

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 attended the hearing for the Landlord.

Tenants B.M., M.M., D.K., T.N., and A.M. attended the hearing for the Tenants.

All parties provided affirmed testimony. The Tenants confirmed receipt of the Landlord's application for dispute resolution and evidence packages. 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 and the same day if delivered in person. I find the Landlord sufficiently served the Tenants with the application for dispute resolution and evidence packages.

The Tenants did not submit any evidence for consideration.

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 Landlord testified that the rental building is a stucco three-story wood framed building containing 9 specified dwelling units. The Landlord testified that the building was built 75 to 80 years ago. There is no evidence that the Landlord had applied for an additional rent increase for capital expenditure against of the Tenants prior to this application.

The Landlord applied to impose an additional rent increase for capital expenditure that was incurred to repair the building envelope and rotted framing (the Repairs) at a cost of

\$36,096.00. The Landlord testified that the bottom front left portion of the stucco siding was falling off the building and the 2X4 framing in the wall and around the windows were rotting. The Landlord testified that this area of the building sees more rainfall than the rest of the building and the repairs to the building were necessary. The Landlord testified that the interior trim around one of the windows also had to be repaired.

The Landlord testified that the stucco and building envelope were original to the building built 75-80 years ago. The Landlord testified that the Repairs have been completed, a photograph of the repair in progress and the repair completed were entered into evidence. The Landlord testified that he paid for the work in stages and that the final payment was made shortly after receiving the final invoice which was entered into evidence and is dated October 17, 2023. The final invoice entered into evidence states that the total contract price is \$36,096.00 and that all previous invoices have been paid.

The Landlord testified that he does not expect to do additional envelope work in other areas of the building in the next 5 years. The Landlord testified that of the 9 specified dwelling units, only the Tenants in 5 of the specified dwelling units have been listed in this application for dispute resolution. The Landlord testified that he did not name new tenants who pay a higher rent.

Tenant B.M. testified that there is a willingness of the old tenants to help out with the building repair costs. Tenant B.M. testified that in general the Tenants want repair work to be done by professionals. Tenant B.M. did not allege that the work in question was not completed by professionals.

Tenant M.M. asked the Landlord if the Landlord's insurance could have covered any part of the repair. The Landlord testified that this is an old building, and his insurance is not that good and did not cover any portion of the repair. Tenant M.M. questioned the appropriateness of including the cost of repairing the interior trim of one window in this application for dispute resolution.

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));

- 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 Landlord testified that there are 9 specified dwelling units in the rental building. This testimony was not disputed. I am satisfied that there are 9 specified dwelling units in the rental building.

4. Amount of Capital Expenditure

The Landlord applied for a capital expenditure of \$36,096.00. An invoice stating same was entered into evidence.

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.

As set out above, a major system or major component includes load bearing elements such as walls and siding. I find that the walls, window framing and siding are integral to the functioning of the building as a building which protects Tenants from the elements. I find that the repair to the walls, window frames and siding, including the interior window trim constitutes a repair to a major component or major system. I accept that as part of the aforementioned repair, interior repairs to a window frame were required. I find that this repair falls within the scope of the repair of the major system or major component and was properly included in this application for dispute resolution.

b. Reason for Capital Expenditure

Based on the undisputed testimony of Landlord, I find that the repair to the siding, walls and window framing were due to the components failing.

RTB Policy Guideline 40 states that the useful life expectancy of stucco siding is 20 years and the useful life of window framing is 15 years. As the building was 75-80 years old, I find that the areas repaired were well beyond 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 testimony of the Landlord I am satisfied that the final invoice was paid shortly after it was received in October of 2023. I find the Landlord filed this application for dispute resolution within 18 months of the final invoice being paid as this application for dispute resolution was filed on May 22, 2024.

d. Life expectancy of the Capital Expenditure

According to RTB Policy Guideline 40, the useful life expectancy for stucco is 20 years and the useful life for window framing is 15 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.

The Tenants did not argue that the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance.

Tenant M.M. queried whether the Landlord could have been paid from a different source. I take judicial notice that such repairs are not commonly covered by insurance. I accept the Landlord's testimony that this repair was not covered by insurance. I find that the Tenants did not prove that the Landlord was entitled to be paid by another source.

7. 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 capital expenditure. 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. Below I will provide the eligible capital expenditure.

The eligible amount for the Repairs is \$36,096.00. There are 9 specified dwelling units.

The Landlord has established the basis for an additional rent increase for capital expenditures of \$33.42 ($\$36,096.00 \div 9 \text{ units} \div 120$). 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 \$33.42. 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 *Residential Tenancy Act*.

Dated: August 13, 2024

Residential Tenancy Branch