



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MAINSTREET EQUITY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Introduction

On April 26, 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 time. Some Tenants listed as Respondents, who live at the rental unit property, attended the hearing. Collectively, and where possible, I refer to the “Tenants” listed as Respondents for this hearing as the “Tenant” or “a Tenant” in this decision.

Preliminary Issue – service and disclosure of evidence

The Landlord presented a record of their delivery/service of the Notice of Dispute Resolution Proceeding and evidence to each rental unit in the rental unit property. They served to each rental unit, by name to each Tenant, a copy of the hearing materials, including the Notice of Dispute Resolution Proceeding, and their prepared evidence for this hearing. This was alternately by hand delivery, or attached to the door of each rental unit.

From this evidence, I find that the Landlord served each Tenant in accordance with the *Act*.

A Tenant provided evidence to the Landlord that was disclosed correctly. Another Tenant provided evidence to the Residential Tenancy Branch; however, they did not provide this to the Landlord and I give this piece no consideration herein.

Preliminary Issue – scope of Landlord’s Application

At the start of the hearing, the Landlord stated they withdrew all pieces of their Application that focused on individual rental unit renovations/repairs. The pieces of the Landlord’s Application that are under consideration are listed below.

Issue to be Decided

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

Background and Evidence

The rental unit property consists of one building, constructed in 1972. The Landlord purchased the building in 2011.

As submitted by the Landlord, all 114 units are the subject of this Application. The Landlord completed exterior painting, paved the parking area, upgraded the fire system, and completed “major general plumbing” throughout the rental unit property.

As set out by the Landlord on their Application:

- building improvements – exterior painting
claimed cost: \$79,729.46
- new asphalt paving parking
claimed cost: \$94,500.00
- fire system upgrade
claimed cost: \$8,369.24
- Major general plumbing, new copper lines and valves
claimed cost: \$21,555.65

The claim for rent reduction is based on the total amount of \$204,154.35.

Regarding exterior painting, the Landlord provided that they made their final payment on March 15, 2023. The Landlord set out their understanding that, with the useful life cycle of painting being 8 years, this qualifies as a major capital expenditure. They cited the need for exterior painting as being for the benefit of all building residents.

A representative Tenant in the hearing provided that such painting is not encompassed in the term “capital expenses” as appears in the legislation. A Tenant submitted that the photos they provided, showing the building exterior both before and after the completed painting, reveals no change. Another Tenant observed that the completed exterior painting was already deteriorating.

Regarding new asphalt/parking area paving, the Landlord stated that the condition of the paving that was in place at the rental unit property was proving to be a safety hazard. Additionally, the painted indicators on the ground for stalls had faded and was illegible. They cited the useful life cycle for paving as being 10 years.

A representative Tenant described only one of two parking areas as deteriorating, and even observed weeds now poking through in the recently-paved areas. A Tenant described such work being completed prior to this Landlord’s management term beginning, “at least 3 times in 13 years.” Another Tenant stated that they did not even drive or use the parking area.

Regarding the fire system upgrade, the Landlord referred specifically to the fire extinguishers and the fire alarm panel. They cited the useful life cycle for the panel and wiring as being 15 years, and this was the bulk of the cost for this capital expenditure. The useful life cycle for fire extinguishers is 6 years.

One Tenant questioned whether this was a true eligible capital expenditure, and cited the need (as per the Residential Tenancy Branch’s policy guideline) for a permit for such work to be in place, yet not provided by the Landlord in evidence. They added this was “not our responsibility [i.e., as Tenants]” and thought this was simply the cost of doing business for the Landlord.

Regarding plumbing replacement of lines and valves, the Landlord set out that water lines in the building were original to its construction, thus requiring replacement.

One Tenant stated their impression that the matter was one of insurance, due to their interpretation of the invoices the Landlord provided as evidence.

The Landlord presented a series of invoices for each piece of the work completed, for each category of capital expenditure. The Landlord also provided records of payment for each category – these were copies of the cheques issued to each contractor/service provider.

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, I find the Landlord did not make a prior application for an additional rent increase within the previous 18 months. I find this to be fact, where this work was completed throughout 2022 and 2023, and the Landlord filed their Application at the Residential Tenancy Branch on April 26, 2024.

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 114 dwelling units, of which all 114 are eligible. This was as specified by the Landlord in the hearing. I make this finding based on s. 21.1(1)(a) of the *Regulation*, set out immediately above.

Eligibility and Amount

For the Landlord's submitted expenditures, I address whether it was *eligible*, and then determine the expenditure *amount*.

As set out in s. 23.1(4) of the *Regulation*, I find the exterior painting is not an installation, repair, or replacement of a major system or major component that failed, malfunctioned, or was inoperative, or close to the end of its useful life. This is not a structural system that is integral to the residential property.

Regarding parking area paving, I find this qualifies as a major system/major component, essential to protecting the physical integrity of the rental unit property, or alternately supporting a critical function of the property. I find the amounts provided by the Landlord for paving are for the amount of \$94,500.

Regarding the replacement of the fire alarm panel, and its installation, I find this is a major component of the residential property that is integral to the property and its residents' safety. This is limited to the fire alarm panel (\$4,499.97) and replacement of flood lights (\$1,219.78 and \$1,764). Fire extinguishers' maintenance/replacement is not a major component or major system at the property.

I find the Landlord's replacement of plumbing components throughout the rental unit property qualify as a major system/major component. This supports a critical function at the rental unit property. This amount, as verified with the Landlord's invoices, is \$21,555.65.

The separate amounts provided by the Landlord add up, from relevant work, to \$123,539.40. I find the Landlord provided sufficient detail on the work involved, the timelines thereof, and the need for completion. I find each invoice bears sufficient detail to show how they are related to each separate project as a whole.

I grant this capital expenditure, as provided on the Landlord's Application, for the amount of \$123,539.40. I dismiss the piece of the Landlord's Application involving exterior painting, without leave to reapply.

Timing of the Capital Expenditure

I accept the Landlord's evidence that the payments they made were within 18 months of the Landlord's making this Application on April 26, 2024.

Life Expectancy of the Capital Expenditure

Given the nature of the work involved, I find each capital expenditure will not reoccur, and there will be no expenditure for each incurred again within 5 years.

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 \$123,539.40. 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 52 specified dwelling units, and that the amount of the eligible capital expenditure is \$123,539.40.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$9.03 ($\$123,539.40 \div 114 \div 120$) 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.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37, page 11, to properly calculate the rent increase in accordance with the *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 expenditures totalling of \$123,539.40.

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 requests a printed copy in person.

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

Dated: August 8, 2024

Residential Tenancy Branch