



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

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.

The Landlord's agent (the Agent) attended the hearing for the Landlord. Tenants B.B.2, S.R., M.S., G.Y., T.O. and A.I. attended the hearing for the Tenants. Tenant B.B.2.'s interpreter attended the hearing. Agent N.D. attended and provided affirmed testimony on behalf of Tenant S.R. I note that Tenant A.I. joined the hearing approximately 47 minutes after it started. All parties affirmed to tell the truth.

The Agent testified that 12 Tenants, who had written email service agreements with the Landlord, were served via email on May 15, 2024. The Agent testified that the remaining Tenants were served via posting between May 15, 2024 and May 16, 2024. The Agent referred to proof of service documents which were not supplied into evidence. I permitted the Landlord 24 hours to upload the proof of service documents which were uploaded in the required period of time. All Tenants in attendance at the start of the hearing, except for Tenant G.Y., confirmed receipt of the Landlord's application for dispute resolution.

Tenant G.Y. testified that he was not served with the Landlord's application for dispute resolution and learned of this hearing through an evidence service reminder sent from the Residential Tenancy Branch. The Agent testified that Tenant G.Y. was incorrectly named in this application for dispute resolution and that the Landlord meant to name Tenant C.H.J. for unit 414, not Tenant G.Y. The Agent confirmed that Tenant G.Y. was not served with this application for disputes resolution.

The Agent testified that Tenant C.H.J. was served with the Landlord's application for dispute resolution via email on May 15, 2024. The Agent requested that the Landlord's

application for dispute resolution be amended to remove Tenant G.Y. for unit 414 and to add Tenant C.H.J.

The dispute management system communications tab notes the following on May 14, 2024:

LL CALLED INFO LINE. REACHED OUT TO SIO M.H. UNIT 414 HAS WRONG TT LISTED. CORRECT NAME SHOULD BE [C.H.J.] LL WILL SERVE NODRP AND BLOCK OUT WRONG TENANTS NAME AND WRITE IN CORRECT TENANTS NAME. LL WILL ASK ARB TO MAKE FORMAL CORRECTION AT HEARING.

Based on the proof of service documents entered into evidence, the testimony of the Agent and the Tenants in attendance at the start of the hearing, I find that all Tenants named in this application for dispute resolution, with the exception of Tenant G.Y., were served with the Landlord's application for dispute resolution in accordance with the Act, regulations and standing order.

As Tenant G.Y. was not served with the application for dispute resolution and was incorrectly named, in accordance with section 64 of the Act, I amend the Landlord's application for dispute resolution and remove Tenant G.Y.

Based on the proof of service document entered into evidence, I find that Tenant C.H.J. was served with this application for dispute resolution via email on May 15, 2024 pursuant to an email service agreement. I find that since Tenant C.H.J. was notified of this hearing and was provided with an opportunity to participate in this hearing and respond to the claims made, Tenant C.H.J. is not prejudiced by amending this application for dispute resolution to include them. In accordance with section 64 of the Act, I amend the Landlord's application for dispute resolution to state Tenant C.H.J. as the tenant for unit 414.

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 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 parties' claims, and my findings are set out below.

The Agent testified that the rental building is a 4-story wood frame building with 61 specified dwelling units, built in 1972.

The Agent testified that the Landlord has not applied for an additional rent increase for capital expenditure against any of the Tenants prior to this application for dispute resolution.

The Landlord applied to impose an additional rent increase for capital expenditures on May 3, 2024. The expenditures claimed are as follows:

Description	Amount
Upgrade electrical panel	\$32,821.95
Elevator modernization	\$81,976.67
Balcony and railing upgrade	\$723,166.18
	\$837,964.8

The Landlord submitted copies of invoices supporting the amounts claimed.

The Landlord and Tenant spoke to each of the above noted items, as follows

1. Upgraded electrical panels

The Agent testified that the electrical panels in the rental building were old fuse panels that were switched over to breaker panels. The Agent testified that the fuse panels were a fire hazard and that their insurer required them to be upgraded to breaker panels in order for insurance to be provided. Evidence of same was provided by the Landlord. The Agent testified that the fuse panels had been failing over the years and were replaced as they failed.

The Agent testified that the fuse panels were original to the building built in 1972. The Agent testified that according to Residential Tenancy Branch Policy Guideline #40 (PG #40), the useful life of electrical panels is 15 years. The Agent testified that the work was completed at the end of May 2023 and that the last invoice was paid on July 7, 2023. An invoice totalling \$32,821.95 was entered into evidence.

Agent N.D. testified that Tenant S.R. has resided at the rental property since 2018 and did not have any problems with the fuse panel before it was replaced. Tenant T.O. testified that his electrical system has always worked.

Tenant B.B.2 testified that he experienced problems with the electrical system and asked the Landlord to fix it. Tenant B.B.2. testified that he has already paid the annual rent increase and is not sure he should have to pay this rent increase.

2. Elevator modernization

The Agent testified that the elevator was original to the building and required modernization because it was past its useful life. The Agent testified that in 2019 the Landlord had a condition planning report for the elevator completed (the Report). The Report, dated April 24, 2019, was entered into evidence and states:

The elevator equipment is mostly original without many upgrades and has approached the end of its useful life span. The controller and power unit (including valves) have not been manufactured for many years. The cylinder, piston and pipe rupture valve were replaced a few years ago. The supply of spare parts is diminishing and/or not available to source and as the elevator reliability deteriorates, the number of shutdowns will increase.

We recommend a “complete modernization” within the following 1 to 3 years.

The Agent testified that the work was completed in January 2024 and the last invoice was paid on March 19, 2024. Invoices totalling \$81,976.67 for the elevator modernization were entered into evidence.

Agent N.D. and Tenant M.S. testified that the upkeep of the elevator should be paid for by the Landlord.

Tenant T.O. testified that she should not be responsible for the cost of the elevator because he lives on the first floor. The Agent testified that the Landlord is only seeking to increase the rent for the cost of the elevator upgrade for Tenants living on floor 2, 3, and 4. The Agent testified that the Landlord is not seeking to increase the rent for the elevator upgrade for Tenants living on the first floor.

Tenant M.S. testified that the Landlord did not tell the Tenants about a rent increase before the elevator upgrade was made.

3. Balcony Restoration

The Agent testified that the balconies were past their useful life and needed to be refurbished and the railings needed to be replaced. The Agent testified that the balconies were original to the 1972 building and were at the end of their useful life. The Agent testified that PG #40 states that railings have a useful life of 10 years and decks and porches 20 years.

The Agent testified that the balconies were in poor condition and it was determined that replacement was needed. The Agent testified that metal railings were installed and rot in the balconies was remediated.

The Agent testified that the work was completed in April 2024 and the last payment was made on April 15, 2024.

The Agent testified that the Landlord hired an architect for the balcony restoration project. Invoices for the architectural work totalling \$26,388.38 were entered into evidence. The Agent testified that a building permit from the City was necessary for the balcony restoration project. An invoice for same in the amount of \$10,585.00 was entered into evidence.

The Agent testified that the Landlord hired a construction company to complete the balcony repair work. Invoices for same were entered into evidence. The final invoice states that the total work complete to date is \$653,516.96. The Agent testified that the Landlord was charged GST at 5% on the total work complete to date and that the work completed plus GST amounts to \$686,192.80. The invoices entered into evidence confirm that GST was charged by the construction company.

Agent N.D. testified that the Tenants should not have to pay for this expense and that the repairs should be made with the money the Tenants already pay in rent. Agent N.D. testified that the Landlord should be reasonable for the maintenance costs.

Tenant T.O. testified that she should not be responsible for the cost of the balcony restoration because he does not have a balcony and lives on the first floor. The Agent testified that the Landlord is only seeking to increase the rent for the cost of the balcony restoration for Tenants living on floor 2, 3, and 4. The Agent testified that the Landlord is not seeking to increase the rent for the balcony restoration for Tenants living on the first floor.

Tenant M.S. testified that her balcony wasn't in bad condition before the restorations and the floor after the restoration is not good.

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:
 - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
 - o 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 testified that there are 61 specified dwelling units in the rental building. I accept this undisputed testimony.

Amount of Capital Expenditure

The Landlord applied for the following capital expenditures:

Description	Amount
Upgrade electrical panel	\$32,821.95
Elevator modernization	\$81,976.67
Balcony restoration	\$723,166.18
	\$837,964.80

4. 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 (PG #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.

As stated in section 21.1 of the Regulation the electrical system is a major system. I find that an electrical panel is a major component of the electrical system because it is an integral part of the system that brings electricity to Tenants.

PG #37 states that elevators are an example of a major system or major component. I am satisfied the elevator modernization qualifies as a major system or major component.

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.

Overall, I find all 3 items were undertaken to replace “major components” of a “major system” of the residential property.

b. Reason for Capital Expenditure

1. Upgrade Electrical Panel

Based on the undisputed testimony of the Agent, I find that the majority of the electrical panels in the rental property were from 1972 and were beginning to fail in various units. PG #40 states that the life expectancy of electrical panels is 15 years. Based on the Agent's testimony I am satisfied that electrical panels were beyond their useful life expectancy and were beginning to fail.

2. Elevator modernization

Based on the Agent's testimony and the Report, I find that the elevator was original to the 1972 building and was at the end of its useful life.

3. Balcony Restoration

PG #40 states that the useful life of balcony railings is 10-15 years and that the useful life of deck and porches is 20 years. I accept the Agent's undisputed testimony that the balconies were original to the 1972 building making them approximately 50 years old. I find that the balconies were substantially past their useful life.

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 stated "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 Agent's undisputed testimony and the invoices entered into evidence, I am satisfied that the final payment for all three projects were incurred in the 18 month period before the Landlord applied for dispute resolution.

d. Life expectancy of the Capital Expenditure

According to PG #40 the useful life expectancy of an electrical panel is 15 years, 10-15 years for railings, 20 years for decks and porches and 20 years for elevators.

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 PG #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 to undertake the electrical panel upgrade, the elevator modernization and balcony restoration are eligible capital expenditures, as defined by the Regulation.

5. 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.

The Tenants argued the following:

- not all Tenants experienced problems with the electrical system, balcony and elevator
- there were issues with the quality of the work on one balcony
- they have already paid the annual rent increase
- the Landlord should be responsible for all maintenance and restoration costs
- the Landlord did not inform the Tenants that the work completed on the rental building would result in a rent increase

Although I am sympathetic about the hardship a rent increase of any amount may pose for 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.

Tenant T.O. testified that he should not be responsible for the cost of the balcony restoration and elevator modernization because he does not have a balcony and lives on the first floor.

RTB Policy Guideline 37C states that a Landlord can apply for an additional rent increase if they have incurred eligible capital expenditures related to the residential property where a rental unit is located. The rental units on the first floor are located in the residential property where eligible capital expenditures were made. The fact that the first floor Tenants do not usually use the elevator and do not have balconies does not exclude them from this application for dispute resolution.

I also find that the balconies are a component of the building envelope which affects every Tenant including those who live on the first floor so the rent increase for capital expenditure applies to all Tenants including those on the first floor.

6. Outcome

The Landlord has been successful and has proven, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for all 3 capital expenditures claimed. 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 61 specified dwelling units and that the amount of the eligible capital expenditure is \$837,964.80.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$114.48 ($\$837,964.80 \div 61 \text{ units} \div 120$). 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 \$114.48. 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: July 17, 2024

Residential Tenancy Branch