Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") and the *Residential Tenancy Regulation* (the "**Regulation**") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The landlord's property manager ("**KP**") attended the hearing. Three tenants were present at the hearing: tenant NB, tenant TM, and tenant JH.

This hearing was reconvened from a preliminary hearing on June 10, 2022, following which I issued an interim decision.

KP testified that the landlord served the tenants with the Notice of Reconvened Hearing, the interim decision, and the supporting evidence either by registered mail or in person. The landlord submitted a proof of service spreadsheet indicating which tenants were served personally which was indicated by the tenant's signature of acknowledgment of service. Canada Post tracking numbers were listed on the spreadsheet of those tenants not served personally. The tenants in attendance confirmed that they received these documents in one of the manners indicated by KP. I find that the tenants were served in accordance with the Act.

Tenants NB and TM (who reside in the same rental unit) uploaded documentary evidence to the Residential Tenancy Branch (the "**RTB**") website five days before this hearing. They did not serve these documents on the landlord. NB testified that, after uploading them, he received an email from the RTB stating that these documents would be served on landlord by the RTB. Accordingly, he testified that he did not serve them himself.

Such emails are not generated by the RTB. After a party submits evidence to the RTB evidence intake site they receive an evidence submission receipt from the RTB. I have

retrieved the emails sent to NB and TM after they uploaded evidence. Each email contained the following alert at the top:

The Rules of Procedure set out this requirement and my interim decision stated this as well. NB and TM did not comply with the process.

Despite this, KP stated that she would agree to allow NB and TM's evidence into the documentary record. As such, I admit them.

Issues to be Decided

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

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental units in this application are located in a 46-unit apartment building (the "**Building**"). One of these units is used as the landlord's onsite office. The other 45 units are dwelling units. The Building is located on a residential property upon which two other apartment buildings are located: building "A" with 46 dwelling units; and building "C" with 75 dwelling units.

The landlord made this application on January 18, 2022.

KP testified that the landlord has not applied for an additional rent increase for capital expenditure against any of the respondent tenants prior to this application. The landlord made this application on January 18, 2022.

KP testified that the landlord was seeking to impose an additional rent increase for three separate capital expenditures:

1) the installation of exterior handrails (the "**Handrails**") throughout the residential property;

2) the replacement of the hot water storage tank (the "**Tank**"); and
3) the replacement of the interior carpet in the common areas throughout the Building (the "**Carpet**").

(collectively, the "**Work**")

1. The Handrails

KP testified that the landlord upgraded the Handrails throughout the residential property because they did not comply with existing municipal code. KP was unable to explain how the previous handrails were in breach of the municipal code, or even what the current standards were. The landlord did not provide any evidence as to the condition of the old handrails or when they were installed.

KP testified that the landlord incurred $22,756.83 in costs associated with installing the Handrails. In support of this amount, the landlord submitted invoices and ledger entries showing payments in the following amount:

Description	Amount
06-Jul-20	$21,673.17
30-Aug-20	$1,083.66
Total	**$22,756.83**

KP testified that the landlord only seeks to impose a rent increase on the respondent tenants of $7,585.61. She testified that since the Handrails were replaced throughout the exterior of the residential property, the landlord seeks to impose an additional rent increase based on a third of the total amount against each of the three buildings on the residential property.

2. The Tank

KP testified that the Tank only services the rental units in the Building and is not connected to the plumbing in either of the other buildings on the residential property. She stated that it needed to be replaced due to "issues", but she could not specify what those issues were or what caused them. She was not certain how old the previous hot water tank was.

On July 30, 2021, the landlord paid $10,552.50 for the supply and installation of the Tank. It submitted an invoice and a ledger entry supporting this amount.

NB testified that they still have problems with their hot water in the rental unit, they do not believe that installation of the Tank addressed the underlying issue it was meant to fix.

3. The Carpet

KP testified that the landlord replaced the carpet throughout the common areas of the Building because it had become a tripping hazard. She testified that the old carpet was over 25 years old and had become water damaged. KP testified that after the old carpet had been removed, the landlord's contractor discovered cracks and damage in the subfloor, which had to be reinforced and re-levelled.

On its application, the landlord stated that the amount of the capital expenditure it seeks to impose an additional rent increase for is $17,766.79. However, in the evidence submitted in support of its application, the landlord included two invoices:

1) an invoice dated August 31, 2020 for a total of $28,134.23 for the installation of the Carpet, which indicated that $15,774.94 had already been paid, and that $12,359.29 remained outstanding.
2) An invoice dated November 24, 2020 for $5,407.50 for the levelling of the subfloor.

As proof of payment, the landlord submitted:

3) a "Transfer Funds Receipt" from its financial institution to the contractor for $12,359.29 dated January 13, 2021.
4) A ledger entry for payments made to the contractor showing the following payments recorded as being made on December 12, 2020:
    a. $5,407.50
    b. $9,530.85

KP was unable to say whether the landlord incurred more than the $17,766.79 in capital expenditures relating to the installation of the Carpet or what the second charge in the ledger represented.

Tenant NB

Tenant NB argued that the landlord should not be able to recover any money for the installation of the Carpet as the landlord installed carpets of an inferior quality to the ones that were replaced. He testified that the Carpet is thin and there is little in the way of padding between it and the subfloor. He stated that it was uncomfortable to walk on,

and that the landlord should not be rewarded for making what amounted to a downgrade. He did not dispute that the old carpets were damaged, were a tripping hazard, or otherwise needed replacement.

Tenant JH

Tenant JH testified that he moved into the building on May 15, 2021. As such, he stated that the landlord had already incurred the costs for the installation of the Handrails and of the Carpet. Accordingly, he argued that the landlord had (or ought to have) incorporated the cost of these expenditures into the amount of monthly rent that he is paying. He argued that it would be unjust for the landlord to pass on the cost of these capital expenditures to him twice.

He did not raise any objection to the landlord imposing additional rent increase in relation to the capital expenditure for the Tank.

Analysis

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. I will not reproduce the sections here but 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 tenants may defeat an application for an additional rent increase for capital expenditure 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 their evidentiary burden and the tenant fails to establish that an 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

I accept KP's undisputed testimony that the landlord has not imposed an additional rent increase for capital expenditure against any of the tenants before.

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 do not find that the landlord's office meets the definition of "dwelling unit". There is no evidence before me to suggest that it is a "living accommodation" (for example, that it has bathroom and kitchen facilities). As such, I find that there are 45 dwelling units in the Building.

The Tank provides service solely to the units located in the Building. Similarly, in this application, the landlord is only claiming the cost of replacing the Carpet in the Building. Accordingly, I find that for the purposes of these two capital expenditures, all dwelling units in the Building are "specified dwelling units".

The Handrails are outside of the Building, throughout the residential property. There is no evidence before me that only the occupants of the Building use the Handrails. Indeed, the landlord's approach to recovering the cost of the Handrails indicates that the residents of all three buildings benefit from the Handrails. The landlord seeks to impose an additional rent increase on the residents of each of the three buildings based on one third the cost of the railings. This is not the correct approach, under the Regulation. The Regulation calculates permissible rent increases based on the number of specified dwelling units the capital expenditure relates to, not the number of buildings.

Accordingly, the cost of the Handrails must be borne by all tenants of the residential property equally. The landlord's application disproportionately put the cost of the new railings on the occupants of the Building and on building A, as they have fewer dwelling units than building C.

As the hand railings installation affected all units on the residential property, I find that there the number of specified dwelling units for this capital expenditure is equal to the number of dwelling units on the residential property: 166 (45 + 46 + 75).

4. Amount of Capital Expenditure

Based on the evidence before me, I find that the landlord incurred a cost of $22,756.83 for installing the Handrails and a cost of $10,552.50 for installing the Tank.

Based on the invoices, receipts, and ledger entries provided by the landlord, I am satisfied that the landlord incurred *at least* $17,766.79 for the installation of the Carpets. However, I will not make any finding that the landlord incurred an amount greater than this, as the landlord only applied to impose an additional rent increase on this amount and did not make an application to increase the amount of the capital expenditure prior to the application.

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

As stated above, in order 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.

I will address each of these in turn.

a. Reason for Capital Expenditure

KP was unable to explain why the old hot water storage tank was replaced or whether it was close to the end of its useful life. There is nothing in the documentary evidence explaining the necessity for its replacement. As such, I find that the landlord has failed to discharge its evidentiary burden to demonstrate that the Tank was installed for one of the purposes set out at section 23.1(4)(a) of the Regulation. Accordingly, I do not find

that the installation of the Tank was an eligible capital expenditure and I dismiss the landlord's application to impose an additional rent increase to recover its cost.

KP testified that the Handrails were replaced because the old handrails were not up to municipal code. The landlord tendered no documentary evidence to support such a claim. Additionally, there is no indication that the old handrails had failed, were malfunctioning, or were inoperative.

KP testified that the old handrails were original to the Building. However, the landlord did not offer any evidence to corroborate this. KP has not worked for the landlord since the Building was constructed (the 1970s) and she did not specify how she came to have understand the old handrails were original. The landlord did not provide any photographs or description of the old handrails, so a visual approximation of their age is not possible. In the absence of evidence supporting her assertion, or an explanation as to the source of her belief that the old handrails were original to the Building, I do not find KP's testimony sufficient to satisfy the landlord's evidentiary burden. Accordingly, I do not find that the cost of installing the Handrails is an eligible capital expenditure and I dismiss the landlord's application to impose an additional rent increase to recover its cost.

The parties agree that the old carpets were water-damaged and were in need of replacement. As such, I find that the old carpets had failed and that the reason for their replacement was one set out at section 23.1(4)(a) of the Regulation.

b. Type of Capital Expenditure

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.

Carpet in the common areas of the Building amounts to “primary flooring in common areas”. As such, I find that the Carpet is a major system or major component thereof.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

> A capital expenditure is considered “incurred” when payment for it is made.

The landlord made this application on January 18, 2022. 18 months prior to that date was July 18, 2020.

Based on the evidence submitted by the landlord, I find that the landlord incurred the capital expenditures to install the Carpets after the July 18, 2020.

d. Life expectancy of the Capital Expenditure

RTB Policy Guideline 40 sets the useful life for carpets at 10 years. Based on the evidence before me, I see no reason to deviate from this length of time. For this reason, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

6. Tenants’ Rebuttals

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.

The tenants did not make submissions on either of these two points. Rather they argued that portions of the application should be denied because:

1) the Carpet was of an inferior quality to the carpet it replaced; and
2) cost of the Carpet and the Handrails were incurred prior to tenant JH moving into his rental unit.

Neither of these are reasons set out in the Regulation for denying an application. JH's objection is not an unreasonable one, however the Regulation does not provide any basis to deny an application on that basis.

There is no requirement that a major system or major component be replaced with one of the same or similar quality. Policy Guideline 37 explicitly states that a replacement may be of an upgraded nature and its cost would still be eligible. I find it reasonable that the inverse should also be true.

The tenants have not demonstrated that any part of the application should be denied on the grounds set out in the Act.

7. Outcome

The landlord has been partially successful. It has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for the capital expenditure connected to the installation of the Carpet. 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, in relation to the Carpets, I have found that there are 45 specified dwelling units and that the amount of the eligible capital expenditure is $17,766.79.

So, the landlord has established the basis for an additional rent increase for capital expenditures of $3.29 ($17,766.79 ÷ 45 units ÷ 120). 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 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 RTB website for further guidance regarding how this rent increase made be imposed.

Conclusion

The landlord has been partially successful. I grant the application for an additional rent increase for capital expenditure of $3.29. The landlord must impose this increase in accordance with the Act and the Regulation.

I order the landlord to serve the tenants with a copy of this decision in accordance with section 88 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 17, 2022

Residential Tenancy Branch