Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Application Code ARI-C

Introduction

Denfor Investments Inc. DBA Chateau Diane 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).

Denfor Investments Inc. DBA Chateau Diane, represented by agents director FDE (the Landlord) and manager CBO, and the tenants 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 the evidence (the materials) on January 15, 2025 by attaching individual packages to the rental unit's front doors of all the named respondents. The Landlord submitted a proof of service letter indicating service of the materials in accordance with his testimony.

The attending Tenants confirmed receipt of the materials.

The Landlord sent a letter to MKR on March 7, 2025 confirming receipt of a USB drive. The Landlord stated he was not aware that this drive was supposed to have documents related to this application and that the drive did not have documents.

MKR testified she informed the Landlord's agent that the drive had response evidence documents.

MKR submitted a digital evidence detail form RTB43 dated February 3, 2025. Her evidence consists of 11 photos and typed submissions. MKR said the Landlord could have informed her about the difficulties with the drive.

Based on the convincing testimony of the parties and the proof of service letter, I find the Landlord served the materials in accordance with section 89(1) of the Act.

Based on MKR's convincing testimony, I find MKR sufficiently served her response evidence, and the Landlord could have informed her about the alleged difficulties with the drive. As the Landlord did not indicate any issues with the drive on the March 7, 2025 letter, I find the Tenant sufficiently served the response evidence on March 7 in accordance with section 71(2) of the Act.

Thus, I accept the service of the response evidence.

Preliminary Issue

MKR affirmed the Landlord's agent CBO could not attend the hearing, because he is not a named party.

The Landlord stated CBO is his manager and agent and that he is authorized to attend the hearing.

Rule of procedure 6.7 states: "A party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make their presentation."

CBO can attend the hearing, as he is an agent of the Landlord, in accordance with the rule of procedure 6.7.

Application for Additional Rent Increase

The Landlord is seeking an additional rent increase for the rental building's elevator modernization (the elevator) in the amount of $83,384.24.

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 testified the expenditure benefits all 55 rental units located in the building completed in 1968.

Based on the Landlord's undisputed testimony, I find the rental building has 55 rental units and that they all benefit from the expenditure, in accordance with section 21.1(1) of the Regulation.

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

The Landlord said he did not submit a prior application for an additional rent increase and that the Landlord is seeking an additional rent increase only for the respondents tenants.

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 undisputed and 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).

Expenditure incurred in the 18-month prior to the application

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.

The Landlord submitted this application on January 5, 2025. Thus, the 18-month period is between July 4, 2023 and January 4, 2025.

The Landlord affirmed the elevator renovation was completed in November 2023. The Landlord submitted 4 invoices with due dates between October 12, 2023 and November 24 totalling the amount claimed in this application and stated he paid all of them by the due date.

Based on the Landlord's convincing and undisputed testimony and the invoices, I find the Landlord incurred the expenditure in the 18-month period, per Regulations 23.1(1) and 23.1(4)(b), as the invoices were paid within that 18-month period.

Expenditure not expected to occur again for at least 5 years

The Landlord testified the expenditure is not expected to occur again for at least 5 years, as the life expectancy of the upgraded elevator is 40 years or more.

Based on the Landlord's convincing and undisputed testimony, I find that the life expectancy of the expenditure is at least 5 years, and the expenditure is not expected to occur again for this period of time. Thus, I find that the capital expenditure incurred is an eligible expenditure, per Regulation 23.1(4)(c).

Expenditures because of inadequate repair or maintenance

The Landlord said the expenditure was not necessary because of inadequate repair or maintenance, as the prior elevator was properly maintained. The Landlord submitted elevator maintenance invoices from 2018 to 2024 and affirmed that since the building was purchased in 1994 the elevator was always maintained, but the Landlord does not keep documents for more than 7 years.

MKR inquired why the Landlord did not submit proof of maintenance prior to 2018. The Landlord stated he is not required to keep documents prior to 2018.

Based on the Landlord's convincing and undisputed testimony and the maintenance invoices from 2018 to 2024, I find the Landlord proved that the expenditure was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a). I find it reasonable that the Landlord did not submit maintenance invoices prior to 2018.

Payment from another source

The Landlord testified that he is not entitled to be paid from another source for the expenditure claimed, there are no grants, rebates or subsidies available regarding the elevator modernization.

MKR inquired how could she be sure that the Landlord could not receive payment from another source. The Landlord indicates once again that he cannot receive any payment from another source regarding the elevator expenses.

Based on the Landlord's convincing testimony, I find the Landlord is not entitled to be paid from another source for the expenditure, per Regulation 23.1(5)(b).

Elevator

The Landlord said the prior elevator was from 1968. Despite proper and regular maintenance, the elevator was beyond its useful life and needed to be modernized, as parts were not available for such an old elevator anymore.

The Landlord submitted a proposal for modernization of the elevator dated January 31, 2023. It states:

> Based on our records the elevator system in this building is an estimated 55-years old. In considering the age and worn nature of the existing elevator equipment, West Coast Elevator recommends that a full elevator modernization be considered. The existing original elevator equipment has well exceeded its' life expectancy. As a result we have concerns about the safety and reliability of these elevator systems going forward. Please note that numerous new versions of the B44 elevator safety code have been adopted since these elevators were originally installed. These various new 844 elevator safety code requirements have greatly increased the safety and reliability of modern elevator systems. By proceeding with a full elevator modernization, the building owner's liability will be reduced and their equity in the building should increase.

The Landlord affirmed he changed the controller, cables, safety system and door closure system. The Landlord submitted 4 photos of the modernized elevator, and a certificate of inspection dated October 27, 2023 indicating the elevator passed the inspection.

Policy Guideline 37 states that elevators are major components and policy guideline 40, published in 2012, states the useful life of elevators is 20 years. I am not considering in this decision policy guideline 40 updated in February 2025, as the Landlord submitted this application before that update.

I find the elevator upgrade is a major component of the rental building, as it is integral to the rental building, per regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of $83,384.24 to upgrade the elevator is in accordance with Regulation 23.1(4)(a)(ii), as the Landlord upgraded the elevator that was beyond its useful life in 2023, the prior elevator was from 1968, and the elevator is a major component.

Tenants' Submissions

MKR stated the Landlord should have considered this expenditure in his budget, the Landlord is a large corporation and can afford this expenditure without an additional rent increase.

Tenant NWH testified the average rent has increased significantly over the last years and the Landlord can pay for the expenditure with the new higher rents.

Tenant TMC said it is not appropriate to have this additional rent increase, as tenants face financial difficulties.

The market rent increases for new rental units in recent years and the Landlord's corporation status are not reasons to deny the Landlord's claim. I am sympathetic to the alleged Tenants' financial difficulties, but this is also not a reason to deny the Landlord's claim.

Tenants DHE, TMC, MKR and JBA affirmed the Landlord maintains the building very well and that they are pleased with the Landlord.

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 elevator in the amount of $83,384.24.

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 55 specified dwelling units and that the amount of the eligible expenditure is $83,384.24.

The Landlord has established the basis for an additional rent increase for expenditure of $12.63 per unit ($83,384.24/ 55 units / 120). If this amount represents 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.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for expenditures of $12.63 per unit. The Landlord must impose this increase in accordance with the Act and the Regulation.

The Landlord must serve the tenants with a copy of this decision in accordance with section 88 of the Act.

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: March 27, 2025

Residential Tenancy Branch