Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for an additional rent increase for capital expenditure under section 43 of the Act and section 23.1 of the Residential Tenancy Regulation.

The parties listed on the cover page to this Decision attended the hearing.

The Landlord's representative C.A. stated the Tenants were each served with a proceeding package by Canada Post registered mail on December 20, 2024. The Landlord's representative confirmed that each package included copies of the Landlord's evidence. She further stated that in the event a package was returned by the post office as undelivered, the proceeding package was then posted to the rental unit door. These units included at the 1555 building (210, 205, 301 – two packages, 302 and 107) and at the 1625 building (209, 107 and 307).

Tenants A.B. and S.P. provided written submissions to the RTB as well as providing a copy of the Landlord prior to the hearing.

Preliminary Matters

The Landlord requested correction of Tenant I.A.P.'s surname to I.A.R. I find the request appropriate and accordingly correct this Tenant's surname on the cover page of this Decision.

The Tenants S.P. and A.B.'s legal advocate requested that paragraphs 44 and 45 be stricken from her written submissions as the statements set forth therein were later determined erroneous or inaccurate. I accept the advocate's representation and strike these paragraphs from the advocate's written submissions.

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 it:

- Replacement of balconies – the Landlord claims $500,000.00 per building
- Patio door replacement – for a total cost of $363,923.81 per building
- Exterior re-painting of each building at a cost of $186,072.27 per building

It is noted the cost for work to replace balconies at each building exceeded $500,000.00 but I accept the Landlord's application limiting the cost for this work to the stated amount on the application.

The residential rental properties were each constructed in 1967, are 4-storeys and each has a total of 45 rental units. The Landlord's representative states the capital expenditures were incurred in relation to the projects within 18 months preceding the application and these are not expected to occur again for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The representative further confirmed that each capital improvements is expected to last for at least 5 years and there was no other source of payment for these expenditures.

The Landlord submitted a building renewal project report and structural evaluation concerning the balconies and patio doors (with sliders) that was commissioned in 2018. The balconies are structural to the building, the cantilever beams supporting each balcony proceed from under the flooring in the living room of each unit for a span of approximately one-half the length of the living room. The representative explained the original deck was constructed of wood on which a sheathing and a topcoat was applied. Over time, as documented in the report, the decking had begun to deteriorate, having "succumbed to repeated saturation." The deterioration was noted particularly where the metal railing (replaced in 1990) was resting on the deck platform. The project report

proposed modern decks with sheathing on top together with a vinyl non-slip coating. The representative stated the deck railing would then be reinstalled and attached to the side fascia rather than rest on the deck. The representative stated that decks were repaired over time as needed as part of building maintenance. She testified the useful life of the new decks to be at least 15 to 20 years. The Landlord disclosed the maintenance records it had from 2018 pertaining to repair of individual decks; the representative noting that records were not kept beyond 7 years.

The patio doors and sliders were replaced at the same time as the decks. The report found the sliding doors to be original to each rental building and are "single pane, aluminium framed" units. The report found "notable air leakage and condensation" with the patio doors and determined these to be at the end of their useful life. The Landlord's representative confirmed isolated leaking for some patio doors and some doors had broken handles. The newly installed patio doors were vinyl and double pane.

The Landlord also requests an additional rent increase for exterior painting of each building. The Landlord's representative stated the building's exteriors were last painted in 2008 when windows for the units were replaced. She stated the painting was thus at the end of its useful life and the exterior painting operated to maintain the structural life of the building.

Tenants S.P. and A.B.'s legal advocate, S.C., stated the Landlord's final payment was not a payment but rather the release of the final holdback to the contractor. The advocate took the position that excluding this from consideration resulted in the final payment for the building enclosure renewal project having been made on May 24, 2023 (the date of the last invoice no. 138). As such, the additional rent increase application was more than 18-months prior to the Landlord's application on December 4, 2024. She further stated the holdback amount was "negligible" in comparison to the overall cost for the project. Additionally, the advocate submitted the Landlord had not disclosed the contract with the general contractor so it was impossible to determine whether the final holdback was necessarily associated with the work.

The Landlord's representative replied the Regulation refers to final payment and places no parameter on the amount or that a final holdback when released would not constitute a final payment. She states the final payment (release of the holdback) was made on February 12, 2024, and the application was timely filed by the Landlord on December 4, 2024. The representative further relied upon Policy Guideline 37C in support of her position, noting that the Guideline did not preclude a final holdback payment under a construction contract – regardless of the percentage – was not a final payment when released.

The Tenants' advocate urged that the balcony replacement was not a qualified capital expenditure under Regulation 23.1. The advocate noted that, under the Regulation, reimbursement could not be awarded when the repair or replacement was due to

inadequate maintenance. The advocate stated the Landlord had failed to fully disclose maintenance records for the balcony and was thus precluded from making the request for additional rent under Rule of Procedure 11.4. The advocate referred to their retained expert who opined, based upon the engineer's report, that the balcony replacement was required as a result of lack of maintenance. The advocate stated some units on the ground floor did not have balconies and should not be classified as "specified dwellings" and assessed for the capital expenditure if it were awarded (there were 8 units in one building and 6 units in the other building on the ground floor level that did not have balconies).

Similarly, the patio door replacement was also urged as ineligible under the Regulation as a result of lack of maintenance by the Landlord.

The Landlord's representative responded to the advocate's arguments noting the Tenants' expert's report was retrospective in its opinion and acknowledged the repairs that had been made to the balconies over time. She further stated the Landlord's engineer report had indicated the need for the replacement of the balconies, given their age and construction material. Additionally, she stated the patio doors were original to the building – approximately 60 years old – and maintenance had allowed these to remain for that period of time but ultimately the patio doors were beyond their useful life and required replacement.

Tenant O.C. agreed with the advocate's submissions and Tenant M.R. had no additional comments. Tenant J.K. stated the monthly rental rate was already "too high for pensioners," of which there were many in the rental buildings. She stated she chose her current unit not anticipating additional rent increases beyond the annual rent increases. Tenant J.K. stated that during the construction work, tenants were not compensated for loss of quiet enjoyment caused by the intrusive nature of the work. She urged that the exterior painting was simply aesthetic. Tenant J.K. stated the age of the patio doors was such that the Landlord should have replaced these sooner and that the deck deterioration was caused by improper maintenance.

Tenant A.P. stated he moved into his unit at the start of the construction and questioned why his rent would be increased. Tenant J.H. stated he had moved into his unit approximately 7 years ago and was retired from construction after 30 years. He stated he had built many decks at another building and based upon his experience, the work done at the Landlord's buildings was not "up to Code." He specifically noted he had contacted City authorities who informed him the City had not yet made a final inspection of the improvements as required by the permit. He questioned the placement of the railings on the old deck as the problem noting that the flashing fell below the level of the deck and this would account for the deterioration. He stated the new deck did not have a vinyl coating but rather a rubber coating that was not waterproof. Tenant J.H. stated the patio door replacements were cosmetic and not necessary.

Tenants' advocate stated there had been issues with the new patio doors since installation but acknowledged that repair requests may not yet have been submitted to the Landlord.

The Landlord's representative concluded by stating the Landlord properly relied upon the engineer's report for determining the work was necessary. She stated she was unaware the permits were "still open with the City" but stated the contractor may have forgotten to contact City authorities. Property manager R.O. stated he was confident the permits had been closed and final signatures from City officials had been secured by the contractor.

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 within the last 18 months before the Landlord filed 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.

I find there are 45 specified dwelling units in each residential rental building.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **$1,049,996.08** as detailed in the Landlord's itemized capital expenditure set forth above, there being no collateral source or rebates to off-set any portion of this cost. It is again noted the capital expenditure for the balcony replacement exceeded $1 million for both buildings as detailed in the Landlord's summary of invoices and expenditures but the Landlord has taken the position for this application that it limits the capital expenditure to $500,000.00 for each building for this work.

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.”

Balcony Replacement

I find the balconies on each building are a major system or component in each residential building. The Landlord’s evidence details how the balconies are an integral part of the structure of the rental property. The Landlord provided evidence the decks were original to the building when constructed in 1967 and the balcony railing had been replaced in 1990. I find the balconies had exceeded their useful life and required replacement. I further accept the Landlord’s engineer report that stated the wood balconies had deteriorated. This may have posed safety issues to Tenants and their guests. I note that maintenance alone can extend a component’s useful life only a certain amount of time and the balconies had long exceeded their useful life. I do not accept the Tenants’ advocate’s expert report that the Landlord’s maintenance, or lack thereof, was such to preclude this capital expenditure under the Regulation.

I am satisfied the final payment for this work occurred on February 12, 2024, within 18 months of the application filed by the Landlord on December 4, 2024. I am not persuaded by the Tenants’ advocate’s argument that release of the final holdback by the Landlord at completion of the work was not a final payment, either because the payment was negligible or because the Landlord did not disclose the contract for the work detailing the conditions under which the release of the final holdback was made. I note neither the Regulation nor Policy Guideline 37C delineate “final payment” in the terms as urged by the advocate. I further accept the Landlord representative’s

testimony the newly installed balconies have a useful life exceeding 5 years and there was no other source of payment for this expenditure.

Additionally, I find that as the balconies are integral to the structure of the building, that all units in each building are specified dwelling units for purposes of this work. The structural integrity of the building benefits all units, not only those that have an exterior balcony. I note the balcony in a unit above also provides protection from the elements to the exterior of the unit below.

Installation of Patio Doors and Sliders

I find the patio doors to be a major component of the exterior of each rental building. I find the work was completed on February 12, 2024, when final payment was made (the release of the final holdback to the contractor). I find the replacement was necessary as the patio doors were original to the construction of each building in 1967 and had exceeded their useful life as evidenced by the Landlord's engineer's report. The Landlord's representative testified the patio doors and sliders are anticipated to last at least 5 years and there was no other source of payment.

Exterior Painting of Each Rental Building

I find that painting of the exterior of the building is not a major component or major system of the rental building. I am persuaded by the Tenants' advocate and other Tenant's arguments that painting is maintenance. I am not satisfied by the Landlord's evidence that painting is structural to the building. Therefore, I decline to award an additional rent increase for the rental property in the amount of $186,072.27 for each building.

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 there was no additional source of payment for the capital expenditures the Landlord could apply in payment of the work completed.

I find the Tenants have not provided sufficient evidence to support a dismissal of the Landlord's application for an additional rent increase for capital expenditure for the balcony and patio door replacements. I do not find there is sufficient evidence to establish the capital expenditure is the result of the Landlord failing to maintain or properly repair or maintain the roof. Rather, the useful life of each these major components or systems had expired.

Summary

The Landlord has been partially successful in 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 **$500,000.00 per building** for replacement of the balconies; and, **$363,923.81 for each building** for replacement of patio doors and sliders in each unit. I decline to award the Landlord an additional rent increase for the cost associated with painting the exterior of each building.

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 45 specified dwelling units per building and the total amount of the eligible capital expenditures totaling **$863,923.81** for each residential rental building.

I find the Landlord has established the basis for an additional rent increase for the capital expenditure for the roof replacement in the amount of **$159.99 ($863,923.81 ÷ 45 units) ÷ 120 months = $159.99).** 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 **$863,923.81 for each rental building** as set forth in greater detail 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 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 on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 23, 2025

Residential Tenancy Branch