



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding KELSON GROUP PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ARI-C**

INTRODUCTION

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase for capital expenditures under to section 43 of the Act, and section 23.1 of the Regulation.

Landlord's representatives J.F. and K.F., building manager D.S., and two Tenants K.G. and L.W. attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. All parties testified that they were not recording this dispute resolution hearing.

This Decision should be read in conjunction with one Interim Decision dated September 7, 2023.

SERVICE

The Landlord served the Proceeding Package and evidence for this hearing to the Tenants by Canada Post registered mail on May 18, 2023 (Proceeding Package). The Landlord uploaded Canada Post tracking receipts for each unit to which the capital expenditure claim is against. The Landlord stated that three units are excluded because these tenants moved in after the work was completed. The two Tenants who attended the hearing confirmed receipt of the Proceeding Package. I find that the Tenants were

sufficiently served with the Proceeding Package for this hearing on May 23, 2023, in accordance with section 71(2)(b) of the Act.

The Landlord served the additional evidence as instructed by the September 7, 2023 Interim Decision to the Tenants by Canada Post registered mail on September 15, 2023. The Landlord uploaded Canada Post tracking receipts for each unit to which the additional evidence was served. The Landlord wrote that three units are excluded because these tenants moved in after the work was completed. The Landlord wrote that six units who were originally served the Proceeding Package for the application have vacated, so they were not served the additional evidence. I find that the remaining Tenants were deemed served with the additional evidence on September 20, 2023 in accordance with sections 88 and 90 of the Act.

ISSUE TO BE DECIDED

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

BACKGROUND, EVIDENCE AND ANALYSIS

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 Landlord's claim, and my findings are set out below.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Summary of Proceedings

The hearing for this matter covered one hearing time. One Interim Decision was rendered as the Landlord needed to provide additional evidence. The Landlord served their additional evidence on the Tenants on September 15, 2023. The Tenants did not submit written submissions based on the additional evidence and did not dispute the Landlord's testimony about the capital expenditures. I accept the Landlord's convincing and credible testimony about the capital expenditures.

The Landlord purchased the 3-storey, wood frame, residential complex in 2012. The building was built in the mid 1970s and has not received any substantial upgrades in more than 20 years. The Landlord underwent renovations to modernize the common

areas of the residential property. The Landlord conducted upgrades to increase the security with the mailboxes in the building.

The Landlord uploaded before and after pictures for the capital expenditure claims made.

The Landlord testified that three units are exempt from any additional rent increase granted as they moved in after the work was completed. At least six other tenants have vacated their rental units prior to service of the Interim Decision. All new Tenants who have moved into the building are paying current market rents for their units. The Landlord submitted this application against all the remaining Tenants.

A. Statutory Framework

Sections 21 and 23.1 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 made an application for an additional rent increase against these Tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the submitted capital expenditures were:
 - o an *eligible* capital expenditure;
 - o incurred less than 18 months prior to making the application; and,
 - o not expected to be incurred again within five years.

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, or
- for which the Landlord has been paid, or is entitled to be paid, from another source.

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.

B. Prior Application for Additional Rent Increase

The Landlord submitted that they have not applied for an additional rent increase for the capital expenditures against any of the Tenants prior to this application. Based on the Landlord's undisputed testimony, I find the Landlord has not made a previous application for an additional rent increase for the eligible capital expenditures in the last 18 months in accordance with section 23.1(2) of the Regulation.

C. 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.

I find the number of specified dwelling units for the purposes of the capital expenditures is equal to the total number of units in the building, or 79 units. The Landlord stated they would not impose an additional rent increase against three Tenants as they moved in after the capital expenditure work was completed. At least six other Tenants have vacated their rental units prior to service of the Interim Decision, and the additional evidence. The Landlord deemed the initial three units as exempt from having an additional rent increase as these units are paying the current market rent for their suites, but I find the calculation of the additional rent increase will include the total number of specified dwelling units in the residential property.

D. Amount of Capital Expenditure

The Landlord submitted this application on May 15, 2023. I find the prior 18-month cut-off date for eligible capital expenditures is November 15, 2021.

The Landlord testified that they are seeking, under section 23.1(4) of the Regulation, to impose an additional rent increase for the following capital expenditures incurred:

Capital expenditures		Amount
1	Upgraded Interior Common Areas	\$210,550.59
2	Electrical wiring and fixtures in building and rental units-safety upgrades	\$134,707.65
3	Replaced and repaired drainage pipes	\$33,983.96

E. Is the Work an Eligible Capital Expenditure?

For the capital expenditure to be considered eligible, the Landlord must prove all the following:

- the capital expenditure was to repair, replace, or install a major system or a component of a major system;
- the capital expenditure 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; and,
- the capital expenditure is not expected to be incurred again within five years.

The Landlord testified they did not receive payments from another source for any of the above capital expenditures. Further they wrote they are not expecting and are not eligible to receive any payments going towards any of the capital expenditures. No Tenants submitted that the repairs or replacements were required because of inadequate repair or maintenance on the part of the Landlord.

Based on the Landlord's undisputed testimony, I find the Landlord has established that the capital expenditures undertaken neither have been required for repairs or replacement because of inadequate repair or maintenance on the part of the Landlord, nor has the Landlord been paid, or is entitled to be paid, from another source for the above capital expenditures in accordance with section 23.1(5) of the Regulation.

Types of Capital Expenditure

Section 21.1(1) of the Regulation defines "major system" and "major component" as:

"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;*

"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;*

1. Interior common areas

Reason for Interior Common Area Improvements

The Landlord testified that they completed significant interior common area improvements. The upgrades included new flooring, and paint, new light fixtures and electrical plugs, woodwork, signage, and security upgrades to the residential property mailboxes. All these upgrades were completed as the replaced items were close to, or at the end of their useful life. The Landlord stated that no upgrades had been completed in the building for more than 20 years.

The Landlord incurred these expenditures due to the installation, repair or replacement of major components that have failed or are close to the end of their useful life, and to achieve security improvements in the residential property.

Residential Tenancy Policy Guideline #40-Useful Life of Building Elements (PG#40) provides a general guide for determining the useful life of building elements. The useful life is the expected lifetime, or the acceptable period of use, of an item under normal

circumstances. PG#40 states that the useful life of carpets and tile is 10 years. The useful life of interior paint is 4 years. The useful life for light fixtures, panel and wiring is 15 years. The useful life of panelling (closest item to woodwork) is 20 years. A mailbox useful life is 15 years. I find the interior common area improvements were required as all the items were past their useful life.

The Landlord testified that the carpets were a hazard. They were ripped and rippling in some areas and stretching them did not improve their usefulness. The Landlord's goal was to modernize the visual appeal in the building, conduct the needed upgrades, and improve the security with the mailboxes.

The Landlord testified that they expected the interior common area improvements to last another 10 to 20 years.

The Landlord submitted that these common area improvements are major components that were close to the end, or at the end, of their useful lives. Lighting upgrades and installation are part of a major system in the residential property and are integral to the residential property and provide needed services to Tenants and occupants of the building. I find the upgrades to the interior common areas and improving the security to mailboxes in the residential property are integral to the residential property, and an improvement in the security of the residential property. I find the lighting upgrades and installation are part of a major system in the building. Both items fit the definition of a major component and a major system of the residential property and were necessary for the betterment of the residential property.

I find the Landlord has established that the interior common area improvements were required as the existing items were past their useful lives. I find the capital expenditures for the interior common areas are not expected to be incurred again for at least five years.

Timing of Common Area Improvements

The Landlord provided a copy of their general ledger and invoices for the work completed for the common area improvements. The summary invoicing for the common area improvements spans from February 22, 2022 to March 31, 2023 and the Landlord testified that the payment dates for the respective work occurred within one week or 30 days post invoice.

RTB Policy Guideline 37C-Additional Rent Increase for Capital Expenditures (dated February 2023) states:

A capital expenditure is considered “incurred” when payment for it is made. If a landlord pays for a capital expenditure by cheque, the date the payment is considered to be “incurred” is the date the cheque was issued by the landlord.

The expenditures claimed by the Landlord must have been incurred in the 18-month period prior to the application date. The onus is on the Landlord to establish on a balance of probabilities that the expenditures meet these requirements to be eligible for an additional rent increase.

I accept that the Landlord paid for the invoices noted on the general ledger summary within one week and not more than 30 days post invoice.

I find that payment for the invoices for the common area improvements were dated within the 18-month period preceding the date on which the landlord made the application, and I accept that the capital expenditures totalling **\$210,550.59** supported by the detailed invoicing were paid for within the allotted timeframe.

2. Electrical wiring

Reason for electrical wiring

The Landlord completed a number of projects related to the electrical wiring in the building. First, a safety upgrade to the electrical wiring and fixtures in every apartment by redoing the connections and fixture upgrades of the aluminum wiring as required by the insurance company. Second, the Landlord replaced electrical panels in every apartment to modern ones with breakers, replacing old panels that had fuses. Third, the main electrical switch of the building failed and had to be replaced. Fourth, the Landlord upgraded the laundry room electrical panels for safety reasons.

PG#40 states that the useful life of electrical items or items most similar to those are:

<u>Building Element</u>	<u>Useful life in years</u>
Light fixtures	15
Panel and wiring	15
Rewiring	25

Based on the Landlord's undisputed testimony, and PG#40, I find the electrical wiring work is a major system that is essential to provide services to the Tenants and occupants of the residential property. I find also that the electrical wiring work is integral to the residential property. I find these major systems were well past their useful lives.

The Landlord testified that the useful life expectancy of the electrical wiring ranges from 10 to 30 years, and there is no expectation that this capital expenditure is expected to be incurred again within the next five years.

I find the Landlord has established that all the electrical wiring system work was required as the existing items were past their useful lives.

Timing of replacement of exterior doors, windows, railings, decks, fascia, soffit, trim

The Landlord provided a copy of their general ledger and invoices for the work completed for the electrical wiring system. The summary invoicing for the electrical wiring system spans from December 13, 2021 to January 12, 2023.

I accept that the Landlord paid for the invoices noted on the general ledger summary within one week and not more than 30 days post invoice.

I find that payment for the invoices for the electrical wiring system were dated within the 18-month period preceding the date on which the landlord made the application, and I accept that the capital expenditures totalling **\$134,707.65** supported by the detailed invoicing were paid for within the allotted timeframe.

3. Replaced and repaired kitchen drains

Reason for replaced and repaired kitchen drain work

Due to overflowing drains, the Landlord replaced and repaired kitchen drains from four apartments at two ends of the building on the first floor. By using a camera, the Landlord determined that the drains were cracked and broken, and this was causing the

blockage. This work benefited all the Tenants, as the pipe draining impacts the whole building.

The Landlord testified that the drains were 100% blocked, so the Landlord opened the floors at one end of the hall and replaced the drainage pipes, and from the other side, the Landlord relined the pipes with an epoxy repair method from Nu Flow liner. This repair work eliminated the need to jackhammer the floors open and provided a green solution to rehabilitate the piping system from the inside.

I find this drainage pipe installation, and repair benefits a major plumbing system that affects the whole building. It is the Landlord's obligation to maintain the residential property in a state of repair that complies with the health, safety and housing standards required by section 32 of the Act. This work was required due to the problems with draining and overflowing of the pipes.

The Landlord does not expect that the replaced drainage pipes will be incurred again for at least five years, and the Nu Flow contractors submitted that their technology has an estimated life expectancy over 50 years.

Based on the Landlord's undisputed testimony and their submission of additional evidence, I find the repaired kitchen drain work addresses a major system and major component that restores the plumbing draining system for the whole residential property. I find that the repaired kitchen drain work is not expected to be incurred again for at least five years.

Timing of replaced and repaired kitchen drains

The Landlord provided a copy of their general ledger and invoices for the work completed for the replaced and repaired kitchen drain work. The summary invoicing for the replaced and repaired kitchen drain work spans from November 16, 2021 to November 21, 2022.

I accept that the Landlord paid for the invoices noted on the general ledger summary within one week and not more than 30 days post invoice.

I find that payment for the invoices for the replaced and repaired kitchen drain work were dated within the 18-month period preceding the date on which the landlord made the application, and I accept that the capital expenditures totalling **\$33,983.96** supported by the detailed invoicing were paid for within the allotted timeframe.

For the above-stated reasons, I find that the following capital expenditures incurred are eligible capital expenditures as defined by the Regulation:

Capital expenditures	Amount
Common area improvements	\$210,550.59
Electrical wiring	\$134,707.65
Replaced and repaired drainage pipes	\$33,983.96
Total capital expenditures	\$379,242.20

OUTCOME

The Landlord has been successful. They have proven, on a balance of probabilities, all the elements required 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 such:

$$\begin{aligned} \text{Additional rent increase} &= \left[\frac{\text{Eligible capital expenditure}}{\text{Number of specified dwelling units}} \right] / 120 \\ &= \left[\frac{\$379,242.20}{79} \right] / 120 = \$40.01 \end{aligned}$$

In this case, I have found that there are 79 specified dwelling units and that the amount of the eligible capital expenditures is \$379,242.20.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$40.01. 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 Guidelines 37 (February 2023), and 40 (March 2012), 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 of \$40.01 for a capital expenditure of \$379,242.20. 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 Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 30, 2023

Residential Tenancy Branch