

## **DECISION**

### **Introduction**

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

Landlord H.E.L. was represented by H.A., its property manager; S.E. its CFO; and, D.D. its building manager; at the hearing. The Landlord introduced expert witness was G.M.

Tenant A.S., Tenant I.A., Tenant S.T.3, Tenant W.W., Tenant L.K., Tenant A.S.3, Tenant S.K.7, Tenant C.P., Tenant J.W.3, Tenant A.R.2 attended the hearing.

The Landlord confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord to each Tenant on February 5, 2025, by either posting to the rental unit door or in person to the Tenant. The Landlord submitted a completed Proof of Service form in confirmation. I find the Tenants were served with the required materials in accordance with the Act.

The Landlord's representative stated that tenants whose tenancy began on or after October 25, 2024, were not included in the application as the Landlord would not seek to impose a rent increase on those tenants. The rationale was the rent for those tenants was adjusted for purposes of the additional rent increase set forth in this application. The total specified dwelling units would be included in the calculation of the additional rent increase, if the application was granted.

### **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 as well as written submissions received from Tenants who were not in attendance at 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 requests an additional rent increase for landscaping improvements it made to the rental property totaling \$339,054.97. The Landlord provided invoices for the work completed. The work commenced November 2022 and was completed late spring 2023. The last payment made by the Landlord for the work was April 25, 2023. The Landlord's representative and CFO S.E. confirmed there were no other sources of payment for the work and there had been no prior applications for an additional rent increase in the 18 months before submission of the present application. There are two rental buildings with 406 total units, although at the time of the hearing the Landlord's representative noted that the total occupied units in both buildings were 368.

The landscaping included installation an upgraded irrigation system, planting new and replacement trees and various plants and flowers in designated planting beds, mulch, improving walkways/paths with paving stones through the yard to the rental buildings, and removing all rock which had posed a risk of vandalism to tenant units. The outdoor space consists of 55,750 square feet. The refurbished outdoor space also had areas for Tenant use for barbeques, picnics, and similar activities. The Landlord stated the refurbished outdoor area would provide a gathering place for tenants where they could emotionally and physically recharge.

The Landlord introduced the testimony of the general manager and landscape architect G.M. who worked on the improvement project. He stated the work began in November 2022 and was completed in late spring 2023. The gravel on the pathways had been contaminated so it was all removed. A membrane and paving slabs were installed, as well as an upgraded irrigation system for the garden/flower beds and the lawn. He noted the ground level lawn was severely damaged and required work. G.M. further testified that old or dying trees were removed and new hedging and trees were planted. He estimated the landscaping that was replaced was 25 years old.

The Landlord submitted photographs of the landscaping both before, during and after completion of improvements.

Tenants in attendance raised the following issues regarding the landscape project:

- the landscape project included improvements that were necessitated by the Landlord's failure to properly maintain the yard (one Tenant stating she had resided in her unit since 2018 and had not noticed any maintenance of the yard);
- the landscape project was of no value or benefit as several Tenants stated they did not use or visit the area;
- the landscaping improvements did not qualify under the Act or regulation and is an aesthetic project only;
- the rental property required repairs to the elevator and other items in the building and in individual units.

Several Tenants not in attendance submitted written statements noted complaints lodged by various tenants regarding "constant" construction and disturbance to their

quiet enjoyment; that the Landlord was limited to only one rent increase per year; that the improvements inured to the benefit of the Landlord only; other repairs were necessary; and, problems associated with increased use of the yard area, including children's balls hitting patios and windows, greater amount of litter accumulating on tenant patios particularly from individuals who used the yard to smoke, and the accumulation of dust and dirt from the landscaping project.

The Landlord's representative S.E. stated the Landlord is constantly upgrading the rental property and considered the renovated landscaping project was an improvement to the tenants' yard. Representative H.A. noted the Landlord had retained a landscape company to maintain the property, both before and after the landscape work was completed.

## 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));
- 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 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.

I find there are 406 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 \$339,054.97 as a capital expenditure for the work described herein, there being no other source of payment for the work. The Landlord provided the invoices and payment records. I find the Landlord paid for the landscaping work in the stated amount.

#### 5. Is the Work an *Eligible* Capital Expenditure?

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 37C 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.

Policy Guideline 37C states: “Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property.”

Residential Tenancy Branch Policy Guideline 37C 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.” I find the Landlord timely applied for an additional rent increase within 18 months of the last payment made by it for the capital improvement.

### *Landscaping of Common Areas*

I find that landscaping of the common areas is not a major system or major component of the rental property. Landscaping is not integral to the building as are those items set forth in the example from Policy Guideline 37C (above). A major system or component that is integral is one that goes to the structure of the building so it may be used for its intended purposes; namely, providing suitable housing for individuals. Landscaping of lawns, garden beds, trees, hedges and outdoor spaces is for the elective use by tenants of a residential property are not integral to the structure of the residential rental property necessary for the building’s intended purpose. I find the Landlord has not provided sufficient evidence to establish the landscape renovation work detailed in its application and in testimony during the hearing is an eligible capital expenditure under Regulation 23.1 and as described in Policy Guideline 37C.

## **Conclusion**

The Landlord's application for an additional rent increase is dismissed, without leave to reapply.

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: April 20, 2025

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Residential Tenancy Branch