

DECISION

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.

Landlord Y.L.L. attended the hearing with close family member J.W.

Tenant T.L. and Tenant G.L. both attended the hearing.

The parties listed on the cover page attended the hearing on January 27, 2025.

Service of Proceeding Materials

Landlord J.W. stated the Notice of Hearing and copies of the Landlord's evidence were served to each Tenant in person on November 28, 2024. J.W. also testified she sent copies of the proceeding package to each Tenant by email that date as well. She stated the Tenants had each signed a form whereby they agreed to service by email. The Landlord did not provide a copy of that form.

The Tenants stated they received the proceeding package and had an opportunity to review it prior to the hearing.

Preliminary Matters

The Landlord's application for additional rent increase for capital expenditure included requests for increases in strata maintenance fees for the period July 1, 2023 to June 30, 2024, and July 1, 2024 to June 30, 2025. The Landlord confirmed the maintenance fees were for maintenance of the strata building. The Landlord was informed at the start of the hearing that these costs were not "capital expenditures" as defined by Regulation section 23.1. Therefore, I find it appropriate that these items be dismissed, with leave to reapply under the appropriate provision of the Act and Regulation. I make no findings on the Landlord's request for additional rent increase premised upon the increase to the strata management maintenance fees.

Additionally, during the hearing, Landlord J.W.'s testimony was the Landlord's special assessment for the elevator repair would not be fully paid until December 1, 2025. Therefore, I find it appropriate that this expenditure also be dismissed, with leave to

reapply. I make no findings on the Landlord's request for capital expenditure for the elevator repair.

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 Landlord's application requests an additional rent increase for certain capital expenditures made by the Landlord pursuant to a strata special levy:

- Replacement of a hot water boiler, the Landlord's share totaling \$710.05, final payment made by the Landlord on May 29, 2023
- Repair of the unit balcony, the Landlord's special assessment for this work at \$2,779.81, final payment made by the Landlord on May 29, 2023

Landlord J.W. testified no previous application for additional rent increase has been filed in the 18 months preceding this application.

The Landlord submitted a copy of a special assessment for the unit as well as strata owner meeting minutes discussing each of these expenditures. Strata meeting minutes dated February 5, 2020, state the hot water boiler for the building is approximately 15 years old and the boiler is at or near the end of its useful life. A recommendation is made to the strata owners for the replacement of the one boiler with six smaller boilers to ensure that any breakdown will not result in occupants being without hot water. The Landlord also submitted strata meeting meetings dated May 25, 2022, providing that an engineer had determined that 58 units required repair to the balcony for safety reasons. The minutes then state the subject unit balcony was also found to require repairs as determined by the engineer. The meeting minutes reflect the unit's balcony will undergo repair from May 15 to June 15, 2023. A copy of the engineer's report was not provided in evidence for this hearing.

The Landlord submitted a copy of the schedule of payments for each of these expenditures (balcony repair and hot water tank replacement) for the strata units commencing July 1, 2022 and ending June 1, 2023. Landlord J.W. testified that her uncle who managed the property for the Landlord during that time made the monthly special assessment payments from the rent proceeds. The Landlord provided no

evidence that payments had been made to the strata management for this work. Landlord J.W. testified the last payment for these repairs was made on May 29, 2023. She stated the hot water tank would not require replacement for 5 to 10 years, but she could not comment on the repairs made to the balcony. Landlord J.W. confirmed there was no other source of payment for these repairs.

The Tenants testified they have resided in the unit since January 1, 2018. The Tenants stated they were unaware of the hot water boiler replacement. They stated there were no notices posted in the common area of the building regarding any repair to or replacement of the boiler. They stated the hot water for the unit was not disconnected or disrupted at any time.

The Tenants both testified that no repairs had been made to the balcony. Tenant G.L. testified the exterior siding of the building had been replaced during the summer months of 2024, but no work had been done to their balcony. Tenant T.L. stated they removed personal property they had on the balcony pursuant to a notice but no work was ever done to the balcony.

Landlord J.W. stated she assumed the work had been done as she had paid the special assessment. The Landlord did not provide any evidence to establish the repair to the balcony or the replacement of the hot water tank had been done. Although Landlord J.W. noted the strata meeting minutes included the unit's balcony in the repair work, there was no confirmation of completion of the work. Likewise, the strata meeting minutes for the hot water boiler replacement speaks in terms of work to be done, and there is no other evidence to substantiate the boiler was replaced.

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));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o 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 the 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 is 1 specified dwelling unit pursuant to the Regulation.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **\$3,489.86** as detailed in the Landlord's application for the balcony repair work and the portion of the hot water boiler replacement assessed to the Landlord. I accept the Landlord's submission that there was no other source of payment for these 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.

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."

In this case, the Landlord did not provide sufficient evidence that the boiler replacement and the balcony repair work was paid for and that the work had actually been completed. The Tenants credibly testified there had been no repair work done to the unit's balcony. The Landlord provided strata meeting minutes that discuss the undertaking of the boiler replacement and the balcony repair, in support of a vote for a special assessment. However, the Landlord did not submit sufficient evidence to support a finding that the special assessments for these items had been paid by her property manager at that time or that the work was actually undertaken and completed.

Conclusion

The Landlord's application for additional rent increase for increased strata maintenance fees and elevator repairs are dismissed, with leave to reapply.

The Landlord's application for additional rent increase for capital expenditures regarding the replacement of a hot water boiler and repair of the rental unit balcony is dismissed, without leave to reapply.

This decision is issued upon authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 27, 2025

Residential Tenancy Branch