Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lantern Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: ARI-C

Introduction

In this application, the landlord seeks a rent increase pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the "Act") and section 23.1 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 (the "Regulation"). This Decision in respect of the landlord's application. There are 34 specified dwelling units.

The landlord filed their application on December 20, 2021 and a preliminary hearing was held on April 8, 2022. An Interim Decision in respect of the preliminary hearing was then issued on that same date. The preliminary hearing was adjourned to a substantive hearing scheduled on August 23, 2022.

Attending the hearing on August 23, 2022 were counsel for the landlord and five tenants each appearing on their own behalf.

Procedural Matter: Service of Documents

Landlord's counsel (hereafter the "landlord") testified that all respondents were served with a copy of the Interim Decision and a copy of the Notice of Dispute Resolution Proceeding within a week of the landlord receiving these from the Residential Tenancy Branch, on or shortly after April 8, 2022. All respondents were provided copies of the landlord's evidence upon which this application relies. While landlord's counsel did not provide a copy of his written submissions as requested in my Interim Decision, counsel's oral submissions were thoroughly sufficient for the respondents to respond to, and for me to consider.

Issue

Is the landlord entitled to impose an additional rent increase for eligible capital expenditures?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this application, and to explain the decision, is reproduced below. The landlord gave the following oral and documentary evidence:

1. This is the landlord's first application for a rent increase under subsection 23.1(1) of the Regulation; the landlord purchased the property in late 2010.

2. The eligible capital expenditures were in the total amount of $254,641.84 and were for envelope repairs and for podium repairs. Many of the building envelope assemblies had reached the end of their useful service lives. Similarly, the podium waterproofing assembly had malfunctioned and failed and was close to the end of its useful life. The envelope repairs, argued the landlord, meet the criteria set out in section 23.1(4)(a)(ii) of the Regulation. Details of the repairs are outlined in the landlord's documentary evidence, including in the reports.

3. The capital expenditures were incurred for the repair and replacement of major components of the property, namely the building envelope and podium.

4. The capital expenditures were incurred within the 18-month period preceding the date on which the landlord made its application.

5. The capital expenditures are not expected to be incurred again for at least 5 years, though in actuality much longer. The envelope repairs should have a useful life of 25 years. Absent failure owing to defects in workmanship, it is inconceivable that any of these expenses will reoccur in the next five years. Also, the podium repairs are expected to last at least 25 years.

6. The landlord did not fail to repair or maintain the envelope. The landlord acted reasonably and prudent in all of the circumstances. The landlord has not received monies to pay for the envelope repairs by any other source.

7. The landlord did not fail to repair or maintain the podium. Quite the contrary, when the landlord purchased the building, it was understood to be in reasonable condition. The landlord later discovered that the podium waterproofing assembly had failed. It acted reasonably and prudently and has not received funding from any other source to pay for these repairs.

Submitted into documentary evidence were proof of the capital expenditures (invoices and bills), proof of installations and replacement, reports, and proof that the work was completed. The envelope repairs are complete as described in a field report dated April 16, 2019. The podium repairs were completed, and this completion is outlined in a report dated April 27, 2021 and a field review report dated June 4, 2021.

The five respondent tenants were invited to ask questions, make submissions and statements, after the landlord completed his submissions. Most of the four tenants who spoke expressed concern about what the final rent increase would be. They likewise expressed anxiety about how much the annual rent increase might be. Most also had questions about how the rent increase would be implemented and "rolled over."

Another tenant expressed concern and dissatisfaction with the fact that she only became a tenant last summer (August 2021) but that she is now being asked to help pay for expenditures on work which was mostly completed before her tenancy began. She commented that she finds this "very upsetting."

Analysis

The landlord bears the evidentiary burden of establishing on a balance of probabilities (in other words that it is more likely than not) that the capital expenditures meet the requirements to be eligible for an additional rent increase.

Subsection 43(1)(b) of the Act states that a landlord may impose a rent increase only up to the amount "ordered by the director on an application under subsection (3) of the Act. Subsection 43(3) of the Act, to which the above section refers, states that

> In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

Section 23.1 of the Regulation sets out the criteria by which this application is considered. I have considered *Residential Tenancy Policy Guideline 37: Rent Increases* (https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl37.pdf) in applying the law to the facts of the application. The relevant sections of section 23.1 of the Regulation is reproduced as follows:

(1) Subject to subsection (2), a landlord may apply under section 43 (3) *[additional rent increase]* of the Act for an additional rent increase in respect of a rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.

(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.

(3) If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.

(4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:

(a) the capital expenditures were incurred for one of the following: [...]

(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; [...]

(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.

(5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital 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.

In this application, based on the evidence before me, it is my finding on a balance of probabilities that the capital expenditures were incurred for 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.

It is further my finding that the capital expenditures were incurred in the 18-month period preceding the date on which the landlord made its application; this is evidenced by the invoices and bills. I find that all of the capital expenditures are substantive and not minor. Nor do I find that any of the work completed is purely for aesthetic or cosmetic purposes (which would ordinarily disqualify the claim). That the work was completed before one of the respondents began her tenancy in August 2021 is not—as much as it is upsetting to the respondent—a factor that may bar the landlord's application.

Further, based on the evidence before me, I conclude that the capital expenditures are not expected to be incurred again for at least five years. (Indeed, the components for which the landlord seeks an additional rent increase will not require upgrades or replacement for a minimum of 25 years.)

While the respondent tenants asked a few questions, both of the landlord regarding its application, and a few directed at me in respect of how the legislation works, the respondents did not establish that the capital expenditures were incurred either for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or for which the landlord has been paid, or is entitled to be paid, from another source. As such, there are no facts by which the application may be denied under subsection 23.1(5) of the Regulation.

Given the above, the landlord's application for an additional rent increase for eligible capital expenditures in the amount of $254,641.84 pursuant to section 23.1 of the Regulation and section 43(1)(b) of the Act.

Section 23.2 of the Regulation sets out the formula to be applied when determining the amount of the additional rent increase.

(1) If the director grants an application under section 23.1, the amount of the additional rent increase that the landlord may impose for the eligible capital expenditures is determined in accordance with this section.

(2) The director must

(a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and

(b) divide the amount calculated under paragraph (a) by 120.

(3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43 (1) (a) of the Act in that year by 3%.

(4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

In this application, the calculation is thus: (254641.84 ÷ 35) ÷ 120 = $60.63.

From there, the landlord must then apply subsections 23.2(3) and (4). I leave it to the landlord to make the required calculations.

While it is not lost on me that the applicable sections of the Regulation are rather convoluted, it is ultimately the landlord's obligation to calculate the imposition of the amount as per page 11 of the *Residential Tenancy Policy Guideline 37* and sections 23.2 and 23.3 of the Regulation.

The parties will want to refer to *Residential Tenancy Policy Guideline 37*, 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 Residential Tenancy Branch website for further guidance regarding how this rent increase made be imposed.

Conclusion

For the reasons set out above the landlord's application is hereby GRANTED.

A copy of this Decision must be served by the landlord upon each affected tenant within two weeks of the landlord receiving a copy of this Decision. The landlord may provide a copy of this Decision to any of the tenants by email if preferred.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: August 24, 2022

Residential Tenancy Branch