Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding CAMSTA 3205-3215 WETHERBY APARTMENTS LTD and [tenant name suppressed to protect privacy]

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 October 27, 2024.

The Landlord confirmed service on September 12, 2024, to each Tenant with the Notice of Dispute Resolution Proceeding with correspondence providing Tenants with an on-line link to access the Landlord's evidence. Service was accomplished by posting the proceeding package to the door of each rental unit. The Landlord submitted an affidavit to confirm this service. Additionally, the Landlord served each Tenant with further evidence (regarding the water-efficient toilets) by posting to each rental unit door on October 22, 2024, providing an affidavit to confirm that service. I find the Tenants were served with the required materials in accordance with the Act.

During the hearing, an issue arose regarding the Landlord's request for an additional rent increase premised upon the Landlord's installation of FOB-system for entry to the rental buildings and individual units. A Tenant testified during the hearing that FOB's had been issued by the previous landlord and inquired as to the necessity of the Landlord re-issuing or re-installing a FOB system when FOB's were presently in use. A second issue arose regarding the water-efficient toilets installed by the Landlord and whether all units in the rental buildings had received these toilets.

In order to allow the parties to further investigate these issues, with an opportunity to submit any relevant and material evidence, by Interim Decision dated October 27, 2024, the Tenants were afforded 30 days from the hearing date to make additional submission

and the Landlord thereafter had an additional 30 days within which to make its submissions.

On November 22, 2024, a group of Tenants submitted additional information regarding the security system the Landlord had upgraded in the buildings. The Tenants further provided confirmation that their evidence had been provided to the Landlord by email.

On November 29, 2024, the Landlord withdrew its request for that portion of the additional rent increase based upon the capital expenditure for installation of water-efficient toilets. A copy of the letter, and confirmation of service to all Tenants, was provided by the Landlord. I grant the Landlord's request for withdrawal of an additional rent increase for the installation of the water-efficient toilets.

On December 19, 2024, the Landlord submitted its evidence regarding the security system. The Landlord also provided confirmation of service of its supplemental submissions to the Tenants. This evidence addressed the security cameras that were installed, their location and the video system capability. Based upon the Tenants' submissions, the Landlord withdrew from its application the cost of the FOB system, which it determined was $777.60 plus GST for a total of $816.48. The Landlord stated in its supplemental submission it was proceeding with the balance of the cost for the security system upgrades totaling $35,083.12. I grant the Landlord's request for withdrawal of the cost of the FOB's where issued by the previous landlord. The Landlord further determined it had received a rebate from the utility company in the amount of $2,475.00 for the hot water tank and boiler installed in Building 3215. The Landlord amended its application to reduce this capital expenditure to $62,571.80. I grant the Landlord's amendment to its application reducing the capital expenditure for the hot water tank and boiler to account for the rebate it received from the utility company for installation of energy-efficient products.

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 two residential rental buildings were constructed in 1982, have 4 storeys each and a total of 89 units. Building 3205 has 54 rental units, and Building 3215 has 35 units.

The Landlord's application, as revised in its supplemental filing, requests an additional rent increase for the following capital expenditures:

- LED lighting in common areas - $46,452.00 (last invoice for this work paid by Landlord on May 1, 2023)
- Security upgrade - $35,083.12 (including cost reduction for some FOB's; last invoice for this work paid by Landlord on April 19, 2023)
- Boiler and hot water heater (for Building 3215) - $62,571.80 (last invoice paid by Landlord on June 3, 2024, includes rebate for installation of energy-efficient products)

The Landlord provided proof of the cost for each capital expenditure as well as proof of payments. Landlord's counsel confirmed there had been no prior applications for additional rent increase within the 18-month period prior to the filing of this application. The Landlord takes the position that, in interests of equity and fairness, any approved additional rent increase will be imposed on those Tenants who were in their rental units before May 1, 2023. Stated otherwise, the Landlord will not impose the additional rent increase on Tenants who moved in on or after May 1, 2023.

Landlord's counsel stated the LED lighting retrofit was undertaken for both buildings. The LED lighting included the replacement of lights in the common areas of both buildings as well as exit signs. The prior lighting system was fluorescent and the LED lighting is energy-efficient. The Landlord's representative G.W. confirmed evidence submitted by the Landlord to establish the reduced annual kilowattage used in the year subsequent to installation of the LED lighting. The Landlord's representative confirmed there were no rebates offered for this product. Landlord's counsel also noted the LED lighting enhanced security for building occupants, invitees and guests. The Landlord's submission states it is not anticipated the lighting upgrade will require replacement in the next 5 years.

The security upgrade consisted of the additional of 11 security cameras (not replacements) throughout the common areas of each building (5 cameras for Building 3205 and 6 cameras for Building 3215), including the stairways, halls, laundry room, bike room and at the entrances to each building. Security cameras were also installed in the underground parking areas for each building. In its supplemental submission, the Landlord provided detailed information as to the location of each security camera and the video recording functions of the new security system. The Landlord notes the installation of security cameras in common areas that were not previously monitored enhances security for all occupants and their guests, by deterring harmful acts and theft.

The security system upgrade also included the provision of FOB's and keyless access entry readers to common areas that were not previously part of the FOB system

installed by the prior landlord. This includes a common “party/amenity” room located in Building 3205 but available for all Tenants to use. The security upgrade was anticipated to last at least 5 years.

The Landlord’s evidence is the hot water tank and boiler were replaced in Building 3215 as the existing system was 35 years old and past its useful life and requiring installation of a new system. In its supplemental submissions, the Landlord corrected its representative’s testimony at the hearing that no rebate was provided for the installation of the energy efficient hot water tank and boiler. The Landlord stated the utility company had provided an energy-efficient incentive rebate in the amount of $2,475.00, thereby reducing the cost of the capital improvement to $62,571.80. The Landlord’s submission provides it is not expected for this expense to re-occur in the next 5 years.

Several Tenants noted the security system (FOB’s) did not operate properly. For instance, Tenant D.C. stated the access to the laundry facility was not functioning “at all.” Tenant P.B. stated the buildings already had an FOB system the Landlord was now replacing and the previous system was operational. In a supplemental submission, the Tenants provided documentary evidence from their previous landlord dated December 20, 2018, stating the installation of the FOB system was nearing completion and tenants would soon be receiving their FOB’s. Tenant P.B. testified at the hearing she did not receive a new FOB from the Landlord upon its installation of the new FOB system.

The Landlord’s supplemental submissions notes that although several Tenants stated the FOB system was not operating properly for them, the Landlord had received no complaints to that effect. The Landlord also undertook its own investigation to determine if the FOB and access card reader system was working properly and found it operational.

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:
    - 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 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 filed by the Landlord for the subject residential rental buildings in the 18 months preceding the filing of 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 89 specified dwelling units to be used for calculation of the additional rent increase related to the LED lighting and the security system upgrade. For purposes of the capital expenditure for the installation of a new boiler and hot water tank, there are 35 specified units.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **$81,535.12** as detailed in the Landlord's itemized submissions set forth above for the LED lighting upgrade and security system for both buildings; and, **$62,571.80** for the installation of a new boiler and hot water tank for Building 3215, there being no other source of partial or full payment for any item. The Landlord provided in evidence invoices and proof of payment for these capital expenditures.

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

I find the lighting in the residential rental buildings is a major component or major system. I further find the LED lighting qualifies as an energy-efficient capital expenditure permitted under the Regulation for an additional rent increase. Based upon the Landlord’s evidence establishing the decreased consumption of energy use for the LED lighting, 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 May 1, 2023, within the preceding 18 months of the Landlord making this application on August 20, 2024. I further accept the Landlord’s statement there was no other source of payment (such as rebates) available to pay for some or all of the capital expenditure and 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 $46,452.00 qualifies for an additional rent increase as the lighting upgrade reduces energy use.

Security System Upgrades

Policy Guideline 37C provides that security systems, including cameras and other mechanisms to prevent unauthorized entry, are a major system and major component “essential to support or enclose a building…or support a critical function of the residential property.” I find the upgraded security system, including upgraded security cameras and keyless access cards, meet the criteria of the Regulation allowing for the installation of a major component or system that improves the security of the residential property. The security cameras and access card readers promote and enhance security to Tenants, the building and its contents.

The Landlord’s supplemental submissions note the FOB system allows the Landlord to track who uses the FOB for entry into each building and common area rooms, thereby increasing security and discouraging harmful acts to others and/or property.

I also accept the Landlord’s evidence the LED lighting upgrade in common areas, as well as the updated signage, enhances security. The updated signage provides enhanced visibility for first responders as well.

I accept the Landlord’s payment for this work occurred on June 3, 2024, as documented by the Landlord, and there was no other source of payment for this work. This is within

the 18 months preceding the Landlord's application. I accept the Landlord's submission it is not anticipated this work will be required again within 5 years.

Therefore, I find the Landlord is entitled to include the amount of $35,083.12 in its application for additional rent increase for capital expenditures for the upgrades and additions to the security system.

Hot Water Tank and Boiler Replacement

I find hot water tank and boiler in Building 3215 are a component of a major system in a residential building and are necessary for health and safety reasons for occupants. Policy Guideline 40 states domestic hot water tanks have a useful life of 10 years and commercial hot water tanks have a useful life of 20 years. The Landlord submitted evidence the hot water tank and boiler were approximately 35 years old and past its useful life. I accept the Landlord's evidence that the hot water tank and boiler were at or exceeded their useful life and required replacement.

Additionally, I find the boiler and hot water tank qualify as energy-efficient capital improvements based upon the utility company's rebate for qualifying energy-efficient products. The final payment for the hot water tank and boiler was made on June 3, 2024, and the cost for these capital improvements based upon the Landlord's evidence is $62,571.80. I further accept the representative's testimony that the replacement hot water tanks have a useful life of more than 5 years.

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.

Several Tenants raised the issue that the FOB's were not always functional. Furthermore, Tenants stated the LED lighting was a benefit to the Landlord in reduced energy consumption with the Tenants bearing the cost of the improvement. However, the Tenants' objections do not meet the criteria under the Regulation necessary to defeat 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 these capital expenditures.

Based on the above, I find the Landlord is entitled to recover for the boiler, hot water tank, upgraded LED lighting installation and security system upgrades in the total revised amount of **$144,106.92**.

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 **$81,535.12,** for the LED lighting and security system upgrades installed for both Buildings; and a further additional rent increase of **$62,571.80** for Building 3215 for the hot water tank and boiler replacements.

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, for purposes of calculating the additional rent increase for the upgraded security system and LED lighting, I have found that there are 89 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **$81,535.12.** I find the Landlord has established the basis for an additional rent increase for these capital expenditures of **$7.63 per month per unit ($81,535.12 ÷ 89) ÷ 120 = 7.63).**

I find there are 35 specified unit for Building 3215 for purposes of determining the additional rent increase for the installation of a new boiler and hot water tank at a cost of **$62,571.80**. I find the Landlord has established the bases for an additional rent increase for this capital expenditure of **$14.90 per month per unit ($62,571.80 ÷ 35) ÷ 120 = 14.90).**

The total additional rent increase for Building 3205 is $7.63 per month; and,
the total additional rent increase for Building 3215 is $22.53 per month.

If the amount of additional rent increase 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.

I accept the Landlord's position that it will impose this additional rent increase only for those Tenants in either building as of May 1, 2023, and will exempt from this additional rent increase any Tenant who moved into a rental unit in either building on or after May 1, 2023.

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 **$144,106.92.** The Landlord must impose the increase as set forth above 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 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 with authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 22, 2025

Residential Tenancy Branch