DECISION

Introduction

This hearing concerned the Landlord's application pursuant to 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) for an additional rent increase for capital expenditure.

The parties listed on the coverage page attended the hearing on July 8, 2024.

The parties confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. The Landlord submitted confirmation of service to each rental unit on April 26, 2024, by Canada Post registered mail, providing copies of the tracking numbers to confirm this service. I find the Tenants were served with the required materials in accordance with the Act.

Preliminary Matters

The Landlord's application also included the cost of renovations to 4 units (103, 119, 122 and 217) as well as reimbursement for the cost of number signage for doors in the amount of $377.21. At the start of the hearing, the Landlord's representative K.S. stated that these requests were withdrawn, as incorrectly included in the application. The Tenants in attendance and the Tenant's advocate had no objection. I find that the request for reimbursement of renovations to these units and the cost for door number signage are not properly a capital expenditure under the Act and regulations, and therefore, these requests are dismissed without leave to reapply.

Issues to be Decided

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

Background and Evidence

While I have considered the submission of the parties and the documentary evidence, not all details of the parties' respective submissions are reproduced herein. The relevant and important evidence related to this application before me has been reviewed, and my findings are set out in the Analysis portion of this Decision.

The Landlord's representative K.S. testified that the residential rental units consist of three buildings and were originally constructed in 1977, and a total of 47 rental units. The Landlord acquired the property in May 2021. At the time of acquisition, the representative testified, the stucco was old and several exterior walls exposed to the elements had cracks in the stucco. Therefore, the Landlord determined that rather than replace the stucco which was costly, it applied siding to the exterior walls or those with the most extensive damage. The representative K.S. stated that the siding adds a layer of protection to the residential tenancy buildings, increases the insulation, and is longer lasting at a reduced cost than installing new stucco.

In approximately March 2023, the representative testified that a decision had been made by the Landlord for repair to be made to the stucco on those exterior walls evidencing the most damage. He stated that there had been an inspection done on the property at the time of purchase, but due to a cyber-attack, the Landlord had lost the data and documents pertaining to the purchase of the property. This included maintenance records for the building from the prior owner.

The representative stated that due to the high cost of repairing the stucco with the installation of siding, a determination was made that the exteriors walls showing the most damage and cracking were selected for siding. The remaining walls, most shielded from the elements as these were interior walls (each building constructed in a square-C shape), were painted for purposes of extending the life of the stucco on those walls and to make the building uniform in color and aesthetically pleasing.

The Landlord submitted in evidence a copy of the invoice for the capital expenditure (the Work) in the amount of $216,700.00, that the representative affirmed had been paid. Markings on the invoice indicate payments made to the contractor. The invoice provides for both the installation of siding and painting exterior walls where there was no siding installed, without separation of these costs. The representative stated the Work commenced March 27, 2023, and was completed on July 28, 2023. The representative stated there was no third-party source of payment for the capital expenditure. The Work was expected to last at least 10 years; the representative stated that judging by the condition of the exterior, it had not been painted in approximately 10 years although he did not have documentation to that effect and thus was not certain. The Landlord's representative stated that the painting of select walls was matched to the color of the siding. The Landlord submitted photographs of the Work while undergoing completion and upon completion.

The Tenant's advocate raised the absence of maintenance records and its effect on the Tenant's ability to make objection to the necessity for the Work. The Tenant's advocate also inquired why painting was used to extend the life of the stucco on some portions, and not those portions where siding had been installed. The advocate also noted the invoice did not separate out the cost of the painting from the installation of the siding. The advocate urged that the Landlord as a corporate entity must have undertaken a documented assessment for the repair prior to expending financial resources, and the

lack of such an assessment or report impaired the Tenants ability to determine the necessity of the capital expenditure under the Act and regulations.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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. As the dispute related to the Landlord's application for an additional rent increase based upon an eligible capital expenditure, the Landlord has the burden to support its application.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

1. Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. I will not reproduce the sections here but to summarize, the landlord must prove the following, on a balance of probabilities:

- the landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- that the Work was an *eligible* capital expenditure, specifically that:
    - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
    - the Work was undertaken for one of the following reasons:
        - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
        - because the system or component:
            - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
            - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
        - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
        - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
    - the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
    - the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

The tenants may defeat an application for an additional rent increase for capital expenditure if they can prove on a balance of probabilities that the capital expenditures were incurred:

- for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

If a landlord discharges its evidentiary burden and the 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

In this matter, there have been no prior applications for an additional rent increase within the last 18 months before the application was filed.

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.

There are 47 specified dwelling units to be used for calculation of the additional rent increase.

4. Amount of Capital Expenditure

The Landlord is claiming the total amount of **$216,700.00** as provided in the invoice for the Work submitted in evidence by the Landlord.

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.

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.

I find the stucco repair with siding and matching paint to the remaining stucco walls to extend the life of these walls is a major component of the building. I find the Work was done as the existing stucco had exceeded its useful life as evidenced by the cracking of

it on those walls exposed to the most to the elements. I find this is sufficient to satisfy the requirements of the Regulation. I find the stucco repair with siding and painting non-repaired walls to match was required because the expected serviceable life of the stucco had been exceeded as permitted by 23(1)(4)(a)(ii) of the regulations.

Residential Tenancy Branch Policy Guideline 37 states:

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

I accept the Landlord's evidence of the final payment for the Work was made July 28, 2023, and within 18 months of the Landlord making this application on April 19, 2024.

I find it reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

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.

The Tenants do not consider the Landlord sustained its burden of proof that the Work was necessary as there is no documentation (assessment or report) to substantiate its position. To the extent any documentation from the sale was lost to the Landlord through no fault of the Landlord, I am not persuaded by this argument. Additionally, I do not find the Landlord must have an assessment or report conducted by a third-party to determine that visible cracking in the exterior stucco walls required repair, and the Landlord's position that siding was a cost-effective means of repair with added benefits of increased insulation requires independent assessment prior to undertaking the Work.

I find the Tenant's position insufficient to defeat the Landlord's application. I find the Landlord completed necessary repairs, was required to pay for such repairs, and is bound only by the statutory framework in seeking the capital expenditures, and not the arguments described above.

Therefore, I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **$216,700.00.**

Summary

The Landlord's application is granted. The Landlord has established, on a balance of probabilities, all elements required in order to be able to impose an additional rent increase for total capital expenditures of **$216,700.00.**

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 47 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **$216,700.00.**

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **$38.42 (216,700.00 ÷ 47) ÷ 120 = 38.42).** 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 40, 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 is imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **$216,700.00.** The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve each Tenant with a copy of this Decision in accordance with section 88 of the Act.

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 14, 2024

Residential Tenancy Branch