



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding NUEVO ENTERPRISES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI - C

Introduction

This hearing dealt with the landlord's application for an additional rent increase for capital expenditures made under section 43(3) of the *Residential Tenancy Act* (the "Act") and section 23.1 of the *Residential Tenancy Regulation* (the "Regulation").

An agent appeared for the corporate landlord and one tenant appeared for the hearing. Both parties were affirmed and given the opportunity to be heard.

Preliminary and Procedural Matters

The landlord's agent testified that all of the tenants were given the proceeding package and evidence, in person, on June 10, 2023 and June 11, 2023 by the landlord's agent and building manager. I accepted the evidence before me that the tenants were duly served. Having been satisfied the landlord duly served its tenants I proceeded to hear from the landlord's agents with respect to this application and review its evidence.

None of the tenants had uploaded any written submissions or evidence prior to the hearing. However, after the landlord's agents presented the landlord's basis for seeking an additional rent increase for capital expenditure, I heard oral submissions from the tenant who was in attendance at the hearing.

On another preliminary matter, I noted the landlord's name appeared to be an operating name rather than a legal name. The landlord's agent requested the application be amended to reflect the landlord's correct legal name. The application was amended accordingly.

Issue(s) to be Decided

Has the landlord established an entitlement for an additional rent increase for capital expenditures in the amount requested?

Background and Evidence

The landlord submitted that the residential property is an older apartment style building constructed in 1966, with 23 specified dwelling units.

The landlord has made an application to the Director for authorization to increase the monthly rent by an additional \$38.14 for capital expenditures made in November 2022 and December 2022.

The landlord replaced the windows and sliding glass doors of the rental units in November 2022 at a cost of \$84,000.00. The windows and sliding glass doors that were replaced were original to the construction of the building in 1966. They were single pane aluminum framed windows that had issues with condensation, and some of the windows were cracked.

The landlord also removed the old carpeting and linoleum flooring in the common areas with new commercial grade carpet and tiles. The old flooring had been in place for over 12 years. The landlord expects the new flooring to last approximately 10 years. The cost of the new flooring was \$21,280.00.

The landlord's agent testified the landlord is not a GST registrant and did not recover any of the taxes paid on the purchase of the above expenditures.

In making this application, the landlord provided evidence that included: photographs of the old windows and photographs of the new windows; photographs of the old carpeting and linoleum in the common areas and photographs of the new carpeting and tiles; an invoice for the removal of the old windows and installation of the new windows and sliding glass doors; an invoice for the supply and install of the new carpeting and tile.

The invoice for the window replacement reflects the landlord entered into a contract for the window replacement on October 26, 2022, the windows were delivered on November 1, 2022, the contract price was \$80,000.00 plus GST of \$4,000.00, the

landlord paid a deposit of \$20,000.00, and the landlord was invoiced the balance due of \$64,000.00 on December 8, 2022.

The invoice for the new flooring is dated December 20, 2022 and reflects a contract price of \$21,280.00 including tax.

The tenant appearing at the hearing testified he moved into the building approximately three years ago. The windows that were in the building were old and they were in need of replacement; however, the tenant questioned whether the cost to do so should be borne by the landlord as opposed to passing on the expenditure to the tenants. A discussion ensued with respect to the changes in the rent increase regulations in recent years.

The tenant also questioned the quality of the new carpeting, stating the new carpeting is stained already and the edges come off the steps, creating a tripping hazard. The landlord's agent responded the new carpeting is commercial grade carpet tiles that is often used in hospitals and the benefit of carpet tiles is that if an area gets damaged it is possible to replace just the damaged tiles rather than the entire carpet. The landlord acknowledged that there had been a couple of instances when the carpet lifted on the stair edges; however, those were fixed right away and none of the stair edges have lifted recently.

Analysis

Section 43 of the Act provides for the amount that rent may be increased by a landlord. Where a landlord seeks to increase the rent by more than the annual allowable amount and if the tenant has not agreed to a greater increase in writing, section 43(3) of the Act provides that the landlord may make an application for an additional rent increase to the Director of the Residential Tenancy Branch for one of the reasons provided in the Regulations.

Sections 21 and 23.1 of the Regulations sets out the framework for determining if a landlord is entitled to an additional rent increase for capital expenditures. I will not reproduce these sections here but to summarize, the landlord must prove the following, on a balance of probabilities:

- the landlord has not made an application for an additional rent increase against these tenants within the 18 months preceding this application;
- the number of specified dwelling units on the residential property;

- the amount of the capital expenditure;
- that the work performed was an *eligible* capital expenditure, specifically that:
 - the work was to repair, replace, or install a “major system” or a “major 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
 - because it 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.

Below, I analyze each of the criteria for granting an additional rent increase for capital expenditure:

Prior Application for Additional Rent Increase

The application before me was filed in June 2023 and upon review of the Residential Tenancy Branch records, I am satisfied the landlord had not made an application for an additional rent increase in the 18 months that preceded June 2023.

Number of Specified Dwelling Units

Section 23.1(1) of the Act 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.

The landlord submitted that the building has 23 specified dwelling units. This number was on the application served to the tenants and none of the tenants refuted that number. Therefore, I accept the landlord's undisputed submission that there are 23 specified dwelling units in the building that had the new windows and flooring installed.

Amount of Capital Expenditure

The landlord submitted that the window replacement cost a total of \$84,000.00 and the flooring replacement cost \$21,280.00. I find that figure is supported by the invoices provided. Therefore, I find the amount of \$105,280.00 is the sum of the capital expenditures.

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 that the work was done for an eligible purpose. One of those purposes is that the work was to repair, replace, or install a major system or a major component of a major system.

The 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. A "major component" is a component of the residential property that is integral to the property or a significant component of a major system.

As seen in Residential Tenancy Branch policy guideline 37C, examples of a major system or major component include entry doors, windows, and primary flooring in common areas. As such, I find that the replacement of the windows and sliding glass doors, and the flooring in the common areas was undertaken to replace or install a "major system" or "major component" of the residential property.

To be an eligible capital expenditure, the major system or major component had to be repaired or installed because the former system or component had failed or was near the end of its useful life. The landlord's agent submitted the windows and sliding glass

doors were old, from 1966, and there were issues with condensation and cracks. The landlord submitted that the flooring in the common areas was at least 12 years old at the time of replacement. Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements* provides that aluminum framed windows have an average life of 20 years and carpeting has an average life of 10 years. Therefore, I accept that the windows, sliding glass doors and flooring in the common areas had exceeded its average useful life and was at the end of its useful life at the time of replacement.

To be an eligible capital expenditure it must have been incurred in the 18-month period preceding the date the landlord submits their application. A “capital expenditure” refers to the entire project of installing, repairing, or replacing a major system or major component. As such, the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure is due or made. In this case, the window contractor issued an invoice on December 8, 2022 requiring final payment be made and the flooring contractor issued an invoice requiring payment on December 20, 2022. Therefore, I am satisfied the capital expenditure was incurred within the 18 months preceding the filing of the application.

Finally, to be an eligible capital expenditure, the capital expenditure must not be expected to be incurred again within the next five years. Considering policy guideline 40 provides for an average useful life of 15 - 20 years for windows, I accept that the windows and sliding glass doors are not expected to be replaced again within the next five years. The landlord’s agent submitted the flooring is expected to last 10 years; however, the tenant questioned the quality of the new carpeting and its expected life span. Having heard the new carpeting is commercial grade carpet tiles that permits replacement of individual tiles where they become stained or damaged, I accept that the new carpeting is expected to last at least five years.

Tenant’s position

If the director determines that all or part of the claimed capital expenditure is eligible, the director must grant an additional rent increase unless a tenant establishes that the expenditure is ineligible.

Section 23.1(5) provides that 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:

- because of inadequate repair or maintenance on the part of the landlord, or

- the landlord has been repaid, or is entitled to be repaid, some or all of the cost from another source.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be granted (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.

The tenant appearing before me questioned whether the cost of new windows and flooring ought to be borne by the landlord rather than tenants. This position does not point to ineligibility on part of the landlord's expenditures but is more in the nature of disagreeing with the rent increase provisions contained in the Act and Regulations.

The Act provides that the rent may be increased in accordance with the Regulations. The Regulations were amended in July 2021 to eliminate an annual 2% rent increase that could be charged by any landlord in addition to inflation, regardless of whether the landlord was maintaining or improving the property. In its place, the Regulations permit rent to be increased by inflation and a landlord may apply for authorization to increase rents by an additional amount in certain circumstances, including where the landlord proves it has incurred eligible capital expenditures.

Outcome

In light of all of the above, I find the landlord has established that it made eligible capital expenditures and I find the **Total ARI is \$38.14**, calculated as follows:

$$Total\ ARI = \frac{(eligible\ capital\ expenditures) \div (number\ of\ specified\ dwelling\ units)}{120}$$

Eligible capital expenditure:

Windows and sliding glass doors	\$ 84,000.00
Flooring in common areas	<u>21,280.00</u>
Total eligible capital expenditures	\$105,280.00

$$Total\ ARI = [\$105,280.00 / 23] = \$4,577.39 / 120 = \$38.14$$

Therefore, I grant the landlord's application for an additional rent increase due to capital expenditures, as requested.

As provided under the Regulations, the Director provides the Total ARI in the decision issued in response to the landlord's application for an additional rent increase for capital expenditures.

Sections 23.2 through 23.3 of the Regulations sets out the formula for the landlord to use to calculate the amount of the additional rent increase that may be imposed upon the tenants in a given year, including a maximum amount. The Residential Tenancy Branch website provides a calculator for parties to use to calculate or verify the amount of the rent increase imposed by the landlord is lawful. Accordingly, the landlord must ensure that the amount of the rent increase imposed in a year is compliant with sections 23.2 and 23.3 of the Regulations.

I refer the landlord to policy guideline 37C and the calculators on the Residential Tenancy Branch website to determine the timing, notice requirements, amount limitations for imposing the additional rent increase.

Conclusion

The landlord's application for an additional rent increase for capital expenditures is granted.

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: October 31, 2023

Residential Tenancy Branch