



DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for an additional rent increase 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's J.F. president, Landlord's property manager D.M., Landlord's support specialist C.G., Landlord's vice-president K.F., and Landlord's property manager R.M. attended the hearing.

Tenant V.W., Tenant L.M., and Tenant M.D. attended the hearing.

The Landlord confirmed service of Notice of Dispute Resolution Proceeding package to each Tenant by Canada Post registered mail on December 20, 2024. The Landlord provided copies of each tracking receipt issued by Canada Post for each Tenant. 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 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:

- Improvements to hallways and stairwells with new carpeting, paint, including painting unit doors, signage and unit door numbers totaling \$92,606.34
- Replacement of stairwell windows in each building totaling \$64,403.50
- Repair of the parking lot in the amount of \$53,508.00

The residential rental property was constructed in the 1970's and consists of 3 buildings each having 22 rental units. The Landlord stated the capital expenditures were incurred in relation to the projects within 18 months preceding the application and these are not expected to re-occur for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The Landlord further confirmed there was no other source of payment for these expenditures, including rebates.

The Landlord explained the carpeting in the hallways and stairwells was approximately 25 years old (he estimated the replaced carpet was installed in 1998-99). The Landlord provided photographs of the old carpeting and the newly installed carpeting. He stated the carpeting had holes in certain areas and "nosing" (a rubber guard placed at the edge of each stair) was also installed. He explained that due to the age of the replaced carpeting, hazardous material disposal was required for each of the three buildings. The hallways and stairwells were painted, as were the rental unit doors. The Landlord further stated each unit door received new numbering not only for aesthetics but for emergency services and some units were missing the unit number. The Landlord further testified new signage was installed and noted some signage was missing. The new signage he stated was important so emergency services would be able to locate areas in the building as well as identify individual units. The Landlord's application includes the cost of painting the unit doors, hallways and trim, totaling \$12,097.33. The Landlord provided invoices and payment information for this expenditure and he stated the sum was divided equally among the three buildings. The Landlord's stated there are four stairwells in each building and the total cost of the project was equally divided between the three buildings.

Invoices provided by the Landlord establish that, exclusive of the cost of painting, for building 1962, a total of \$22,649.28 was spent on the hallway renovation; for building 1956, a total of \$26,980.10; and for building 1950, the invoices totaled \$23,399.10. The replacement of unit numbers on all units for all buildings was \$1,495.53. The Landlord incurred a total of \$5,985.00 for the cost of hazardous material testing for all three buildings from the vendor. The Landlord paid the last invoice for this work on April 8, 2024.

The Landlord also replaced all the windows in the stairwells to each building. The Landlord stated the replaced windows were original to the building and approximately 50 years old and beyond their useful life. The replaced windows were single-pane, were draughty and for those located on the south-side, made the interior of the hallway too hot during warmer months. The new windows were energy-efficient, double-pane. There were 8 windows in each building that were replaced. The Landlord was required to use a crane service for installation of the windows, given the height of the building. The total cost for the window replacement was \$64,403.50, which the Landlord's application requests that all units in all three buildings bear equally. Final payment for this work was made on June 25, 2024.

Lastly, the Landlord's application requests an additional rent increase for all three buildings for repaving the parking lots that are adjacent to each building. The Landlord testified there is a shared driveway between buildings 1956 and 1962. The repaving work included repaving the area where the garbage bins used by buildings 1950 and 1956 are located. The parking area for building 1962 also had lines repainted. The Landlord testified that over the years (the Landlord has owned the buildings for approximately 35 years), the parking lot surfaces had been patched on several occasions but it had been approximately 25 to 30 years since major repair had been done to the lots. He noted the soil condition was challenging in the area, and the parking surface had sustained a general failure.

A review of the invoices submitted by the Landlord indicate the parking lot for building 1962 cost \$43,228.50. The resurfacing of the parking areas for buildings 1950 and 1956 totaled \$10,279.50. Final payment was made on August 28, 2024, for the resurfacing on the lots, and October 10, 2024, for the area where the garbage bins were located.

The Landlord testified the bulk of the cost for the work was associated with building 1962. He stated the units did not have assigned parking and tenants could park in any available spot in any of the three parking areas. However, he noted the parking area for building 1962 was not as convenient for tenants residing in the other two buildings. For these reasons, the Landlord's position was each building should share equally in the total cost of the repair to the parking lots and garbage bin area.

Tenant M.D. stated he has resided in his unit since 2022. He indicated there was no specific assignment of a parking spot in his tenancy agreement. However, when he moved into his unit, he stated the Landlord's agent pointed to a spot and informed him this is where he could park. Tenant M.D. noted that on occasion others have parked in the spot that was shown to him to be his parking spot. He further acknowledged the parking area was "rough," but inquired whether further patching could have remedied the situation. Tenant M.D. also questioned whether the new windows in the hallway were energy-saving, and stated he was uncertain whether the carpet repair in the hallways and stairwells had a safety aspect.

Tenant L.M. stated she has resided in her unit in building 1950 since 2007. She stated she was assigned a parking spot at the commencement of her occupancy although it was not stated in her tenancy agreement. Her parking spot, she noted, was numbered and she had always parked there. Tenant L.M. testified that she was told when she moved into her unit that she could not park elsewhere. The Landlord's property manager R.M. stated he indicates to tenants where they can park generally and states that tenants are informed that visitors must park on the roadway. Tenant L.M. further testified that over the course of her tenancy she has noted that when a tenant moves out, the new tenant moving into that unit uses the same parking spot as the vacating tenant had during their tenancy.

Tenant V.W. testified she has resided in her unit for approximately 6 years and noted general agreement with Tenant L.M. as to her testimony regarding interaction with the Landlord's agents about parking spot assignments. She stated her parking spot was assigned to her when she moved in, that it had a number and she has regularly parked only in that spot.

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 present application was filed by the Landlord on December 4, 2024.

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 22 specified dwelling units in each of the three buildings to which this application applies.

4. Amount of Capital Expenditure

The Landlord claims the total amount of \$92,606.34 for hallway renovations for all three buildings (including the cost of re-painting the hallways); \$64,403.50 for window replacement in common areas for all three buildings; and, \$53,508.00 for repair to the parking areas for all three buildings, as detailed in the Landlord's itemized capital expenditure set forth above. The Landlord stated there was no other source of payment or rebates to off-set any portion of these costs.

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.”

Common Area Hallway Renovations

I find the common area hallways in each building are a major system or component in a residential building. The Landlord provided evidence the carpeting that was replaced was 25 years old, had last been replaced in approximately 1998 or 1999 and had exceeded its useful life. Furthermore, given the condition of the carpet, I find it posed a safety hazard to tenants and others. I accept the Landlord’s evidence that the replaced carpeting was at or exceeded its useful life and required replacement. I find the replaced carpeting with the rubber nose guards improves tenant safety by reducing trip hazards. I further accept the Landlord’s evidence and testimony that signage was replaced and signage provided where missing, as well as the number for each rental unit. I accept the Landlord’s testimony there was also missing signage (for instance, the electrical room), and the replaced signage and unit numbers will assist emergency services in locating areas within each building. Finally, I accept the Landlord’s evidence that hazardous materials testing was necessary for the hallway renovations to occur.

The Landlord also incurred a total of \$12,097.33 for all buildings combined for patching any holes and painting the hallways and trim. I decline to award the cost incurred by the Landlord for painting the hallways as I do not find that this work is repair work. I find patching and painting to be an expenditure for maintenance associated with the walls.

The final payment for the hallway renovations was made April 8, 2024 (within 18 months of the application filed by the Landlord on November 13, 2024). I find the payments made by the Landlord are within the 18-month period prior to the Landlord making this application. I further accept the Landlord’s testimony the carpeting and signage have a useful life exceeding 5 years (demonstrated by the warranty issued to the Landlord for materials) and there was no other source of payment for this expenditure.

I find the following payments were made by the Landlord:

- hallway renovation for building 1950 - \$23,399.10
- hallway renovation for building 1956 - \$26,980.10
- hallway renovation for building 1962 - \$22,649.28
- signage cost total for all three buildings - \$1,495.53
- hazardous materials testing for all three buildings - \$5,985.00

Common Area Window Replacement

I find windows are a major component or system in each building. The Landlord's evidence establishes the replaced windows were single-pane and original to the building. I accept these windows had exceeded their useful life. I further accept the newly installed windows are double-pane and thus improve energy efficiency. I find the total cost for all three buildings, each having the same number of windows (8), is \$64,403.50, there being no rebates or other source of payment to reduce this cost. The last payment was made on June 25, 2024.

Parking Lot Resurfacing

I find the parking lots to be major components of the residential rental buildings. I accept the evidence that surfaces of each lot as well as under the garbage bins for buildings 1950 and 1956 had deteriorated such that re-surfacing of each parking area was necessary. The Landlord testified that over the years patching of the surface was done but re-surfacing was now required. I further accept the Landlord's testimony that the cost for the re-painting was solely for the parking area for building 1962.

I find the cost for the resurfacing of that portion of the parking lot for building 1950 and 1956 totals \$10,279.50, and the last invoice for this work was paid on October 10, 2024. I find the cost for resurfacing the lot adjacent to building 1962 is \$43,228.50. I find the last invoice was paid by the Landlord for this work on August 28, 2024. I find there was no other source of payment or rebate for this work.

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 Tenants have not provided sufficient evidence to support a dismissal of the Landlord's application for an additional rent increase for these capital expenditures. 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 parking lot, the common area windows or the hallways. Rather, the useful life of each had expired, and additionally in the case of the windows in the common area, was installed for energy efficiency. I do not find evidence the Landlord was paid or entitled to be paid from another source for this work.

However, I decline to accept the Landlord's apportionment of all work for all buildings evenly. I am persuaded by the Tenants' evidence that the Landlord's agents or representatives may have assigned to at least certain tenants in each building a parking spot. Thus, I find it appropriate that the cost for this work be in accordance with that incurred for each building.

Furthermore, I do not find a basis by which the hallway renovation of carpeting should be equally applied to all tenants in the three buildings. Rather, I find it appropriate that the new carpet and related installation work be assessed to each building pursuant to the invoices. I find it appropriate though that the signage and the hazardous materials testing in the total amount of \$7,480.53 be equally shared among the three buildings.

Summary

The Landlord has been successful with this application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures more particularly set forth 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 22 specified dwelling units in each building.

Building 1950

I find eligible capital expenditures in the following amounts for building 1950 in the total amount of \$52,500.23 as follows:

- hallway renovations - \$23,399.10
- signage and hazardous waste testing (1/3 of \$7,480.53) - \$2,493.51
- common area window replacement – \$21,467.87 (1/3 of \$64,403.50)
- parking lot resurfacing - \$5,139.75 (1/2 of \$10,275.50)

I find for each unit its additional rent increase is \$19.89, calculated as follows:

$$(\$52,500.23 \div 22 \text{ units}) \div 120 \text{ months} = \$19.89$$

Building 1956

I find the Landlord's eligible capital expenditures for this building as follows:

- hallway renovations - \$26,980.10
- signage and hazardous materials testing - \$2,493.51 (1/3 of \$7,480.53)
- common area window replacement - \$21,467.83 (1/3 of \$64,403.50)
- parking lot resurfacing - \$5,139.75 (1/2 of \$10,275.50)

I find for each unit its additional rent increase is \$21.24, calculated as follows:

$$(\$56,081.19 \div 22 \text{ units}) \div 120 \text{ months} = \$21.24$$

Building 1962

I find the additional rent increase for each unit in building 1962 is based upon the following capital expenditure costs:

- hallway renovations - \$22,649.28
- signage and hazardous materials testing - \$2,493.51 (1/3 of \$7,480.53)
- common area window replacement - \$21,467.83 (1/3 of \$64,403.50)
- parking lot resurfacing - \$43,228.50

I find for each unit its additional rent increase is \$34.03, calculated as follows:

$$(\$89,839.12 \div 22 \text{ units}) \div 120 \text{ months} = \$34.03$$

If the additional rent increase for each unit, in each building as set forth above 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.

Furthermore, I accept the Landlord's testimony the additional rent increase will not apply to those Tenants who moved in after May 1, 2024, the Landlord having already adjusted their rent accordingly.

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 for each 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 Act.

Dated: March 30, 2025

Residential Tenancy Branch