Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes ARI-C

Introduction

Both hearings dealt with the landlord's application, filed on November 10, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an additional rent increase for capital expenditures of $218,394.75 total, pursuant to section 43 of the *Act* and section 23.1 of the *Residential Tenancy Regulation* ("*Regulation*").

The landlord's two agents, "landlord AE" and "landlord DB," and one "tenant LC," attended both hearings. Tenant LC's support person attended the first hearing only. The landlord's third agent, "landlord MG," attended the second hearing only. At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The first hearing on April 3, 2023, lasted approximately 26 minutes from 11:00 a.m. to 11:26 a.m.

The second hearing on August 1, 2023, lasted approximately 30 minutes from 9:30 a.m. to 10:00 a.m.

The purpose of the first hearing was to make preliminary procedural orders to ensure that the second substantive hearing proceeded properly and concluded within its allotted time.

At both hearings, all hearing participants confirmed their names and spelling. At both hearings, landlord AE provided his email address for me to send copies of both decisions to the landlord after both hearings. At the first hearing, tenant LC provided

her mailing address, and at the second hearing, she provided her email address, for me to send copies of both decisions to her after both hearings.

At both hearings, landlord AE confirmed that the landlord company ("landlord") named in this application manages the rental property for the owner of the rental unit. At both hearings, he said that he is a property manager for the landlord, affirmed that he had permission to represent the landlord and the owner, and provided the rental property address. At both hearings, he identified himself as the primary speaker for the landlord.

At both hearings, landlord DB said that he is the vice president of property management for the landlord, and affirmed that he had permission to represent the landlord and the owner.

At the second hearing, landlord MG said that he is the director of property management for the landlord, and affirmed that he had permission to represent the landlord and the owner.

At both hearings, tenant LC affirmed that she only attended both hearings to observe and that she did not want to make any verbal submissions. At the first hearing, she confirmed that her sister was only present for moral support.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. At the outset of both hearings, all hearing participants separately affirmed that they would not record both hearings.

At both hearings, I explained the hearing process to both parties, and they had an opportunity to ask questions. At both hearings, neither party made any adjournment or accommodation requests.

At the first hearing and as noted in my interim decision, the first preliminary hearing was convened pursuant to a Notice of Prehearing Conference, dated December 9, 2022 ("NOPC"), provided to the landlord. Landlord AE stated that the landlord served this notice, a notice of dispute resolution package, and the landlord's supporting evidence to each tenant on December 9, 2022, all by registered mail. Landlord AE stated that the landlord served one tenant only with the above documents on December 12, 2022, by registered mail. The landlord provided copies of Canada Post receipts and tracking numbers for each tenant to confirm the above service.

At the first hearing and as noted in my interim decision, tenant LC confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that tenant LC was duly served with the landlord's application. In accordance with sections 89 and 90 of the *Act*, I find that all tenants, except tenant LC and the tenant in the unit indicated on the cover page of this decision, were deemed served with the landlord's application on December 14, 2022, five days after their registered mailings. In accordance with sections 89 and 90 of the *Act*, I find that the tenant in the unit indicated on the cover page of this decision, was deemed served with the landlord's application on December 17, 2022, five days after its registered mailing.

At the second hearing, Landlord AE and tenant LC confirmed receipt of my interim decision and the notice of adjourned hearing.

I find that all tenants were deemed served with my interim decision and the notice of adjourned hearing, as per sections 88 and 90 of the *Act*.

At the second hearing, landlord AE stated that the landlord served the landlord's second evidence package to each tenant on May 4, 2023, all by way of posting to each tenant's rental unit door. The landlord provided copies of signed, witnessed proofs of service for each tenant. Tenant LC confirmed receipt of the landlord's second evidence package. In accordance with section 88 of the *Act*, I find that tenant LC was duly served with the landlord's second evidence package. In accordance with sections 88 and 90 of the *Act*, I find that all tenants, except tenant LC, were deemed served with the landlord's second evidence package on May 7, 2023, three days after their postings.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord at both hearings, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for work done to the residential property's elevators. Landlord AE stated

that an elevator modernization project took place (collectively, the "**Work**") in the rental building. The landlord provided the following description in the online RTB dispute access site:

> *"…elevator modernization including mechanical and interior renovations of cab and components including updating the supporting machinery and controls to provide safe and efficient transportation throughout the Building."*

Landlord AE stated the following facts. The landlord is the beneficial owner of the apartment building since 2009. The landlord is the agent and manager for the owner. The building is from 1970, has 4 stories, and 66 residential units. The landlord was initially seeking this rent increase against 45 tenants, but one was removed so the landlord is only seeking it against 44 tenants. 21 units moved in after the elevators were complete and they are paying market rent, so they are not included in this application. The one unit was removed because the tenant moved out in January 2023 and they were not named in the initial application. The new tenant that moved into that unit was not served with this application, as no rent increase is being sought from them. The elevator project was completed between October 10, 2021 and January 24, 2022. In February 2021, the landlord discussed the project with the elevator company. The landlord provided a deposit for the elevator modernization project. The following five invoices were received and paid by the landlord to the elevator company, and copies were provided as evidence:

- 1) Invoice, dated May 21, 2021, for $58,966.58, was for the deposit;
- 2) Invoice, dated October 21, 2021, for $49,138.81;
- 3) Invoice, dated November 23, 2021, for $60,932.13;
- 4) Invoice, dated December 20, 2021, for $27,517.74;
- 5) Invoice, dated January 24, 2022, for $21,839.49.

Landlord AE stated the following facts. The landlord provided paid cheque stubs as evidence. The total for the project was $218,394.75. The landlord obtained an elevator license permit and a business license. The landlord provided photographs of the elevators before and after. The landlord provided the consultant findings of the inspections, the needs, and the project overview. Residential Tenancy Policy Guideline 40 states of the useful life of elevators is 20 years. This building was built in 1970 and the elevators are 50 years old and needed replacement. Residential Tenancy Policy Guideline 37 says that the landlord can apply for an order for an additional rent increase for capital expenditures. This is a capital expenditure that is eligible. The landlord's application was filed on November 10, 2022. The capital expenditure was incurred in

the 18-month period before filing. The landlord does not expect this capital expenditure to recur in five years. It is expected to last 20 years. It is a replacement of a major system, as per section 32(1)(a) of the *Act*. It relates to the state of the building and the health, safety, and housing, as required by law. It was the end of the useful life of the elevator and past the useful life. The elevators are a major component of the building. The materials and parts were not available for purchase to repair the elevators. There was a tripping hazard and tenants were tripping and falling. The landlord completed the machinery and new controls for the elevator cabs. The landlord is seeking a rent increase for 44 of the 66 units. The landlord calculated the rent increase per unit as $27.57 for a total of 66 units in the building. During this hearing, landlord AE calculated the cost for 44 units as $41.36, but is unsure if this number applies or the other number does.

Tenant LC stated that she had no submissions to make, and she had no response to the landlord's application.

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 its evidentiary burden and the tenants fail 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 that the landlord has not submitted a prior application for additional rent increase.

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 accept that the rental building is one structure which consists of 66 total rental units, as per landlord AE's affirmed testimony and the landlord's evidence.

4. Amount of Capital Expenditure

I accept that the cost of having the Work completed amounted to $218,394.75 based on the invoices provided by the landlord and landlord AE's affirmed testimony.

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. 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;*

Residential Tenancy 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.*

The Work amounted to upgrades to the buildings’ elevators. Residential Tenancy Policy Guideline 37 identifies elevators as a major system or major components. Section 21.1 of the *Regulation* identifies a residential property’s mechanical system as a “major system” or “major components.” The landlord modernized the elevators in the residential property. This amounts to significant components of the mechanical system, which cause them to be “major components”, as defined by the *Regulation*.

As such, I find that the Work was undertaken to replace “major components” of a “major system” of the residential property.

b. <u>Reason for Capital Expenditure</u>

I accept that the landlord was required to modernize the elevators in the rental building, which were approximately 51 years old in 2021 when this project was undertaken, as they had reached the end of their useful life of 20 years, as per Residential Tenancy

Policy Guideline 40. I find that the elevator modernization was required as the elevators became aged and tenants were tripping and falling, as per landlord AE's affirmed testimony. I find that the landlord provided sufficient evidence that the elevator modernization was required in order to abide by the landlord's duty to maintain the residential property according to health, safety, and housing standards required by law, as per section 32 of the *Act* and section 23.1(4)(a)(i)) of the *Regulation*. Such reasons fall under the category set out in the *Regulation* for eligible capital expenditures.

c. Timing of Capital Expenditure

Residential Tenancy Policy Guideline 37 states:

A capital expenditure is considered "incurred" when payment for it is made.

I accept the landlord's undisputed evidence that the first payment for the Work was incurred in May 21, 2021 and the final payment was incurred in January 24, 2022. Both of these dates are within 18 months of the landlord filing this application on November 10, 2022.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the major components replaced all exceed five years. There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out in Residential Tenancy Policy Guideline 40. For this reason, I find that the life expectancy of the major components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years, as confirmed by landlord AE in his affirmed testimony and the landlord's evidence.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the *Regulation*.

6. Tenants' Rebuttals

As stated above, the *Regulation* limits the reasons which tenants 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), tenants 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.

In this case, the tenants did not dispute the landlord's application. The tenants were provided with directions and orders in my interim decision, for submitting evidence and appearing at the second hearing. None of the tenants, aside from tenant KF, provided any evidence to the landlord or the RTB.

Only one tenant LC appeared at both hearings, but she did not provide any evidence or testimony, nor did she dispute the landlord's application. No other tenants appeared at either of the two hearings.

As noted in my interim decision, only one tenant, tenant KF, submitted a 2-page document as evidence, prior to the first hearing. Tenant KF did not appear at either hearing, in order to present his submissions or explain his documentary evidence. The document consists of a written statement of tenant KF's response to the landlord's application. In his evidence, he indicated that the replacement of the elevators in the building was necessary, and the rental building dated back to the 1970s. He took issue with receiving yearly rent increases from the landlord, as per the *Act* and the allowable *Regulation* amount, in addition to this new amount for capital expenditures.

As noted above, tenants can only defeat the landlord's application if they show the following, which I find that tenant KF failed to do:

- 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.

7. Outcome

The landlord has been successful and proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditures. 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 expenditures divided by 120. In this case, I have found that there are 66 specified dwelling units and that the amount of the eligible capital expenditures is $27.57.

The landlord named 57 tenant-respondent parties and 44 units in this application.

The landlord stated that only 44 of 66 units would receive the rent increase, since the other units were excluded because the tenants moved in after the elevator modernization and they pay market rent. However, the landlord provided the above rent increase amount of $27.57 based on 66 units in the building. I can only calculate the capital expenditures rent increase amount based on the 66 units total in the building, not the 44 units that the landlord intends to apply it to.

So, the landlord has established the basis for an additional rent increase for capital expenditures of $27.57 ($218,394.75 ÷ 66 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 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 RTB website for further guidance regarding how this rent increase made be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditures of $27.57. 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: August 29, 2023

Residential Tenancy Branch