Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing was conducted by way of written submissions in response to an Application for Dispute Resolution filed by the Landlord April 01, 2022 (the "Application"). The Landlord states that they have eligible capital expenditures and are seeking an additional rent increase.

This matter came before me for oral preliminary hearings August 18, 2022, and September 09, 2022. Interim Decisions were issued in relation to the preliminary hearings and should be read with this Decision.

Service of documents was addressed in the Interim Decisions. Deadlines for written submissions and evidence were outlined in the Interim Decision issued September 09, 2022. I have received materials from both the Landlord and Tenants which have been reviewed and are the basis for this Decision.

I note that the Tenants did not follow the proper procedure for submitting materials to the RTB and were told this by an Information Officer October 07, 2022. Despite this, the Tenants did not re-submit their materials in accordance with the proper procedure. However, I have located the Tenants' materials and have reviewed them.

Issue to be Decided

1. Is the Landlord entitled to impose an additional rent increase due to eligible capital expenditures?

Background and Evidence

The Application sets out the two capital expenditures the Landlord is applying for the additional rent increase in relation to:

1. Exterior deck replacements $66,597.42

2. Supply and replace tankless hot water heater $4,060.91

1. Exterior deck replacements $66,597.42

The Landlord submitted a letter dated September 2022, stating the following. The Landlord viewed the aging exterior decks as a safety concern. The rotting plywood on the decks required timely replacement. The replacement was done to maintain the residential property in a state of repair, and to replace major systems and/or components necessary, to comply with health, safety and housing standards. The decision to replace the decks was made with the professional recommendations of a roofing company. The replacement work is warrantied and projected to last more than five years.

The Landlord submitted three invoices from the roofing company for the deck replacement with the following details:

- Invoice dated June 17, 2021, for a total cost of $66,553.20 showing the Landlord owes $25,000

- Invoice dated August 12, 2021, showing the Landlord paid $25,000.00 June 16, 2021, and owes $25,000.00

- Invoice dated August 31, 2021, showing the Landlord paid $25,000.00 June 16, 2021, $25,000.00 August 13, 2021, and owes $16,597.42

The Landlord submitted what I understand to be cheque stubs showing they made the following payments:

- $25,000.00 June 16, 2021
- $25,000.00 August 16, 2021
- $16,597.42 August 31, 2021

The Tenants provided an email to the RTB with statements I have considered to be submissions. The Tenants also provided photos. In relation to the deck replacement, I understand the Tenants to be stating that the replacement work done by the roofing company is not adequate or complete. The Tenants rely on some of their photos to support this position.

The Landlord provided a reply to the Tenants' submissions and photos which I do not find relevant because it addresses the adequacy of the deck replacement work.

2. Supply and replace tankless hot water heater $4,060.91

The Landlord's September 2022 letter states the following. The aging tankless water heater was continuously problematic. Replacement parts for the water heater became harder to find which resulted in long repair times and disruptions of service. It was more cost-effective to replace the water heater with a current model.

The Landlord submitted an invoice dated January 31, 2022, from a plumbing and heating company. The invoice is for replacement of the heating unit and shows a total cost of $4,060.91.

The Landlord submitted what I understand to be a cheque stub showing they paid $4,207.91 February 04, 2022.

In the Tenants' email, it states that there have been multiple occurrences of there being no hot water in the rental units after the water heater was replaced and therefore, they do not feel that they should be responsible for the cost of replacing the water heater.

The Landlord provided a reply to the Tenants' submissions and photos which I do not find relevant because it addresses the adequacy of the water heater replacement.

Analysis

Section 43(3) of the *Residential Tenancy Act* (the "Act") states:

> (3) 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.

Sections 23.1 and 23.2 of the *Residential Tenancy Regulation* (the "*Regulation*") addresses additional rent increases for eligible capital expenditures and states:

> 23.1 (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…
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> (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:
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> (a) the capital expenditures were incurred for one of the following:
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> (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…
>
> (b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
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> (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.

23.2 (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).

RTB Policy Guideline 37 addresses additional rent increases for eligible capital expenditures and states in part:

The Residential Tenancy Regulation defines a “major system” as an electrical system, mechanical system, structural system or similar system that is integral to the residential property or to providing services to tenants and occupants. The term “major component” means a component of the residential property that is integral to the property or a significant component of a major system. The term “service or facility” is defined in the RTA. If agreed to be provided by the landlord, services include appliances and furnishings; utilities and related services; elevators; and intercom systems. Facilities such as parking, laundry, storage or common recreational areas are part of a residential property.

Major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. 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.

A major system or major component may need to be repaired, replaced or installed to comply with section 32(1)(a) of the RTA. This section requires a landlord to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Laws can include municipal bylaws and provincial and federal laws. For example, an elevator may need to be replaced to comply with required safety standards or a water-based fire protection system (like sprinklers) may need to be installed to comply with a new bylaw.

Installations, repairs or replacements of major systems or major components are also required if that system or component has failed, is malfunctioning or is inoperative. For instance, this would capture repairs to a roof that was damaged in a storm and is now leaking or the replacement of an elevator that no longer operates properly.

Additionally installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of its useful life. Policy Guideline 40: Useful Life of Building Elements establishes general timeframes for the life of various elements, including some major systems and major components. For instance, a domestic hot water tank generally has a useful life of 10 years and electrical wiring is typically expected to last for 25 years. In some instances, a landlord will need to provide sufficient evidence to establish the useful life of the major system or major component that was installed, repaired or replaced.

Generally, in order to qualify, the repairs should be substantive rather than minor. Cosmetic changes are also not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair or replacement that otherwise qualified. For instance, if the carpeting in the lobby of the residential

property was at the end of its useful life, an additional rent increase can be granted for a cosmetic upgrade, such as porcelain tiles, even if this cost more than a new carpet.

The following is a non-exhaustive list of expenditures that would not be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:

- repairing a leaky faucet or pipe under a sink
- painting walls
- patching dents or holes in drywall
- fixing a broken window

To be eligible, the capital expenditure must not be expected to be incurred again for at least 5 years.

Some examples of major systems or major components that are expected to last at least five years may include:

- A boiler
- A roof
- Carpets in a common area
- Pipes
- Electrical wiring
- Windows
- Asphalt pavement

Routine repairs to or maintenance of a major system or major component are not eligible capital expenditures because they are expected to be incurred again within a 5-year period. Examples may include:

- Replacing filters on an HVAC system
- Carpet cleaning
- Resetting an elevator's systems because the door was held open to long
- Annual servicing of the hot water heater…

> If the director determines all or part of the claimed capital expenditure is eligible, the director must grant an additional rent increase unless the tenant establishes that the expenditure is ineligible…
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> A "specified dwelling unit" means the following:
>
> > (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 capital expenditures were incurred…
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> If the arbitrator approves an additional rent increase for capital expenditures, the arbitrator will set out in the decision the amount of eligible capital expenditures and the number of specified dwelling units. The arbitrator will calculate the "Total ARI" and record it in the decision. The landlord must calculate ARI1, ARI2 and ARI3 themselves…
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> A capital expenditure is considered "incurred" when payment for it is made.

1. Exterior deck replacements $66,597.42

I accept the Landlord's position outlined in the September 2022 letter because the Tenants did not dispute the points in their email. I accept the rental unit decks were aging and a safety concern. I accept the plywood on the decks was rotting and required replacement. I accept the decks were replaced to maintain the residential property in a state of repair, and to replace major systems and/or components, that complies with health, safety and housing standards. I accept the Landlord decided to replace the decks in consultation with the roofing company.

I find the replacement of decks to be a substantive replacement, not a minor replacement. I accept the deck replacement was done to replace a major component of the building. I accept that decks, which have been part of the building and tenancy agreements, are integral to the property as they are part of the building. I accept the decks were replaced in order to maintain the residential property in a state of repair that complies with the health, safety and housing standards required by law in accordance

with section 32(1)(a) of the *Act* because the Landlord states this in their letter and this statement is undisputed by the Tenants. Further, I accept the decks were aging, rotting and a safety concern because the Landlord states this in their letter and this statement is undisputed by the Tenants.

I find the Landlord has proven the deck replacement costs were incurred for the reasons set out in section 23.1(4)(a)(i) of the *Regulations.*

I find the deck replacement costs were incurred within 18 months prior to the Application being filed. The first invoice for the deck replacement cost was issued June 17, 2021, within 10 months prior to the Application being filed. The remaining payments were made within this timeframe. I find the Landlord has proven the deck replacement costs meet the requirement set out in section 23.1(4)(b) of the *Regulations.*

I accept that the deck replacement is not expected to reoccur for at least five years given the nature of the work. I also accept the Landlord's statement in the September 2022 letter that the deck replacement is projected to last more than five years because the Tenants did not dispute this. Further, deck replacement is not a routine repair or maintenance issue. I note that deck replacement is not comparable to the types of repairs that are expected to reoccur within five years set out in RTB Policy Guideline 37 above. I find the Landlord has proven the deck replacement costs meet the requirement set out in section 23.1(4)(c) of the *Regulations.*

I have considered whether the Tenants have proven that the deck replacement was done due to inadequate repair or maintenance on the part of the Landlord or that the Landlord has been paid, or is entitled to be paid, from another source for the deck replacement costs. The Tenants have not submitted that either of these are the case. The only submission made by the Tenants is that the deck replacement work is not adequate or complete. Whether the deck replacement work is adequate is not a consideration on this Application as there is no requirement in the *Act*, *Regulation* or RTB Policy Guideline 37 that the Landlord prove the work was adequate. I do not accept that the deck replacement work is not complete because the Landlord submitted invoices showing they have paid for the work, the Tenants have made submissions about the adequacy of the work which indicates the work is done and the Tenants' photos do not support that the work is not complete. In the circumstances, the Tenants have failed to prove either circumstance set out in section 23.1(5) of the *Regulation.*

I find the Landlord has proven the deck replacement costs are an eligible capital expenditure and the Tenants have failed to prove they are ineligible and therefore I must grant the Landlord an additional rent increase pursuant to section 23.1 of the *Regulation.*

In relation to the amount of the additional rent increase, I find the cost of the deck replacement was $66,553.20 based on the invoices submitted. Based on the Application, I find there are 56 specified dwelling units. Therefore, the amount of the additional rent increase is:

$66,553.20 ÷ 56 = $1,188.45 / 120 = $9.90

The Landlord must do the remainder of the calculations and must impose this additional rent increase in accordance with the *Act*, *Regulation* and RTB Policy Guideline 37.

2. Supply and replace tankless hot water heater $4,060.91

I accept the Landlord's position outlined in the September 2022 letter because the Tenants did not dispute the points. I accept the previous water heater was aging and continuously problematic. I accept that replacement parts for the water heater were hard to find which resulted in long repair times and disruptions to service.

I accept that the water heater replacement was a replacement of a major component of the building because it is integral to providing Tenants hot water in their rental units, which is part of providing services to the Tenants. I accept the water heater was malfunctioning and close to the end of its useful life given the points I have accepted above. Further, the Tenants did not dispute this. I find the Landlord has proven that the water heater replacement meets the criteria set out in section 23.1(4)(a)(ii) of the *Regulation*.

I find the water heater costs were incurred within 18 months prior to the Application being filed. The invoice for the water heater replacement was issued January 31, 2022, within three months prior to the Application being filed. The invoice was paid February 04, 2022, within two months prior to the Application being filed. I find the Landlord has proven the water heater replacement costs meet the requirement set out in section 23.1(4)(b) of the *Regulation.*

I accept that the water heater replacement is not expected to reoccur for at least five years given the nature of the work. I note that the Tenants did not dispute this point. I find water heater replacement similar to the items outlined in RTB Policy Guideline 37 as examples of major systems or components that are expected to last at least five years. I do not find that water heater replacement is a routine repair or replacement such as replacing filters or carpet cleaning. I find the Landlord has proven the water heater replacement costs meet the requirement set out in section 23.1(4)(c) of the *Regulation.*

I have considered whether the Tenants have proven that the water heater replacement was done due to inadequate repair or maintenance on the part of the Landlord or that the Landlord has been paid, or is entitled to be paid, from another source for the water heater replacement cost. The Tenants have not submitted that either of these are the case. The only submission made by the Tenants is that the water heater has malfunctioned since being replaced. Whether the water heater has malfunctioned since being replaced is not a consideration on this Application as there is no requirement in the *Act*, *Regulation* or RTB Policy Guideline 37 that the Landlord prove the replacement has resulted in a system or component that works 100% of the time. In the circumstances, the Tenants have failed to prove either circumstance set out in section 23.1(5) of the *Regulation.*

I find the Landlord has proven the water heater replacement costs are an eligible capital expenditure and the Tenants have failed to prove they are ineligible and therefore I must grant the Landlord an additional rent increase pursuant to section 23.1 of the *Regulation.*

In relation to the amount of the additional rent increase, I find the cost of the water heater replacement was $4,060.91 based on the invoice submitted. Based on the Application, I find there are 56 specified dwelling units. Therefore, the amount of the additional rent increase is:

$4,060.91 ÷ 56 = $72.51 / 120 = 0.60

The Landlord must do the remainder of the calculations and must impose this additional rent increase in accordance with the *Act*, *Regulation* and RTB Policy Guideline 37.

Conclusion

The Landlord is entitled to impose an additional rent increase. The amount calculated pursuant to section 23.2(2) of the *Regulation* is $10.50. The Landlord must do the remainder of the calculations and must impose this additional rent increase in accordance with the *Act*, *Regulation* and RTB Policy Guideline 37.

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: October 27, 2022

Residential Tenancy Branch