence to establish, on a balance of probabilities, the replaced hot water tanks were at or near the end of their useful life and had failed in operation.

Policy Guideline 37C states: “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.” I further find the new hot water tanks installed are energy efficient. I accept the representative’s testimony the tanks operate at a high rate of efficiency, with a minimal loss in energy.

I accept the Landlord’s evidence that final payment for the hot water tanks was made November 23, 2023, within 18 months of the Landlord filing this application on September 17, 2024. The Landlord provided the invoice 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 this capital expenditure will not be expected to reoccur again within five years. I further accept the Landlord’s representative’s testimony there was no other source of payment (such as grants or rebates).

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.

While the Tenants' advocate raised the issue of the Landlord's failure to provide maintenance records, I note the Landlord did not receive these records from the prior owner when the Landlord purchased the building approximately 7 or 8 months before the hot water tanks failed or were at the end of their useful life. I decline to dismiss the Landlord's application for replacing the failed hot water tanks for lack of maintenance records it did not have access to in the first instance.

I also find the lack of maintenance records is not relevant to the installation of energy efficient improvements in a rental building as the installation of energy efficient components or systems is not dependent upon a the replaced component or system failing or being at or near the end of its useful life to qualify under the Regulation for purposes of an additional rent increase. I accept the Landlord's submission that any available grants or rebates from utility companies for the installation of energy efficient hot water tanks was not available at the time of installation.

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.

Based on the above, I find the Landlord is entitled to recover for the hot water tanks, the sewer pipe repair and the window and sliding glass door replacements in the amount of **\$20,199.90**.

Summary

The Landlord has been successful in this application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$20,199.90**, for the installation of energy efficient hot water tanks 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 43 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$20,199.90**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$3.91 ($\$20,199.90 \div 43 \text{ specified dwelling units} \div 120 = \3.91 per month)**. 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 **\$20,199.90**. 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 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 3, 2024

Residential Tenancy Branch