Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes ARI-C

Introduction

This conference call hearing was reconvened in response to an application by the Landlord for an additional rent increase pursuant to section 43 of the *Residential Tenancy Act* (the "Act"). Both Parties were given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties both confirmed receipt of each other's evidence.

Preliminary Matters

The Tenant HP confirms that they have been authorized to represent the tenants in the following units: 101, 102, 103, 201, 202, 204, 206, 207, 210, 301, 302, 303, 304, 305, 306, 307, 308, 401, 403, 405, 407, 408, 409, and 410. The Tenant provides signed authorization for each of these units. Tenants in the remaining 11 units did not sign an authorization for Tenant HP to represent them and did not appear at the hearing.

The Landlord states that the Tenants in units 201, 205, 209, 310, and 402 are not disputing the rent increase. The Landlord provides copies on agreement from the Tenants in these units. The Tenant states that they believe these tenants are neutral about the result of the Landlord's application. The Landlord states that the tenants in unit 104 have moved out. The Parties agree that the Tenants in 302 and 304 have moved out, that tenant SS is no longer residing in unit 306 and that tenant BS in unit 301 is now deceased.

Given the agreements provided by the Landlord I find that the tenants in units 201, 205, 209, 310, and 402 are not disputing the rent increase and I dismiss the Landlord's application in relation to these Parties. Given the undisputed evidence that tenants SS and BS in units 301 and 306 are no longer tenants I dismiss the Landlord's application in relation to these Parties. Given the undisputed evidence that the tenants named in units 104, 202, 302, 304, and 407 are no longer tenants I dismiss the Landlord's application in relation to these Parties.

Issue

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

Background and Evidence

The Landlord seeks an rental increase for capital expenditures made on the replacement of a boiler, components of the elevator and the replacement of fuse boxes with electrical panels.

The Parties agree that the boiler is a major system, that the costs were incurred within the 18 months preceding the Landlord's application made February 25, 2022 and that the boiler should be good for 30 years. The Landlord states that the old boiler had been installed in 1991 with a life expectancy of 30 years. The Landlord states that the building was purchased by the Landlord in 2015 and that the Landlord knew at the time that the boiler was near its end of life.

The Tenant argues that the costs to replace the boiler would or should have been taken into account in the purchase price and that the costs for the new boiler are therefore already covered by the purchase price. The Landlord states that the purchase price reflected the age of all components in the building whether new or aged. The Landlord states that although there may have been a couple of more years left to the boiler as there were no issues and had been well maintained however the Landlord wished to be

pro-active with the heat and hot water provisions to the tenants rather than reactive. The Tenant states that they accompanied the inspector in 2015 prior to the sale and noted that the boiler had a crack in it. The Landlord does not know whether a crack was noted in the inspection report. The Tenant states that the maintenance log from August 2011 was difficult to read and full of jargon that the tenants had difficulty understanding. The Tenant argues that while they do not dispute the need for the boiler's replacement they feel strongly that since the Landlord knew of the age and condition of the boiler at the time of the purchase the Tenants should not now be liable for increased rents to cover costs that the Landlord knew would have to be incurred.

The Landlord agrees that they received a rebate of $4,500.00 for the cost of the new boiler and that although they used the costs amount of $49,678.65 for this application, the amount of costs being used for the rental increase should only be **$45,178.65.**

The Parties agree that the costs $48,707.00 to replace parts on the elevator are costs for a major component of a major system. The Landlord states that the elevator and components were original to the building in 1963 and that the components, being 60 years old, were at the end of their life. The Tenant states that they do no know the expected age of the elevator and its components. The Tenant states that other components of the elevator had been previously replaced. The Parties do no dispute that the new components should not require replacement for at least 5 years. The Tenant confirms that there is no evidence of inadequate repairs and maintenance to the elevator and its components. The Landlord states that no other funds were obtained to cover any portion of the elevator costs.

The Landlord states that the units all had fuse boxes original to the building and the Parties agree that the fuse boxes were a major electrical system. The Landlord states that they were required to replace the boxes with panels by their insurer and not due to any end of life or legally required upgrades. The Landlord argues that the insurers make their requirement for this change on the basis of a risk assessment. The Landlord

states however that the fuse boxes were at the end of their life and also created a fire hazard. The Landlord states that fuse boxes are no longer allowed in new buildings and that the upgrades were required as part of the Landlord's obligation to maintain the rental units under the Act. The Landlord states that they have no evidence of any other health, safety or housing requirements that require the upgrade to panels.

The Tenant states that the Landlord has the benefit of knowing its own finances and questions whether the Landlord recovered any funds through its income tax filings. The Landlord states that no rebates were provided to the Landlord through their income tax and that there may be depreciation in the future.

Analysis

Section 43(3) of the Act provides 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(1) of the Regulations provides that 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. Section 23.1(4) of the Regulations provides that 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:

(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;

(iii)the installation, repair or replacement of a major system or major component that achieves one or more of the following:

(A)a reduction in energy use or greenhouse gas emissions;

(B)an improvement in the security of the residential property;

(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.

There is no dispute that the boiler is a major system that is close to the end of its useful life , that the costs to replace the boiler were incurred within the 18 months preceding the Landlord's application made February 25, 2022 and that the boiler should be good for 30 years. There is no dispute that the costs to replace parts on the elevator are costs for major components that are near the end of their useful life, were incurred within the 18 months preceding the Landlord's application and that the new components should not require replacement for at least 5 years. It is undisputed that the fuse boxes were a major electrical system close to the end of its useful life and that the costs were incurred in the 18-month period preceding the date on which the landlord makes the application. There is no evidence that the costs for the fuse boxes are expected to be incurred again for at least 5 years.

Section 23.1(5) of the Regulations provides that 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.

The Tenants did not provide any evidence of inadequate repairs or maintenance to the boiler. There is nothing in the Act that provides for a consideration of a landlord's financial costs or savings at the time of purchase in relation to any future capital expenditures. As the Landlord has agreed that the costs for the boiler were reduced by a grant, and for the reasons set out above this section, I find that the Landlord has substantiated an approval for a rent reduction based on the reduced eligible capital expenditure of **$45,178.65** for the boiler.

There is no evidence of inadequate repairs and maintenance to the elevator or its components or to the fuse box and no evidence that other funds were obtained to cover any portion of the costs for these items. For these reasons and the reasons set out above this section I find that the Landlord has substantiated an approval for a rent reduction based on the reduced eligible capital expenditures of **$48,707.00** for the elevator parts and **$13,020.00** for the fuse box. The Landlord has therefore established a total amount of eligible capital expenditures of **$106,905.65**.

Section 23.1(1) of the Regulation provides that "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
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> (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.

Based on the evidence presented at the hearing, I find that the building has 34 dwelling units, and that all of them are specified dwelling units for the purposes of this application.

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. As there are 34

specified dwelling units with a total eligible capital expenditures of **$106,905.65, I** find that the landlord has established an additional rent increase of **$26.20** ($106,905.65 ÷ 34 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 is entitled to an additional rent increase for capital expenditures of **$26.20**. 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 RTB under Section 9.1(1) of the Act.

Dated: January 25, 2023

Residential Tenancy Branch