



DECISION

Introduction

This hearing concerned the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- additional rent increase under section 43 of the Act

Landlord's property manager J.B. and building caretaker V.M. attended the hearing for the Landlord.

Tenant M.B.2, Tenant J.B.2, Tenant M.B.3, Tenant D.K., Tenant M.S., Tenant S.S., Tenant T.F., Tenant D.T., Tenant C.D. attended the hearing for the Tenant.

Written submissions were made by Tenant M.M., Tenant D.J., Tenant L.Bro., and Tenant L.Bri.

The parties confirmed service of the Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. I find the Tenants were served with the required materials in accordance with the Act.

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 and written submissions of Tenants, 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 a capital expenditure totaling \$500,160.75 made on October 21, 2024, for the replacement of balconies, including deck and railings, and patio sliding doors to the rental property units. The Landlord provided the invoices with proof of payment and estimates for this capital expenditure.

The rental property was constructed in 1976 and is a three-storey walk-up building with a total of 48 units. Forty-one of the 48 units have balconies. The Landlord's property manager, who testified he has held that position for approximately 10 years, stated the Landlord had not made a prior application for additional rent increase in the 18 months preceding this application, and there were no rebates or other sources of payment available to the Landlord for the cost.

The property manager testified the balconies replaced on the building were of wood construction and original to the building. He stated the balconies were approximately 50 years old, and had sustained rotting and were beyond their useful life. The Landlord submitted tenant requests for repairs to the balcony or patio sliding door it had received between 2021 and 2023 to support its position concerning the condition of these components. The property manager stated that each unit is inspected annually, and patio door sliders were remedied on a case-by-case basis. He stated that one or two sliders were replaced entirely due to the building shifting over time. The balcony decking was originally plywood and was replaced with a vinyl decking which is more durable and is more weather resistant. The property manager testified the balconies were part of the building envelope and even if a unit was ground level, the balcony above it offers protection to the unit below. The property manager stated he anticipated the balconies would have a useful life of 20 years and the railings a useful life of 10 years. He stated the Landlord received a 15-year warranty for the patio doors. He noted the new patio doors installed were double-paned and energy efficient. Documentary evidence in support of the patio doors energy efficiency was submitted.

The Tenants raised several objections to the Landlord's application:

- Several Tenants stated the cost to replace the balconies and patio door sliders were maintenance costs the Landlord should be responsible for, and should have budgeted for over time;
- A Tenant noted that other rental properties had had similar renovations without the landlord passing on the cost to those tenants;
- Tenants objected that the capital expenditure was for an improvement to the building of which the Landlord was a beneficiary and it was inequitable that the cost be shifted to the Tenants;
- A ground-level Tenant took the position the cost of the balcony should be assessed only to those Tenants with balconies, if the additional rent increase was approved;
- A Tenant noted the building required several repairs as indicative that the Landlord failed to maintain the building overall, including the balconies;
- A Tenant noted the length of repair time (from approximately March or April through August 2024) deprived the tenants of use of their balconies which was included in their rent;
- A Tenant stated that had the Landlord engaged in more routine maintenance of the building and the decks in particular, that the Landlord would not have been required to replace all the balconies and patio doors; stated otherwise, had the

Landlord engaged in timely repairs, costs were avoidable and it was the Landlord's responsibility to maintain the building in proper repair.

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 are 48 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 **\$500,160.75** as detailed in the Landlord's itemized capital expenditure set forth above with invoices and payment provided in evidence, there being no collateral source or rebates to off-set this cost fully or partially.

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.

The 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.”

Balcony and Sliding Glass Patio Door Replacement

I find the balcony and sliding glass door replacements for the units to be a major component of the building. The balconies are integral to the exterior wall, as are the sliding glass patio doors in each unit. I find the replacement work was necessary as the existing balconies and sliding glass doors were original to the building, approximately 50 years old and at the end of their useful life. The Landlord provided sufficient evidence, corroborated by some Tenants, that the balconies were delapidated and several had rotted wood. I find this is sufficient to satisfy the requirements of the Regulation. Policy Guideline 40 sets out the useful life for windows is 15 years and the useful life for aluminum frames is 20 years. Additionally, I find the patio glass sliding doors are energy efficient based upon the energy efficient rating set forth in the documentation presented by the Landlord.

I accept the Landlord’s evidence that the final payment for the Work was made October 21, 2024, within 18 months of the Landlord making this application on October 30, 2024.

The Landlord provided the invoices and proof of payment for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application. I further find it is reasonable to conclude this capital expenditure will not be expected to recur again within five years. 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 this capital expenditure.

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.

I find the Landlord completed necessary repairs, had to pay for such repairs, and is bound only by the statutory framework in seeking the capital expenditures.

I find the Tenants have not provided sufficient evidence to support dismissal of the Landlord's application for an additional rent increase for capital expenditure as permitted in the Regulation.

Based on the above, I find the Landlord is entitled to recover for the described capital expenditure in the amount of **\$500,160.75**.

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 **\$500,160.75**, 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 48 specified dwelling units and the total amount of the eligible capital expenditure is the amount of **\$500,160.75**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$86.83** (**$\$500,160.75 \div 48 \text{ specified units} \div 120 \text{ months} = \86.83**). 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 **\$500,160.75, as described above**. The Landlord must impose this increase 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 the date 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 Act.

Dated: February 24, 2025

Residential Tenancy Branch