Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding WELBEC PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Application code ARI-C

Introduction

Welbec Properties Inc. 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).

I conducted a hearing on November 20, 2024 and issued an interim decision dated December 4 (the Interim Decision). This decision should be read in accordance with the Interim Decision. It states:

> **I order that all the written submissions** must be typed, with a font size 12 or bigger and **use clear and concise language**. **If any evidence document is submitted, it must be submitted in the same package as the written submissions, all the pages must be continuously numbered and there must be an index**. The parties are allowed to submit handwritten submissions if they do not have access to a computer.[page 5]
> […]
> Pursuant to section 71(2)(b) of the Act, considering the parties confirmed receipt of the Materials, I order the Landlord must serve this interim decision and the written submissions to all the Tenants in person, by attaching them to the front door or via registered mail. [page 5]
> Pursuant to section 71(2)(b) of the Act, I order the Tenants may serve the Landlord their response evidence and submissions in person, via email (the Landlord's email address is recorded on the cover page of this decision) or via registered mail.
> Any document served must be provided to the RTB along with the proof of service, including form RTB 55. The proof of services must be submitted to the RTB at the latest 3 calendar days after service. [page 6]
> […]
> Based on the above, I order:
> 1. This hearing will proceed in writing.

2. The Landlord must serve the new evidence mentioned in this decision, this decision, and the written submissions, and any other relevant evidence, by the 30th calendar day after this decision.
3.The Tenants may serve their submissions and evidence by the 60th calendar day after this decision.
4. All **the written submissions must be typed, with a font size 12 or bigger and use clear and concise language. If any evidence document is submitted, it must be submitted in the same package as the written submissions, all the pages must be numbered and there must be an index.** The parties are allowed to submit handwritten submissions if they do not have access to a computer.
5. The Landlord must serve documents in person, via registered mail or by attaching them to the front door. The Tenants must serve their documents in person, via email or registered mail.
6. The Landlord must provide unredacted copies of every document to the RTB without redactions and must redact private sensitive information pertaining to the parties in the evidence submitted to the Tenants.
7. The parties must submit to the RTB all the documents served, along with the proof of service (RTB55) no later than 3 calendar days after service.
8.This is not an opportunity for either party to amend this application for dispute resolution or to submit an additional application for dispute resolution to be crossed or joined with the applications for dispute resolution currently before me. [page 7]

(emphasis added)

The Landlord submitted a letter dated December 16, 2024 (file named 'VT_Affidavit), and 80 PDF documents containing hundreds of pages not numbered, and without an index of documents.

The Landlord also submitted as proof of service form RTB55 indicating he attached the evidence documents to the Tenants' front door and 58 photos of individual packages left by the rental unit's front doors.

The Tenants provided response submissions (file named 'Written_submissions) and 9 PDF documents containing response evidence with numbered pages and an index. The Tenants' submission confirmed receipt of the Landlord's package on January 4, 2025.

The Tenants also submitted as proof of service form RTB55 and the tracking number for the evidence documents mailed via registered mail on January 30, 2025 (the number is recorded on the cover page of this decision).

The Landlord submitted a letter dated January 31, 2025 indicating he had not received any document from the Tenants on that date.

Canada Post indicates the Tenants' package was mailed on January 30, 2025 and received on February 3.

Tenants MHI and RMC submitted single page submission letters without proof of service.

Procedural Fairness

In the response submissions, the Tenants indicate the Landlord's submissions are procedurally unfair:

> The Landlord Written Submissions are Procedurally Unfair
> In the Landlord's written submission, it is repeatedly stated that,
>
> > "It would be inaccurate for someone to obtain an opinion from an industry professional after the vinyl, railings, privacy walls, lights, and mini splits were installed because the professional would not be able to provide an accurate assessment without having seen the prior installations and the condition of the components beforehand."
>
> This position reflects a procedurally unfair process, as it effectively prevents the Tenants from cross-examining the expert testimony or engaging a separate expert to independently assess the rental unit. This limitation on the Tenant's ability to gather and present evidence undermines their right to a fair process, as they are restricted in their capacity to challenge the Landlord's claims or fully participate in the proceedings. Even if the Tenants hired their own experts, the experts are barred from any ability to judge to project as they would have no documentations they can review as the landlord has sole possession of almost all documents relating to the case such as documents from tradespeople, maintenance of the system, all information related to the component being installed and work being done which was withheld from Tenants.

I find the Tenants' submissions are not convincing, as the Tenants did not indicate the questions they would like to ask the experts.

However, I find the Landlord's submissions are inadequate and created procedural fairness difficulties, as they are not clear, and it was not possible to understand relevant points necessary to arbitrate this claim.

The Interim Decision clearly states on pages 5 and 7, as highlighted in this decision, that the Landlord had to serve written submissions with clear and concise language, the documents must have continuously numbered pages and there must be an index.

The Landlord stated:

> We understand the Tenants may argue that heat is included in their tenancy agreement, that it was unnecessary to install this mini-split system and that these mini-splits inadequately heat their unit. To that we respond that heat is only included in half of the tenancy agreements in the Apartments.
> […]
> In this circumstance for those with heat included in their tenancy agreement, due to the issues of the original heating system anticipated to cease operating, an abatement of rent may be a consideration to account for the transition to the new mini-split system. For the half of tenant's with heat not included, the transition to the mini-split system will be borne by the user

The Landlord did not explain which units have the heat included in their tenancy agreement and simply provided 80 documents. The documents may contain the tenancy agreements for all the tenants, but the Landlord made no effort to explain which units have heat included in their rent in the submissions.

The Landlord stated:

> Ultimately, certified professionals were consulted prior to making such changes in the Apartments. These same professionals carried out various tests to evaluate the heating and subsequently they recommended that changes were needed in order to resolve the issues raised by many of the tenants.

The Landlord did not refer here to the 80 documents submitted and did not explain what the 'certified professionals' indicated. This is one of the key issues raised during the hearing.

Instead of following my orders, the Landlord submitted typed submissions with 6 pages, and 80 PDFs without numbered pages and without an index. I find the Landlord's submissions are not clear and did not properly address the concerns raised in the hearing by the Tenants.

The Landlord also did not provide detailed submissions about the number of rental units in the building and if they all benefit from the expenditures, and this information must be proved to satisfy section 23.1(3) of the Regulation. The Interim Decision also indicated the parties should read all the pertaining legislation regarding this application.

Considering the above, I find the landlord is not allowed to impose an additional rent increase for the expenditures claimed.

The Landlord, a corporation claiming against 85 respondents, was not represented by legal counsel and the legal test for an additional rent increase application is complex. I do not have any reason to believe the Landlord acted in bad faith. Thus, I find it appropriate to grant the Landlord leave to reapply.

Leave to reapply is not an extension of the timeline to apply.

Conclusion

I dismiss this application with leave to reapply.

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: February 13, 2025

Residential Tenancy Branch