

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for an additional rent increase for capital expenditures in accordance with sections 43(1)(b) and 43(3) of the Residential Tenancy Act (the Act) and section 23.1 of the Residential Tenancy Regulation (the Regulation).

Landlord A.H.H.L. was represented by its owner R.B. and property manager C.A. at the hearing.

Tenant B.B., Tenant S.M., Tenant R.R., Tenant K.H., Tenant K.M., Tenant B.G., Tenant L.R., Tenant M.A. attended the hearing, as well as Tenant advocate D.K. representing Tenants M.A. and B.G.

The Landlord confirmed service of the Notice of Dispute Resolution Hearing and proceeding package to each Tenant by posting to each unit door on February 11, 2025. The Landlord provided a statement from its representative confirming service to each Tenant in this manner. The Landlord further confirmed the proceeding package included copies of its evidence submitted in support of this application.

I find the Tenants were served with the required materials in accordance with the Act.

The Tenant's advocate confirmed that copies of evidence submitted for his principals was served to the Landlord in person on March 28, 2025.

### **Preliminary Matters**

After the hearing in this matter concluded, an interim decision was issued requesting further written submissions from the parties (described in greater detail below). The interim decision, dated April 22, 2025, stated that no further hearing would be scheduled pending receipt of the parties' respective submissions. Having reviewed the submissions of the Landlord and Tenant advocate, I find no further hearing is necessary.

### **Background and Evidence**

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants attending the hearing. However, not all details of the

respective submissions are reproduced in this Decision. Only relevant and material evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The rental property was constructed in 1969, has 4 storeys and a total of 36 units. The Landlord purchased the building in 1982. The principal of the organization passed away in 2019 and the remaining family began taking over the ownership duties of the property. The Landlord stated an engineer was retained to evaluate the building and make recommendations as mandated by their review of the condition of the rental property. The items in issue in the application were identified by the consulting engineer as requiring repair and replacement.

The Landlord's application seeks an additional rent increase for the capital expense associated with the replacement of balcony decks, railings, and removal of rot in joists, deck railings and exterior walls, as well as the removal of asbestos in the exterior stucco and replacement with new insulation and siding. The Landlord provided an invoice from the contractor dated November 3, 2023, for this work for the stated sum of \$1,260,000.00 (including \$60,000.00 in GST). A copy of the invoice was provided in evidence. The Landlord confirmed that payment was made the date of the invoice. The Landlord stated there had been no prior applications in the 18 months preceding this application and there was no other source of funds for payment.

The Landlord explained the replaced stucco and siding were original to the building and thus had exceeded their respective useful life. The balconies were also original to the buildings and were constructed in a manner that has later been determined to have design and engineering shortcomings. To remedy this defect, the Landlord undertook replacement of the balconies, decks and railings in conjunction with the remediation and replacement of the stucco and siding exterior. The Landlord stated the replaced exterior siding had an anticipated useful life of 25 to 30 years; and, the Landlord stated, he hoped it would last as long as 50 years. The Landlord stated this work was undertaken in connection with other improvements to the rental property over a multi-year period of improvements to the rental building.

Tenant advocate D.K. inquired of the Landlord whether the contractor had provided itemized invoices for its work. The Landlord stated the work set forth in the invoice, upon which the application was based, was part of a larger project to repair various aspects of the rental property. The Landlord explained the contractor would provide monthly invoices for work done, some of which was not included in this application. Therefore, the Landlord requested the contractor provide a global invoice for only that work which is the subject of this application. The Landlord stated the invoice was prepared by the contractor and the Landlord provided no direction in its preparation.

Subsequent to the hearing, an interim decision was issued which requested the Landlord submit copies of the invoices for the work done as well as proof of payment by the Landlord. The provisions set forth in the interim decision dated April 22, 2025, is incorporated by reference herein. The Tenants thereafter would have an opportunity to

submit any response to the Landlord's submissions, with the Landlord having the final reply.

The Landlord submitted a spreadsheet of invoices from the general contractor with costs related to the capital improvements in the application. The Landlord further provided the back-up invoices referenced in the spreadsheet for the period May 12, 2022 through June 29, 2023. These invoices provided the name of the contractor or supplier of materials and the contractor's labor, with costs per line item. The Landlord highlighted those amounts in each of the invoices it attributed to the work that is the subject of this application and provided proof of payment. The Landlord's spreadsheet provides the following:

<u>invoice number</u>	<u>date invoiced</u>	<u>date paid</u>	<u>amount of invoice</u>	
invoice 41006-1	May 5/21	May 11/21	\$	140,924.44
invoice 41006-2	July 7/21	Jul 24/21	\$	21,946.48
invoice 41006-3	Oct 13/21	Oct 22/21	\$	16,947.62
invoice 41006-22	July 19/23	July 29/23	\$	92,893.03
invoice 41006-23	Aug 14/23	Aug 26/23	\$	103,154.70
invoice 41006-24	Sept 8/23	Sept 26/23	\$	38,318.43
invoice 41006-25	Oct 4/23	Oct 27/23	\$	14,033.09

The total amount of the invoices paid by the Landlord to the contractor for the improvements is stated in the spreadsheet to total \$1,614,409.31. However, the Landlord did not provide the contractor's invoices subsequent to June 29, 2023.

The Landlord submitted redacted bank statements for each month from May 31, 2022 through July 31, 2023, highlighting the corresponding payments made to the contractor for the invoices dated May 12, 2022 through June 29, 2023. The Landlord included the monthly bank statement issued July 31, 2023, which highlighted two payments on July 8, 2023 and July 29, 2023. The July 8, 2023 highlighted payment corresponds to the last contractor invoice submitted by the Landlord dated June 29, 2023.

The remaining entry highlighted on the July 31, 2023, bank statement is for a payment made on July 29, 2023. There is no corresponding invoice for that payment. The Landlord's submissions include only a single page from monthly statements with payments made highlighted for the dates August 26, September 26 and October 27. The year for each of these payments is not indicated as the first page of the bank statement was omitted. The amounts paid correspond to the entries on the spreadsheet (above) for August 26, 2023; September 26, 2023; and, October 27, 2023. There are no contractor invoices submitted matching these payments.

The Landlord also incurred costs from an architect in the amount of \$9,198.00 that are listed on the spreadsheet. The Landlord provided the architect's invoices dated April 18, 2022 (with notation of payment made May 3, 2023); April 22, 2022 (with notation of payment made April 22, 2022); October 21, 2022 (no payment date indicated on

invoice); and, November 3, 2022 with no description of work performed (notation of payment made that same date).

The total cost incurred by the Landlord for the improvements at issue paid to the general contractor and the architect stated in the spreadsheet is \$1,623,607.31, for payments to the general contractor and architect.

The Landlord provided proof of service of this additional evidence to the Tenants.

In response, Tenant advocate D.K., on behalf of Tenants M.A. and B.G., submitted a response, acknowledging the objections stated therein would apply to all Tenants. The advocate's submissions note the same issues raised above with the supplemental documentation of invoices and payments made by the Landlord in support of its application. Referring to Regulation 23.1(4)(b), the Tenants' advocate states the Landlord has not established that payment was made for the capital improvements within the 18-month period prior to the Landlord filing the application. The Landlord filed its application for additional rent increase on January 21, 2025; and, thus the cut-off date 18 months prior is July 21, 2023. The advocate further notes Policy Guideline 37C states the date on which the capital expenditure is incurred is the date of final payment, the latter defined as the date a cheque was issued whereas in this case the bank statements record the date the cheque cleared the Landlord's account.

The Tenants' advocate submitted a timeline prepared by another Tenant (J.M.) from her personal notes to support the Tenants' testimony during the hearing that the subject improvements were completed in June 2023, not November 3, 2023 (the date of the invoice submitted with the application). The advocate notes the testimony during the hearing of a June 2023 completion date for the work corresponds with the invoice and payment documentation submitted by the Landlord.

Finally, the advocate advances an alternative argument that the contractor's invoices lack specificity as to certain charges for materials and labor such that line items may pertain to work that does not qualify under the Regulations for an additional rent increase.

The Landlord filed its written reply that the bank statements indicate payments through October 27, 2023, and all payments through that date are related to the subject capital improvements described in the Landlord's application. The Landlord contends that all invoices and payments are related to the same work, which transpired over the course of several months. The Landlord states it is the last payment made from which the 18-month period is determined. Lastly, the Landlord takes the position the contractor's invoices are sufficiently detailed and "provide a clear breakdown of eligible expenses."

## **Analysis**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not the facts occurred as claimed. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord bears the burden of proof in support of its application.

Regulation 23.1 governs additional rent increase applications based upon eligible capital expenditures made by a landlord. Among other requirements a landlord must establish, section 23.1(4)(b) requires evidence "the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application."

Policy Guideline 37C provides: "A landlord must also establish the amount of the capital expenditure. This can be done by providing invoices and proof of payment for the costs of the installation, repair, or replacement of the major system or major component." The Guideline further states: "the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made."

I find the Landlord has not provided sufficient evidence to meet its burden of proof that, on a balance of probabilities, the capital expenditures were incurred within the 18 months prior to the date the application was filed. The Landlord filed the application for additional rent increase on January 21, 2025. Therefore, the capital expenditure must have been incurred prior to July 21, 2023, "incurred" meaning "the date the final payment related to the capital expenditure was made." Moreover, the Landlord must establish the amount of the expenditure by providing both the invoice and proof of payment.

The contractor's invoices provided by the Landlord are dated monthly starting May 12, 2022 through June 29, 2023; and, the architect's invoices are for the period April 18, 2022 through November 3, 2022. The most recent invoice date is June 29, 2023. The payment for this invoice in the amount of \$74,818.75 cleared the Landlord's bank account, based upon the bank statement provided, on July 8, 2023, which is beyond the 18-month period prior to the date the Landlord filed this application (that is, preceding July 21, 2023).

I further find the Landlord has not met its burden of proof that the subsequent highlighted payments on the Landlord's bank records indicated for July 29, 2023, August 26, [2023], September 26 [2023] and October 27 [2023] are in relation to the capital improvements at issue as there is no invoice for the work for which these payments were made.

## **Conclusion**

The Landlord's application for an additional rent increase is dismissed without leave to reapply.

I order the Landlord serve the Tenants with this Decision, in accordance with section 88 of the Act, within two weeks of the date of this Decision. I authorize the Landlord to serve those Tenants by email if the Tenant provided an email address for service. The Landlord must also provide a copy to any Tenant that requests a printed copy.

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

Dated: July 24, 2025

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Residential Tenancy Branch