



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 in accordance with 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 capital expenditure.

Landlord's president E.D., Landlord's property managers E.K. and B.K. attended the hearing.

Tenant C.S., Tenant D.W., Tenant L.G., Tenant N.M. and Tenant K.P. attended the hearing.

The Landlord confirmed service of Notice of Dispute Resolution proceeding package to each Tenant by Canada Post registered mail on January 17, 2025. The Landlord provided copies of each tracking receipt issued by Canada Post for each Tenant served with the proceeding package. The Landlord's president confirmed that each proceeding package included copies of the Landlord's evidence submitted to the RTB for this proceeding.

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 a capital expenditure?

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 a capital expenditure made by it, as follows:

- Elevator modernization totaling \$99,044.68, which included electrical work in the amount of \$3,840.85 and flooring material and installation for the elevator in the amount of \$1,136.43.

The residential rental property was constructed in the early 1970's, is a 4-storey building with a total of 35 rental units. The Landlord's president stated the capital expenditures were incurred in relation to the project within 18 months preceding the application and these costs are not expected to re-occur for at least five years. Documentation of invoices and payments made by the Landlord for the work were provided as evidence. The Landlord's representative further confirmed there was no other source of payment for these expenditures, including rebates and permitting fees. The Landlord's president stated the cost for the elevator included a \$500.00 reduction (stated as a rebate in the application) from the vendor pursuant to price negotiation undertaken by the Landlord.

The Landlord's president explained the elevator in the building was estimated to be original to the building. She stated the elevator was approximately 50 years old; a written report submitted by the company retained to replace the elevator estimated its age at 45 years and past its useful life. The president testified the elevator was regularly maintained but she had been advised on several occasions that parts for the elevator would become increasingly difficult to obtain due to the age of the elevator. The Landlord's president further stated she was informed by maintenance and repair personnel that due to the age of the elevator and replacement part availability it could take up to 12 weeks for parts to be available. She stated this was a concern as many of the tenants are elderly and this is the only elevator in the building.

The Landlord's president further explained that replacing the elevator also increased its security and safety. An emergency battery was installed together with a lowering device that would ensure occupants would not be trapped between floors in the event of a power outage. The hoist was replaced and repainted to make it fireproof. Additionally, the electrical system and flooring of the elevator were replaced. The Landlord's president stated the new elevator mechanism and renovated passenger cab was expected to last approximately 20 to 40 years.

The Landlord stated the application pertained only to those Tenants to whom notice of these proceedings had been made, although noting the capital expenditure would be assessed as to all 35 units in the building. The Landlord's president explained that those units that did not receive a notice of hearing were recent tenants and their rent had been adjusted accordingly for the capital expenditure.

Tenant D.W. stated he had no objections to the capital expenditure.

Tenant L.G. inquired whether the Landlord would have had a fund for this expense rather than shifting the cost to tenants by an additional rent increase. Discussion ensued concerning the policy underlying the Regulation and there was a 3 percent limit to the additional rent increase.

Tenant N.M. inquired whether the Landlord was not responsible for the upkeep and maintenance of the building, which was admittedly an old building. Tenant N.M. noted that seniors, including himself, were on a fixed income.

Tenant K.P. stated she had no additional comment.

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 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, based upon the Landlord's president's testimony, 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 35 specified dwelling units to be used for calculation of the additional rent increase, although only those units which were included in the Landlord's application and served with a Notice of Hearing in this matter are subject to the additional rent increase.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **\$99,044.68** as detailed in the Landlord's itemized capital expenditure set forth above, which includes a discount negotiated by the Landlord (there being no other rebates or other source of payment for the 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.

The 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.”

Modernization of Elevator

I find the elevator is a major component of the rental building. I find the replacement and modernization work was necessary as the existing elevator was original to the building, approximately 50 years old and at the end of its useful lifespan. I find this is sufficient to satisfy the requirements of the Regulation.

I accept the Landlord’s evidence that final payment for the work was made on May 7, 2023, within 18 months of the Landlord making this application on January 15, 2025. The Landlord provided the invoices and receipts for the capital expenditure. I find it is reasonable to conclude it is not expected this capital expenditure will re-occur within five years. I further accept the Landlord’s representative’s testimony there was no other source of payment (such as rebates) to pay for some or all of this capital expenditure.

Tenant Objections to the Capital Expenditure

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 have found the modernization of the elevator was necessary as it was original to the building and had reached or exceeded their useful life. Additionally, I find the modernized elevator provides additional safety to occupants that was not available with the original elevator.

I find the Landlord completed necessary work, was required to pay for the work, and is bound only by the statutory framework in seeking the capital expenditure.

I find the Tenants have not provided sufficient evidence to support a dismissal of the Landlord’s application for an additional rent increase for the capital expenditure.

Based on the above, I find the Landlord is entitled to recover for the modernized elevator in the amount of **\$99,044.68**.

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 a total capital expenditure in the amount of **\$99,044.68**, for the major component 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 there are 35 specified dwelling unit and the total amount for the eligible capital expenditures is the amount of **\$99,044.68**.

I find the Landlord has established the basis for an additional rent increase for a capital expenditure of **\$23.58 per unit ($\$99,044.68 \div 35$ specified dwelling units) $\div 120$ months = \$23.58 for those rental units that were served with a Notice of Hearing pursuant to the Landlord's application**. 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 the capital expenditure totaling **\$99,044.68**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenants with this Decision, in accordance with section 88 of the Act, within two weeks of this Decision. I authorize the Landlord to serve those Tenants by email if the Tenant provided an email address for service. The Landlord must also provide a copy to any Tenant that requires a printed copy in person.

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 18, 2025

Residential Tenancy Branch