Dispute Codes ARI-C

DECISION

Introduction

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

Counsel for the Landlords and an Agent of Landlord C.L.P. (the Agent) attended the hearing for the Landlords. 19 Tenants attended the hearing and 18 provided affirmed testimony.

Counsel submitted that on April 19, 2024 all Tenants were served with the Landlords' application for dispute resolution and a letter providing a link to a file sharing site containing the Landlords' evidence. Counsel submitted that the above service occurred via posting the aforementioned documents on the doors of all named Tenants.

None of the Tenants in attendance at the hearing disputed this service; however, Tenant L.H.R. testified that viewing the Landlords' evidence via a link to a file sharing website was not easy for senior Tenants. Counsel submitted that documents in paper formant were made available to any Tenant on request and the Tenant L.H.R. was provided with a paper copy at her request. Counsel submitted that service of documents via a link to a file sharing website is a permitted method of service.

I find that the Landlords served the application for disputes resolution and evidence in accordance with the Director's Standing Order dated February 17, 2023 and in accordance with Rule 3.10.4 of the Rules of Procedure. The Landlords were permitted to serve evidence via a link to a file sharing website.

The Landlords provided a proof of service document showing that they served all rental units by posting the Notice of Dispute Resolution to the front door of the respective units. Pursuant to section 90 of the Act, I find the Tenants are deemed served with these packages 3 days after they were posted to the door.

Counsel confirmed receipt of evidence from the following Tenants and did not oppose their consideration:

- A.J.B.
- M.M.
- T.H.

As Counsel confirmed receipt of the above evidence packages, I find that the Landlords were sufficiently served with the above evidence in accordance with section 71 of the Act.

Tenant L.H.R. testified that she did not serve her evidence to the Landlord. I find that Tenant L.H.R. did not serve her evidence on the Landlord in accordance with the Act and that this evidence is therefore excluded from consideration.

Issues to be Decided

Is the Landlord entitled to impose an additional rent increase for capital expenditures (ARI-C)?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Landlords' Submission

Counsel submitted that there are 4 residential buildings on the property (the Buildings) and each building consists of the following number of specified dwelling units:

12184- 41 units
12186- 33 units
12188- 41 units
12190- 33 units

The Agent testified that there are a total of 148 units in the Buildings. The Agent testified that one of the 41 units in building 12184 has long been occupied but has only recently been legalized. Counsel submitted that he was not aware of this recent legalization and that while his materials state that there are 147 units in the Buildings, the newly legalized suite must be considered in this ARI-C calculation.

Counsel submitted that the Buildings were built in 1977. The Agent testified that Landlord C.L.P. became the owner of the buildings in November of 2020. There is no evidence that the Landlords applied for an ARI-C against of the Tenants prior to this application.

The Landlords applied to impose an ARI-C that was incurred on the Buildings. Counsel submitted that the capital expenditures all relate to a project to repair the balconies and the exterior walls of the Buildings as needed to maintain the Buildings in a state of repair that complies with the health, safety and housing standards required by law, pursuant to section 32(1)(a) of the Act.

Counsel submitted that the balcony and exterior wall repair constitutes a repair to the envelope of the Buildings (the Envelope Repair). Counsel submitted that the Buildings

are identical in construction and all have the same balcony structure. Counsel submitted that the Landlords engaged in a bidding process where different contractors submitted tenders and from this process a general contractor was hired (the Contractor). Evidence of same was entered into evidence. Counsel submitted that the Landlords hired a professional engineering consultant (the Engineering Consultant) to supervise the work throughout construction and the bidding process. Evidence of same was entered into evidence.

Counsel presented a report from the Engineering Consultant (the Report). The writer states that they are a professional engineer who oversaw the bidding process and the Envelope Repair project at the Buildings. The Reports sets out the following scope of work for the Buildings:

> **Balconies**: The balcony portion of the project included removal of the front header assembly across the balcony and all associated metal fascia and soffit trim. The headers were cut as required to facilitate the installation of dual header replacements across the front of each balcony on the second and third floors of each Building. The waterproofing membrane was removed from decks on the second and third floors and the underlying wood sheathing was removed and replaced where needed due to deterioration. The balcony enclosures for the first floor balconies were removed down to the concrete, and deteriorated concrete was repaired as needed. New waterproofing membrane was then installed over top of the balcony decks once underlying framing had been inspected and repaired as necessary. Any deteriorated wood joist framing was removed and replaced and the Buildings were examined to determine if wood rot extended into the Buildings. Sealant was removed and replaced or applied where missing at joints within the exterior wall assembly or within the balcony wall assembly where needed. The existing joists were cut back within the balcony area perimeter where required, and new header joists were installed to form new balcony floor assembly to finish header and provide support for the new railing assembly. This work included the supply and installation of new metal drip edge flashing. New aluminum post and picket panel railing assembly was installed across the balcony edges at each floor level following completion of deck repairs where the existing balcony railing had been removed. All balcony divider wall panels were removed and replaced, as the existing dividing wall panels contained asbestos.
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> **Exterior Walls**: Deteriorated or cracked brickwork within the wall assembly was removed and replaced. The metal shelf angels and lintels were cleaned, primed, and painted and new through wall flashing, including fastening bars, was installed. Deteriorated mortar joints were routed out and repointed. Deteriorated sealant was removed and replaced or applied where missing as necessary. The existing sealant was replaced as it contained asbestos.

Counsel submitted that the Envelope Repair was necessary because the useful life of the Buildings' envelopes including balconies and attached walls, was at the end of their useful life. The Report states:

> ….Although the scope of work above describes building components that were deteriorated, cracked, or otherwise damaged, this does not mean that these building components were not maintained properly. Unreasonable and inadequate maintenance of a building component is not to be confused with the need to replace building components that have worn due to decades of use, like in this case. The replacements described in the scope of work were not required due to inadequate or unreasonable maintenance. They were required because the building components were decades old and past their estimated useful life.
>
> The above-noted work was completed at all four Buildings. It is anticipated that the work completed will have an estimated useful life of significantly over five years, but this is an estimate only and not a warranty. Aside from regular maintenance and minor repair work, it is estimated that CAPREIT Limited Partnership will not need to undertake a similar project for well over five years – this is also just an estimate and not a warranty. This information is provided solely for the assistance of the BC Residential Tenancy Branch in understanding the expected life of these types of building components in general terms, and to explain that they are expected to last over five years.

Counsel submitted that as set out above, this isn't a case where the Envelope Repair was necessary because of inadequate maintenance. The Envelope Repair was necessary because the building components were past their useful life. Counsel's written submissions state that Residential Tenancy Policy Guideline 40 states the estimated useful life for steel balcony railings is 15 years, 20 years for decks and porches, 15 years for masonry repairs, and 15 years for waterproofing (building membrane). All work therefore has an estimated useful life of approximately 15-20 years. Counsel submitted that the envelopes of the 1977 buildings were clearly beyond their useful life.

The Landlords entered into evidence observations reports completed by the Engineering Consultant which show the progress of the Envelope Repairs. The Landlords entered into evidence the following invoices from the Contractor and the Engineering Consultant for the Envelope Repair:

Invoices	**Cost**	**Date Paid**
Contractor	$142,672.32	June 8, 2021
Engineering Consultant	$9,383.16	June 15, 2021
Contractor	$85,976.34	July 6, 2021

Engineering Consultant	$5,654.42	July 20, 2021
Engineering Consultant	$9,294.35	July 27, 2021
Contractor	$141,321.92	July 27, 2021
Contractor	$47,808.97	August 31, 2021
Contractor	$100,984.82	September 28, 2021
Engineering Consultant	$4,080.71	February 1, 2022
Engineering Consultant	$4,337.89	February 1, 2022
Contractor	$65,958.17	February 1, 2022
Contractor	$62,047.76	February 1, 2022
Contractor	$198,516.15	February 8, 2022
Engineering Consultant	$13,055.85	February 22, 2022
Engineering Consultant	$4,698.17	March 29, 2022
Engineering Consultant	$8,371.61	March 29, 2022
Contractor	$127,291.50	March 29, 2022
Contractor	$71,436.33	March 29, 2022
Contractor	$38,002.23	April 19, 2022
Engineering Consultant	$2,499.30	April 26, 2022
Engineering Consultant	$2,199.56	June 14, 2022
Contractor	$33,444.50	June 14, 2022
Contractor	$123,940.11	June 28, 2022
Engineering Consultant	$2,682.60	July 26, 2022
Engineering Consultant	$6,028.37	July 26, 2022
Engineering Consultant	$8,154.31	July 26, 2022

Engineering Consultant	$3,144.26	August 31, 2022
Engineering Consultant	$6,641.48	September 21, 2022
Engineering Consultant	$2,949.64	October 25, 2022
Contractor	$43,897.61	July 19, 2022
Contractor	$98,645.95	July 19, 2022
Contractor	$133,434.23	July 19, 2022
Contractor	$44,849.69	October 25, 2022
Contractor	$35,647.50	November 1, 2022
TOTAL COST	**$1,689,051.78**	

The Landlords entered into evidence payment confirmations for the above invoices which confirm the dates of payment as set out above.

Counsel submitted that the Landlords are aware than in an ARI-C application it is customary make an ARI-C calculation for each building in which the total cost for repairs to each building is divided by the number of specified dwelling units in that building and again divided by 120. Counsel submitted that it is the Landlords' position that in this case, the fairest ARI-C calculation uses the total cost of repairs to all Buildings divided by the total number of dwelling units in all Buildings (148) divided by 120 (the Combined Calculation).

Counsel submitted that the Combined Calculation is appropriate because the Contractor and the Engineering Consultant did not distinguish costs between buildings and invoiced the Envelope Repair of all Buildings as one project. Counsel submitted that since the work completed was the same across all Buildings, the Combined Calculation would result in all Tenants having the same rent increase, regardless of which of the Buildings they reside in.

Counsel submitted that since the invoices for the Contractor and the Engineering Consultant were not divided by building, trying to allocate which invoice is attributable to which building may result in some unfairness. Counsel submitted it is fairer for all the Tenants if the rent increase for each Tenant is the same.

The Agent testified that she has worked for Landlord C.L.P. for 5 years and confirmed that the Landlords are not entitled to be paid for the Envelope Repair work from another source. The Agent testified that the Envelope Repair work is not expected to reoccur in the next 5 years. Counsel submitted that the Contractor provided a 5 year warranty for the work completed. Evidence of same was provided.

Tenants' Testimony and Counsel's Response

Tenant A.J.B. expressed confusion over the breakdown of the Landlords' claim for an additional rent increase for capital expenditure because the Notice of Dispute Resolution Proceeding document lists two capital expenditures, each with their own requested rent increase. The Notice of Dispute Resolution Proceeding document states:

> Capital Expenditure 01
> Major Balcony and Exterior Wall Renovation Project (Part 1 of 2) - The Landlord claims the costs of a major capital expenditure project relating to the building envelope for the entire residential property. The only reason the cost is split is because the online application form does not permit a number in excess of one million dollars to be used. However, for absolute clarity, the entire balcony and exterior wall project is all part of the same project.
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> Capital Expenditure 02
> Major Balcony and Exterior Wall Renovation Project (Part 2 of 2) - The Landlord claims the costs of a major capital
> expenditure project relating to the building envelope for the entire residential property. The only reason the cost is split is
> because the online application form does not permit a number in excess of one million dollars to be used. However, for
> absolute clarity, the entire balcony and exterior wall project is all part of the same project.

Counsel submitted that the only reason the total cost for the Envelope Repair was split into two expenditures on the application for dispute resolution was because the RTB dispute management system does not currently allow a sum over $1,000,000.00 to be entered under one capital expenditure. Counsel submitted that due to this technical glitch the Landlord had to break the sum claimed into two parts.

Tenant A.J.B. testified that there should be a limit to the amount of capital expenditure the Landlords can seek to recover from Tenant and that it seems wrong that the Landlords can apply for an additional rent increase on top of the yearly rent increase.

Tenant L.H.R. and Tenant G.A.T.Z. testified that most of the residents are seniors and cannot afford the proposed rent increase. Tenant L.H.R. and Tenant P.C. testified that the ARI-C calculation should be based on a per building basis because the same amount of work was not done on each building. No documentary evidence to support this testimony was entered into evidence.

Tenant L.H.R. testified that unit 209 and 210 in her building had balconies repaired some years before the Envelope Repairs. Tenant L.H.R. testified that the Landlords'

observation reports state that this work was not completed adequately and needs to be re-done.

Observation report #10 states at section 10.8:

> Unit 210, localized portion of the balcony was inappropriately repaired in past, the rot joist was sistered with 2x8 piece, but the rot portion of the joist was not removed. [The Engineering Consultant] recommends contractor to cut/remove the rotten portion of joist and sister new 2x8 full length as per detail drawings.

Tenant L.H.R referenced observation report #7 from the Landlord's evidence as another example of inappropriate previous repairs. It states at section 7.3:

> One balcony joist at 3rd floor was observed rotted which was repaired in past. Previous repaired joist was inappropriately done by simply sistering 2 small pieces of 2x8 on rot joist, with rot left behind.

Tenant L.H.R. referenced building report #12 from the Landlord's evidence as another example of inappropriate previous repairs. It states at section 12.2:

> Balcony soffits were observed to be excessively fastened, leading to irreversible damages at the removal. All soffits were to be replaced with new…

Tenant L.H.R. testified that the Tenants should not be responsible for paying for the same thing over and over again.

Tenant L.H.R. testified that she moved in in 2016 and was told that her balcony would soon be replaced but despite many requests for same, it was not repaired for five years during the Envelope Repairs. Tenant L.H.R. testified that this delay in repairing the balcony constituted neglect. Tenant L.H.R. testified that she was unable to use the balcony for a couple of years before it was repaired.

Counsel submitted that the observation reports do not state that inadequate repairs were made, but that there were issues that needed to be dealt with. Counsel submitted that the observations reports are evidence of the Landlords repairing and maintaining the building over time. Counsel submitted that the observation reports show that the envelope of the Buildings did very well considering the Buildings were built in 1977.

Tenant L.H.R. Tenant B.V., and Tenant M.M. testified that the report from the Engineering Consultant which states that the repairs were needed due to the building components being at the end of their useful life cannot be relied upon because the

Landlords paid them for their services and they wrote whatever the Landlords asked of them.

Counsel submitted that the Tenants do not have any evidence to substantiate their claim that the Engineering Consultant should not be trusted.

Tenant M.M. questioned the correctness of the Landlords named in this application for dispute resolution. Tenant M.M. testified that he moved into one of the Buildings in 2015 and that at that time the only named Landlord on the Tenancy Agreement was Landlord I.I.C.I. Tenant M.M. entered into evidence an BC Assessment document for the rental property showing the 2024 assessment as of July 1, 2023. This document states that there are no sales history for the past three calendar years. Tenant M.M. testified that Landlord I.I.C.I. still holds title.

Counsel submitted that Landlord C.L.P. owns the building. The Landlords' written submissions state:

> [Landlord I.I.C.I.] holds legal title to the Building. However, the Building is beneficially owned by [C.L.P]. A partnership is not a separate legal entity at law, and cannot therefore hold registered title to property directly. This means that in order for a partnership to own property, it must hold title to the property through a separate legal entity. In this case, Landlord C.L.P.] holds legal title to the Building through [Landlord I.I.C.I.]
>
> Both [Landlord C.L.P] and [Landlord I.I.C.I.]. meet the definition of a "landlord" in the *Residential Tenancy Act*, SBC 2002, c 78 (the "**Act**") as owners of the Buildings. This explanation of the ownership structure of the Landlord is provided in case there is any confusion with respect to why legal title refers to [Landlord I.I.C.I.] while all invoices and payment documents reference [Landlord I.I.CI.]

In support of the above submissions the Landlord entered into evidence a signed Nominee Agreement between Landlord C.L.P. and Landlord I.I.C.I. in which Landlord C.L.P. acquired beneficial ownership of the Buildings.

Tenant M.M., Tenant T.Ha., Tenant C.K., Tenant P.C., and Tenant S.S. testified that prior to the Envelope Repairs, the Landlord did not do any repair or maintenance on their balconies. No repair or maintenance repair requests made by the above listed Tenants were entered into evidence. Tenant M.M. entered into evidence photographs of moss growing on cement balconies. Tenant M.M. testified that since the photographs were taken, the Landlord has power washed the moss off the lower balconies.

Tenant M.M., Tenant G.A.T.Z., Tenant K.B.J., Tenant P.C., and Tenant D.R.Z. expressed dissatisfaction on the quality of the Envelope Repairs.

Counsel submitted that on the topic of inadequate maintenance the burden of proof is on the Tenants. Saying that the Landlord did inadequate repairs does not make it so.

Tenant M.M. testified that the balconies are not a requirement or integral to the building and that the Landlord did not have to have them repaired and could have just blocked of access to them. Counsel submitted that balconies are a major system and needed to be repaired.

Tenant T.H. testified that he does not understand the Landlord's rent increase figures set out in the Notice of Dispute Resolution as it appears the Landlord is seeking more than he is permitted. Counsel submitted that he already addressed the issue pertaining to the need to split the claim due to the glitch in the RTB dispute management system.

Tenant C.S. noted discrepancies in the Landlords' materials regarding the number of specified dwelling units. Counsel confirmed there are 148 specified dwelling units.

Tenant T.Ha. and Tenant C.M.N. testified that the Landlord should not be permitted to seek a rent increase from the Tenants for the Envelope Repairs and that it is an example of corporate greed. Counsel submitted that this is not an allowed defence to an ARI-C application. Counsel submitted that none of the Tenants have provided any evidence of inadequate maintenance and the only evidence showing why the Envelope Repairs were made is the Report from the Engineering Consultant.

Tenant D.R.Z. testified that since the Buildings are not a strata the Landlord should be responsible for the costs of the Envelope Repair. Tenant D.R.Z. and Tenant B.V. testified that Landlord C.L.P. knew what they bought and should not come after the Tenants for the cost of repairs they knew about at the time of purchase. Tenant W.H. testified that the Landlord should pay for their own repairs.

Counsel submitted that the legislation permits landlords to apply for additional rent increases for capital expenditures.

Tenant C.K. testified that the first-floor balconies, like his, are concrete. Tenant C.K. testified that all that was done on his balcony was the installation of a new railing and privacy wall. Tenant C.K. testified that the majority of the Envelope Repairs are not for people with concrete balconies and so he should not have to pay the additional rent increase sought by the Landlords.

Counsel submitted that a building envelope cannot be done in isolation and it ultimately affects everyone in the building so the rent increase for capital expenditure applies to all tenants.

Tenant C.M.N. testified that the Tenants are being asked to pay for the cost to repair the Buildings but are not receiving any benefit. Counsel did not respond to this testimony.

Tenant P.C. testified that everything was worn out at no fault of the Tenants so they should not have to pay the additional rent increase. Tenant P.C. testified that the balconies were past their useful life because they were not maintained. Tenant P.C.

alleged that no wall work has been completed. No documentary evidence to support this position was entered into evidence.

Tenant G.W. testified that he has lived in one of the Buildings since 2001. Tenant G.W. testified that his balcony was repaired shorty after he moved in, and then again during the Envelope Repair. Counsel elected not to respond to this testimony.

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 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.

2. Prior Application for Additional Rent Increase

I am satisfied that the Landlord has not successfully applied for an additional rent increase against these Tenants within the last 18 months. This was not in dispute.

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.

The Agent explained there are 4 residential buildings on the property and each building consists of the following number of units:

12184- 41 units
12186- 33 units
12188- 41 units
12190- 33 units

There are a total of 148 units throughout the 4 buildings. Based on the Agent's testimony I am satisfied that all 148 units, including the newly legalized unit, are specified dwelling units as defined by the Act.

4. Amount of Capital Expenditure

The Landlord applied for capital expenditures for the Envelope Repair totalling **$1,689,051.78** for the Buildings.

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;

RTB 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 Regulation defines a "major component" in relation to a residential building, as a component of the residential property that is integral to the residential property or a significant component of a major system. While the balconies are private balconies for which the individual tenants have access, I find that they are a structural system and form a component of the building envelope and that a building envelope is integral to the residential property. I find that the exterior walls of the building are a major component of the building envelope as they prevent water ingress into the Buildings.

I do not accept submissions that the balconies could simply be closed off as such an act would not deal with water ingress issues in the envelope of the Buildings which could result in significant damage to the Buildings.

I find that the Envelope Repairs were undertaken to replace "major components" of a "major system" of the residential property.

b. Reason for Capital Expenditure

Based on the report from the Engineering Consultant, I find the Envelope Repairs were due to the components being at the end of their useful life, not from inadequate repairs or maintenance.

As noted by Counsel, RTB Policy Guideline 40 states that the useful life for steel balcony railings is 15 years, 20 years for decks and porches, 15 years for masonry repairs, and 15 years for waterproofing (building membrane). Counsel submitted that the Buildings were built in 1977, some 47 years ago. Based on the Report from the Engineering Consultant and submissions of the Agent and Counsel, I am satisfied the balconies were past their useful life expectancy and in poor condition.

A number of Tenants testified that the report from the Engineering Consultant could not be trusted because the professional engineer who wrote it was paid by the Landlords. I do not accept this unsubstantiated position which without evidence of wrongdoing impugns the ethics of the Engineering professional hired to complete the work. I do not accept the proposition that a professional hired to complete a project cannot be objective and truthful.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

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

RTB Policy Guideline 37C states: "A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period."

Based on the invoices entered into evidence and the documents establishing the timing of payment via electronic fund transfers, I am satisfied that the final payment made to the Engineering Consultant occurred on October 25, 2022 and that the final payment to the Contractor occurred on November 1, 2022. The Landlords filed this application for dispute resolution on March 21, 2024. I find that that the final payments to the Engineering Consultant and the Contractor for the Envelope Repairs were made within 18 months of the Landlord filing for dispute resolution.

d. Life expectancy of the Capital Expenditure

As stated earlier RTB Policy Guideline 40 states that the useful life for steel balcony railings is 15 years, 20 years for decks and porches, 15 years for masonry repairs, and 15 years for waterproofing (building membrane). The useful life for the components replaced all exceed 5 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 at RTB Policy Guideline 40. For this reason, I find that the life expectancy of the components replaced will exceed 5 years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within 5 years.

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

6. Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a tenant 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), the tenant 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.

Tenant L.H.R. and Tenant P.C. testified that the ARI-C calculation should be based on a per building basis because the same amount of work was not done on each building.

The Report sets out the scope of work completed on all four buildings. Based on the Report I find that the same work was completed on all four buildings. I note that no contrary documentary evidence was submitted into evidence.

I find that since the same work was completed on each of the Buildings and the Envelope Repair was completed as one project rather than four separate projects, it is fair to calculate one ARI-C based on all units in the Buildings rather than on a per building basis. I find that this calculation will prevent unfairness in arbitrary apportionment of invoices to one building over another.

Tenant L.H.R. referenced several balconies repaired prior to the Envelope Repair, I find that this evidences the Landlords' historical maintenance of the Buildings' envelopes. Tenant L.H.R. testified that the balconies needed repair for years before the Envelope Repair and that previous work on the Buildings' envelopes were not completed adequately. In support of the above testimony Tenant L.H.R. referenced several sections of the Engineering Consultant's observation reports.

I find that the observations reports note on several occasions that previous repair work was not adequately completed. However, I note the policy guideline specifies that the useful life expectancy of balconies is 15-20 years. The Landlord advised the balconies and envelope were original to the 1977 building. I find it more likely than not that the Buildings' Envelope was approximately 45 years old at the time repairs were completed and was past its useful life as stated in the Report. The Report findings are consistent with a product that is at the end of its useful life, rather than one that is failing because it was not properly maintained. I find, on a balance of probabilities, that the Envelope Repairs were necessary because the useful life of the Buildings' envelopes had expired, not because a few items were previously improperly repaired.

Tenant L.H.R. testified that the Tenants should not be responsible for paying for the same thing over and over again. This application for dispute resolution seeks to increase the Tenants' rent based on the Envelope Repairs. No previous application for an additional rent increase was made for previous spot repairs on the envelopes of the Buildings; therefore, the Tenants are not being asked to pay for the same thing over and over.

Tenant M.M. questioned the correctness of the Landlords' named in this application for dispute resolution because the B.C. Assessment document state that no sales occurred in the previous three years. Based on the Landlords' written submissions and the Nominee Agreement, I find that Landlord I.I.C.I. holds legal title to the Buildings which are beneficially owned by Landlord C.L.P which is why no record of sale shows on the B.C. Assessment documents. I find that both Landlords meet the definition of a landlord under the Act as they are both owners of the Buildings.

Tenant C.K. testified that he should be omitted from this application for dispute resolution because his balcony is concrete and did not require the same amount of work as balconies made out of different materials. I find that the envelope of the Buildings affects every Tenant as water ingress from balconies above Tenant C.K.'s can impact

Tenant C.K. I find that the Envelope Repairs affects everyone in the Buildings so the rent increase for capital expenditure applies to all Tenants.

Several Tenants testified that the Notice of Dispute Resolution is confusing because it is broken into two components. The requirement of the Landlords to break their claim into two components is a technical glitch with the RTB dispute management system which does not allow a figure over $1 million dollar to be inputted. I find that this has no bearing on this Application for Dispute Resolution and that the Landlords made the reason for the division abundantly clear in the Notice of Dispute Resolution Proceeding document.

The Tenants also argued the following:

- The Tenants cannot afford the additional rent increase
- An additional rent increase should not be allowed in addition to an annual rent increase
- There should be a limit on the amount of a capital expenditure claimed
- The quality of the Envelope Repairs is inadequate
- The ARI-C is an example of corporate greed
- The Landlord should be responsible for the cost of the Envelope Repair because the Buildings are not strata
- The Landlords should be responsible for the cost of the Envelope Repair because they knew what they were buying

Although I am sympathetic about the hardship a rent increase of any amount may pose for the Tenants, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure, and I find that none of the above listed arguments form a basis to dispute the application.

7. <u>Outcome</u>

The Landlords have been successful and have proven, 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 expenditure divided by 120.

In this case, I have found that there are 148 specified dwelling units in the Buildings and that the amount of the eligible capital expenditure is $1,689,051.78.

So, the landlord has established the basis for an additional rent increase for capital expenditures of $95.10 ($1,689,051.78÷ 148 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 has been successful. I grant the application for an additional rent increase for capital expenditure of $95.10. The Landlords 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: July 3, 2024

Residential Tenancy Branch