



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding bclMC Realty Corporation
and [tenant name suppressed to protect privacy]

DECISION

Introduction

On April 10, 2024 (the “Application date”), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the Residential Tenancy Regulation (the “Regulation”) for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Regulation*.

The Landlord attended the hearing at the scheduled hearing time. One Tenant named as a Respondent by the Landlord attended the hearing.

Preliminary Issue – service and disclosure of evidence

The Landlord provided proof of their service to each Tenant in the form of registered mail labels, handwritten for each Tenant/unit, and stamped at the post office April 19, 2024.

In the hearing, the Landlord confirmed they served the Notice of Dispute Resolution Proceeding Package to 48 individual adult tenant.

Given the number of separate tenants involved, I find there is no issue with the Landlord’s service of the Notice of Dispute Resolution, and their written submissions to all tenants involved. I am satisfied that the Landlord completed this task fully and completely as required, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Issue to be Decided

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

Background and Evidence

The rental property consists of 33 individual units. In the hearing, the Landlord specified that all units are included in this Application. As noted in a preliminary engineering report from 2017 created in line with the Landlord's purchase of the property, provided as evidence: "The subject building is a four (4) storey wood framed residential apartment complex. The building is comprised of thirty three (33) rental units was built in 1976."

The engineering firm completed a proposal for "building enclosure rehabilitation services" and provided this to the Landlord on March 14, 2021. The proposal was based on that same firm's 2017 report on the property, their February 2021 site visit, and the firm's correspondence with the Landlord. They determined that the building enclosure required new windows, patio doors, balcony membranes and cladding. This was due to the building being 41 years old, with the building envelope past its serviceable lifespan.

In March 2021 the Landlord received a quote from the engineering firm, and the engineer hired the general contractor and painter.

The Landlord provided evidence of quotes from the engineering firm, construction firm, and painters. The Landlord also prepared a "submission brief" dated April 10, 2024, listing the following items of completed work:

- rot removal
- timber replacement
- building membrane upgrading
- siding replacement
- replacing some balconies entirely
- railing/soffit replacement
- window/sliding patio door replacement
- exterior painting.

The project work was completed in 2021 and 2022. The municipality inspected the property on September 23, 2022.

The Landlord presented that these expenses qualify, as per s. 23.1 of the *Regulation*, and are in line with the relevant policy guideline¹ "structural system" and "load bearing elements such as walls, beams and columns" and "siding; entry doors; windows".

Moreover:

¹ Residential Policy Guidelines 37C: Additional Rent Increase for Capital Expenditures

- the building envelope was not neglected by the Landlord
- there is no evidence pointing to inadequate repair/neglect by former owners – in approximately 2015/2016 the previous owners had painted the building, but had not looked at anything structural
- the Landlord received no other payment source, nor are there insurance claims related to any of this work
- the Landlord did not previously apply for a rent increase
- these expenses will not reoccur for at least 30 years
- the final invoice was paid within 18 months of the date of the Landlord’s Application.

The Landlord presented each set of capital expenses that they submit are related to major systems or major components of the rental property. These were invoices and payment proof (cheque images) for each of the following:

	Description	invoices/payments start	invoices/payments end	paid
1.	engineering firm – 10 invoices	May 24/21	Jun 21/22	\$30,815.85
2.	construction contractor – 16 invoices	Mar 31/21	31 Aug/22	\$618,776.98
3.	painting – 3 invoices	Aug 31/21	Nov 30/21	\$43,081.50
Total				\$692,674.33

In sum, the Landlord submits that these capital expenditures for a major system replacement were required because the building envelope was past its useful life.

In response to the single Tenant in attendance at the hearing, whose rental unit did not receive a new balcony, the Landlord specified that entire work for all sides of the building would have entailed an expense of around \$2-million. The Landlord specified that the majority of the work was focused on the northeast side of the building, with 58% of the units in total having wood rot and balcony issues. This was specified by the engineer in their March 14, 2021 letter to the Landlord. The Landlord submitted the work involved is a benefit to the building as a whole – the purpose of the law in place as for a landlord to invest in a rental unit property, and not let it go decrepit.

Analysis

The *Residential Tenancy Regulation* (the “*Regulation*”), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
 - to repair, replace, or install a major system or a component of a major system; and
 - undertaken:
 - to comply with health, safety, and housing standards;
 - because the system/component was either:
 - close to the end of its' useful life, or
 - failed, malfunctioning, or inoperative
 - to achieve either:
 - a reduction in energy use or greenhouse gas emissions; or
 - an improvement in security at the residential property

and

- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
- and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;

or

- the landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase within the previous 18 months.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

“dwelling unit” means:

- (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 there are 33 eligible dwelling units, as specified by the Landlord in the hearing.

Eligibility and Amounts

For each of the Landlord’s submitted expenditures 1. through 3. above, I address whether each expenditure was *eligible*, and each expenditure *amount*.

As set out in s. 23.1(4) of the *Regulation*, I find the work – specifically, the timber replacement, membrane upgrade, siding replacement, balcony replacement, railing/soffit replacement, window/patio door replacement, and painting – is replacement of a major system. As defined in the relevant policy guideline, this is a structural system that is integral to the residential property.

Moreover, I find that installation of patio doors and balconies are a “major component” as defined in s. 21.1 of the *Regulation*, integral to the residential property. I make a similar finding for the siding, railing, and soffits. I find that there are major components that the Landlord had to replace to also comply with health, safety, and housing standards.

Stated thus, contractor work invoiced and paid for by the Landlord are expenditures that were eligible; in total this amount is \$618,776.98.

I find the Landlord the expenses that the landlord incurred for consultation with an engineer was necessary for the completion of the work in a safe, effective, and structurally-efficient manner. I find the Landlord incurred these expenses as capital expenditures for the installation of a major system. These are eligible expenses under this statutory framework; this amount is \$30,815.85.

Additionally, I find painting was required for completion of the project work. I find this is a part of the major system; therefore, I grant the amount of \$43,081.50 to the Landlord as eligible capital expenditures.

Timing of the Capital Expenditure

I accept the Landlord's evidence that the first payment for the work was on May 20, 2021, and the final payment was made on October 11, 2022. The final payment date is within 18 months of the Landlord making this Application on April 10, 2024.

The relevant policy guideline² address the 18-month requirement:

A "capital expenditure" refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted . . . As such, the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made.

I find that the capital expenditures, in total, took more than 18 months to complete. This brought costs outside of the 18-month period before the application date. I find the legislation provides for the recovery of capital expenses for a whole project effort, and the timeline was driven by the logistics of the length and engineering-drive detailed project completion.

Life Expectancy of the Capital Expenditure

With regard to the relevant policy guideline³ I find all components of the building exterior that was the work involved are within 15 to 20 years. The one exception is painting that has an expected life cycle of 8 years.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again by the Landlord within 5 years.

² *Ibid.*

³ *Residential Policy Guidelines 40: Useful Life of Building Elements*

Outcome

The Landlord has proven all of the necessary elements for their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$692,674.33. This is pursuant of s. 43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation*, referred to above.

The *Regulation* s. 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of dwelling units, divided by 120. In this case, I found there are 33 specified dwelling units, and that the amount of the eligible capital expenditure is \$692,674.33.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$171.91 ($\$692,674.33 \div 33 \div 120$) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of any tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount, calculated above, in a single year. The Landlord acknowledged this in their written submission, stating:

If successful, due to the 3% maximum allowable additional rent increase per year for three years, the landlord estimates that the average tenant in the building will see an additional rent increase of roughly \$30 - \$40 per year for three years.

As set out in their written submission, the Landlord made reference to the relevant policy guideline in making their calculations.⁴ This accords with *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$692,674.33.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by sending it to them via email where possible. Within reason, the Landlord must also be able to provide a copy to any tenant that requires a printed copy in person.

⁴ Residential Policy Guidelines 37C: Additional Rent Increase for Capital Expenditures

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 10, 2024

Residential Tenancy Branch