Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding AMSTAR 1701 CEDAR HILL APARTMENTS LTD and [tenant nam suppressed to protect privacy]

DECISION

Dispute Code ARI-C

Introduction

Amstar 1701 Cedar Hill Apartments 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).

Amstar 1701 Cedar Hill Apartments Ltd., represented by legal counsel AAG (the Landlord), the other landlord's agents and the respondents named on the cover page of this decision attended the hearing. 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 27, 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 November 5 indicating service of the materials in accordance with his testimony.

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:

1. Energy generator in the amount of $46,062.66 only for tenants in building B.
2. Boilers in the amount of $217,067.50 for tenants in building A and $255.358,50 for tenants in building B.

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 rental property contains two structures. Building A has 73-rental units and building B has 135-rental units. The property was constructed in 1968.

The Landlord affirmed the generator benefits only tenants from building B and each boiler benefits the tenants only from their respective building.

Based on the Landlord's undisputed testimony, I find the generator benefits only the tenants in building B and each boiler benefits the tenants only from their respective building.

In accordance with Regulation 21.1(1), I find there are 73 specified dwelling units for the boiler in building A (benefited by their boiler only) and 135 specified dwelling units for the boiler and the generator in building B.

Prior application for an additional rent increase and application for all the tenants

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 16, 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 15, 2023 and October 15, 2024.

The Landlord affirmed the expenditures for the generator happened on April 17, 2023. The Landlord submitted an invoice for the amount claimed dated February 28, and a cheque for payment on April 17 of that year.

The Landlord affirmed the prior generator was 40-years-old and beyond its useful life.

The Landlord affirmed the expenditure for the boilers for both buildings happened between July 21, 2023 and December 29. The Landlord submitted invoices dated July 31, 2023, September 26, November 20, and December 29 for the boilers in both buildings.

The boilers invoices mention values higher than the values claimed by the Landlord. The Landlord affirmed he received a rebate from Fortis BC for the new boilers for both buildings in the total amount of $33,350.00, and this rebate amount is deducted 46% for building A and 56% for building B. The amounts claimed ($217,067.50 for building A and $255.358,50 for building B) are after the rebate.

The Landlord affirmed the replaced boilers were beyond their useful lives, as the boiler in building A was from 1996 and in building B was from 2007.

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

Policy Guideline 37C state:

> A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

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.

Policy Guideline 40 provides that the useful life of boilers is 10 years and generators is 25 years.

Based on the Landlord's convincing testimony and considering Policy Guideline 40, 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, considering the amounts claimed in this application already deducted the rebate from Fortis BC.

The Tenants affirmed the new boilers' expenses can be recovered as tax credits.

The Landlord affirmed that tax credits are not considered payment from another source.

Policy Guideline 37C states:

> To be considered a "payment from another source," a landlord must be reimbursed by a third party for some or all of the cost of the capital expenditure. For grants, rebates, subsidies, insurance plans, and claim settlements, landlords are reimbursed for the cost of capital expenditures by a third party (e.g., insurance provider, government, private individual). However, landlords are not reimbursed by another party under tax credit and deduction schemes. Instead, a landlord is simply paying another party a lesser amount. As such, schemes that landlords can access to reduce their taxable income when they incur capital expenditures do not constitute "payments from another source" because the landlord is not receiving payment by reducing their taxable income.

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) and policy guideline 37C.

Type and reason for each expenditure

I will individually analyze the expenditures claimed by the Landlord.

Generator

The Landlord affirmed the generator provides power to the fire panel, emergency lighting and exit signs in building B. The Landlord submitted a report signed by an engineer on July 21, 2021 (the Report). It states:

> [inspector] conducted a visual assessment of the Site on July 8, 2021 at which time Pinchin interviewed and was accompanied by the Site Property Manager (hereafter referred to as the Site Representative).
> The Site Buildings were reportedly constructed in approximately 1960. The Site Buildings consist of a total of 208 residential apartment units with basement levels at Site Building B. Site Building A does not possess a basement level.
> The back-up generator serving the Site Buildings was noted to be ~40 years old and has reached its EUL.

The Landlord explained the expression EUL used in the Report means "end of useful life".

The Tenants affirmed the Landlord reduced the number of parking stalls available and started charging paid parking for the Tenants' guests, they had a loss of heating after the new generator was installed and 'some disruptions', and that the prior generator was beyond its useful life, so the new one should not qualify as an expenditure.

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)

The Landlord said that the generator expenditure was not necessary because of inadequate repair or maintenance and submitted a maintenance report for the prior generator.

Based on the Landlord's convincing testimony and the maintenance report, I find the Landlord proved that the generator replacement was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Based on the Landlord's convincing testimony, the invoice and the Report, I find the prior generator was 40 years-old and beyond its useful life of 25 years.

Policy Guideline 37C indicates that electrical systems are major systems. I find the generator is part of the electrical systems in building B, as it provides power during emergencies to building B.

The Tenants did not explain why the reduction in the number of parking stalls or charging parking for their guests prevents this expenditure from being considered for an

additional rent increase. The Tenants did not explain what are ‘some disruptions’ caused by the new generator.

Section 23.1(4)(a)(ii) allows for the replacement of systems that are beyond their useful life.

Considering the above, I find that the expenditure of $46,062.66 to install the generator in building B is in accordance with Regulation 23.1(4)(a)(ii).

Boilers

The Landlord affirmed the boilers replaced were beyond their useful lives and that the new boilers are more energy efficient than the prior boilers. The Report states:

> …Heating within the Site Buildings is provided by hydronic radiators which are supplied with hot water or steam from natural gas-fired boilers. The heating boilers are located within the main level boiler room of Site Building A and lower level boiler room in Site Building B. The two “Viessman” hot water heating boilers serving Site Building A were noted to be manufactured in approximately 1996 (i.e., ~ 25 years old) possessing approximate input heating capacities of 550,000 BTUH each. The two “DeDietrich” hot water heating boilers serving Site Building B were noted to be manufactured in approximately 2007 (i.e., ~ 14 years old) possessing approximate input heating capacities of 1,442,000 BTUH each…

The Landlord affirmed the prior boilers were properly maintained and submitted photographs of the new boilers.

Policy Guideline 37C indicates that the heating systems are major components. I find the boilers are part of the heating systems, as boilers are necessary to heat the rental units, per Regulation 21.1 and Policy Guideline 37C.

I accept the uncontested testimony that the replaced boilers were 14 and 25 years-old. Policy Guideline 40 provides that the useful life of boilers is 10 years. Thus, I find the replaced boilers were beyond their useful lives.

Based on the Landlord’s convincing testimony, the invoices, photographs and the Report, I find the Landlord proved that he replaced the boilers which provide heat to all

the tenants because the prior boilers were beyond their useful lives and he did not need to replace them because of inadequate maintenance, per Regulation 23.1(5)(a).

The Tenants affirmed the lower water and gas bills will benefit the Landlord only, as they pay a fixed-rent amount.

The Legislation does not prevent Landlords from seeking an additional rent increase if the new boilers reduce the gas and water bills and the Landlord is the one directly benefited from the reduction.

Considering the above, I find that the expenditure of $217,067.50 for tenants in building A and $255.358,50 for tenants in building B to replace the boilers is in accordance with Regulation 23.1(4)(a)(ii).

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 $**
Boiler – building A	217,067.50
Boiler – building B	255.358,50
Generator – building B	46,062.66
Total – building A	217,067.50
Total – building B	301,421.16

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 73 specified dwelling units in building A, and the total expenditures is $217,067.50 for this building
- there are 135 units in building B, and the total expenditures is $301,421.16 for this building

The Landlord has established the basis for an additional rent increase for expenditure of $24.78 per unit for building A ($217,067.50/73 units/120) and $18.61 for building B ($301,421.16/135 units/120).

If these amounts represent 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.

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: January 16, 2025

Residential Tenancy Branch