



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WELBEC PROPERTIES INC.
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 November 27, 2024.

The Landlord 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 submitted photographs of the proceeding package posted to each rental unit door. I find the Tenants were served with the required materials in accordance with the Act. No Tenant submitted documentary evidence for this proceeding.

Issue for Decision

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

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants attending each hearing. However, not all details of the respective submissions are reproduced in this Decision. Only that 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 certain capital expenditures made by it:

- Installation of energy efficient LED lighting in the amount of \$33,831.00 (Landlord's last payment made on July 4, 2024)

- Installation of heat pumps with air conditioning in each rental unit in the amount of \$145,454.40 (Landlord's last payment made June 27, 2024)

The residential rental property was constructed in 1971 and has a total of 36 rental units. The Landlord's representative states the capital expenditures were incurred in relation to this work within 18 months preceding the application and these expenses 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 there was no other source of payment for these expenditures.

The Landlord's representative stated the lighting in the rental units was fluorescent and the bulbs contained mercury which posed an environmental hazard. Additionally, the fluorescent lighting was not energy efficient. The Landlord therefore undertook the installation and retrofitting of the lighting fixtures in each unit to energy efficient LED lighting. The representative testified he was informed the energy efficient LED lighting would reduce electricity consumption by 75 per cent compared to the fluorescent lighting. Furthermore, he stated, the upgraded lighting bulbs were 15 watt as compared to the 60 to 75 watt bulbs of the previous lighting system.

The Landlord also installed in each rent unit a heat pump with air conditioning capability. The Landlord submitted a photograph of the installed dual-purpose heat pump in each unit. The representative stated the impetus for the Landlord's installation of this was a heat-related death of an elderly resident during a heat wave a few years ago. The Landlord was concerned vulnerable tenants have access to air conditioning in the event of another heat wave. The representative testified the heat pump/air conditioning units were energy efficient. He stated the industry standard for the heat pumps was an annual 50 per cent reduction in energy use with a reduction in annual greenhouse gas emissions at 65 per cent. The representative stated the heat pumps had a 10-year warranty and had a 20-year useful life with maintenance.

Tenants in attendance at the hearing raised objections to the LED lighting, noting they used energy efficient light bulbs with the existing lighting fixtures. A Tenant stated the change in lighting now required the building manager to attend to any LED lighting issue. Additionally, another Tenant noted he recycled his old lighting bulbs in any event, and there was no environmental hazard as a result.

The Tenants also objected to the installation of the heat pumps, although noting they were not "ungrateful" for the installation of the heat pump/air conditioning unit. One Tenant stated the installer of the heat pump/air conditioning unit placed it in the corner of his rental unit and he expressed concern this placement would be able to provide adequate heat for throughout the rental unit. Additionally, the Tenants stated they had their own air conditioning units already. Another concern was the cost for heating would now shift to the Tenants individually as the Landlord had includes heat in their monthly rent with the current boiler system.

A Tenant also stated that if the Landlord were concerned about energy efficiency, a better choice would be the replacement of the single pane windows with double-pane windows in each unit.

The Landlord's representative stated the current boiler system remains in use and the Landlord includes the cost of heat in the monthly rent. The representative stated the heat pumps were installed at this time principally for the air conditioning function, and the Landlord expected the boiler system would eventually go "off-line" as it was original to the building and past its useful life although still operational due to regular maintenance. The representative stated the selection of where to install the heat pump in each rental was done by the installer, and the Landlord deferred to their knowledge and expertise in selecting the location to provide adequate heat to the rental unit.

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 last 18 months before this 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 36 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 **\$179,285.40** as detailed in the Landlord's itemized capital expenditure set forth above, there being no collateral source or rebates available to off-set this cost.

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.”

LED Lighting Upgrade in Common Areas and Rental Units

I find the lighting in the residential rental building is a major component or major system. I further find the LED lighting qualifies as an energy efficiency capital expenditure permissible under the Regulation for an additional rent increase. Based upon the evidence, I find the LED lighting installed by the Landlord is an energy efficient system and results in the reduction of energy use.

I accept the Landlord’s evidence the final payment for the lighting upgrade was made July 4, 2024, within the preceding 18 months of the Landlord making this application on September 17, 2024. I further accept the Landlord’s representative’s testimony there was no other source of payment (such as insurance proceeds or rebates) to pay for some or all of the capital expenditure and the expenditure for the lighting upgrade is not expected to reoccur for at least 5 years.

Based upon the evidence, the Landlord’s capital expenditure in the amount of **\$33,831.00** qualifies for an additional rent increase as the lighting upgrade reduces energy use.

Dual Heat Pumps with Air Conditioning

I find the heat pumps with air conditioning capability are a major component or system of the rental building. I accept the Landlord’s submissions as to the energy efficiency of these units. I find the final cost for the heat pumps was paid by the Landlord on June 27, 2024, within the 18-month period preceding the Landlord’s application. I accept the Landlord’s submission that there was no other source of payment for this capital expenditure. I also accept the Landlord’s submission that the current boiler providing heat is original to the building and past its useful life, although it is currently operational. Policy Guideline 40 provides that the useful life of a heating system is 15 years and a

commercial hot water tank is 20 years. The boiler currently servicing the rental property is approximately 50 years old. The Regulation permits for the replacement of a major component or system when it is at or near the end of its useful life.

I find, based upon the evidence submitted, the Landlord incurred a cost of **\$145,454.40** for the installation of the heat pumps with air conditioning capacity. I further accept the Landlord's representation there was no other source of payment for this capital expenditure. I find the capital expenditure is not anticipated to reoccur for at least five years, as the evidence provided by the Landlord is the heat pumps have a useful life of 20 years with maintenance and have a 10-year parts and labor warranty. I find the installed heat pumps are energy efficient and are intended to replace the boiler which has reached its useful life, each of which is permitted under the Regulation for an additional rent increase.

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.

In this case, I find the Tenants' objections do not establish a basis under the Regulation to dismiss the Landlord's application.

Based on the above, I find the Landlord is entitled to recover for the installation of energy efficient LED lighting and energy efficient heat pumps with air conditional capacity in the amount of **\$179,285.40**.

Summary

The Landlord has been successful with 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 **\$179,285.40**, 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 have found that there are 36 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$179,285.40**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$41.50 (\$179,285.40 ÷ 36 specified dwelling units) ÷ 120 months = \$41.50 per month per unit**). 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 **\$179,285.40**. The Landlord may only impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the tenants with this Decision, in accordance with section 88 of the Act. This service must occur within two weeks of this Decision. I authorize the Landlord to serve each 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 1, 2024

Residential Tenancy Branch