



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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.

All parties attended the hearing were given an opportunity to provide testimony and make submissions.

The landlords testified, and the tenants confirmed, that they served the tenants with copies of the notice of dispute resolution proceeding package and supporting evidence.

The tenants did not submit any evidence in this proceeding.

Issues to be Decided

Are the landlords 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 rental unit is a single detached home. The tenant occupied the entire house. The tenancy started November 1, 2014. Monthly rent is \$2,078. The tenants paid the landlords a security deposit of \$950 at the start of the tenancy, which the landlords hold in trust for the tenants.

Landlord JF testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

JF testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's roof. He testified that the entire roof of the house was replaced. JF submitted an invoice dated

January 15, 2021 from the contractor hired to do replace the roof which set out what the replacing of the roof entailed. The invoice stated:

- Carefully protect gardens and surrounding property as required during entire job.
- Remove all existing roofing; dispose of all debris.
- Sheet roof with 3/8" plywood sheathing over existing shiplap board deck.
- Apply #30 pound 36" roofing felt underlay eave protection.
- Apply FT gold synthetic underlay to balance of roof surface.
- Installed 26-gauge pre-finished metal gable edge and diverter flashing.
- Replace all plumbing stack and chimney flashings, caulk and seal in counter flashings.
- Install 6 roof vents at 1 per 300 square foot of attic area.
- Installed Owens Corning Duration allergy resistant laminated fiberglass shingles.
- Cleanup site daily, clean up thoroughly upon completion; clean gutters and use magnetic sweep to retrieve loose nails from property.

(collectively, the "**Work**").

The parties disagree exactly when the Work was done. The tenant testified that it was done over a period of three weeks in December 2020. They testified that they were certain of this, because it they recalled the roof having a tarp on it during Christmas. JF testified that the Work was started in early January 2021.

The landlord testified the Work was done because, in December 2020, the tenant reported that the roof was leaking. He testified that the roof was roughly 23 years old, having been replaced one or two years before he purchased the residential property. He testified that he had a contractor inspect the roof when the tenants reported to him that it was leaking. He testified that the contractor's recommendation was to replace the roof, in light of the roof's age. The landlord characterized the roof's condition as "worn out". He testified that he did not explore the possibility of simply patching the roof, given its age and condition.

JF testified that the roofer advised him that the life expectancy of the new roof is roughly 30 years.

The Work cost \$9,542 to complete. The landlord provided a second invoice to corroborate this amount (it included an additional charge of a "tipping fee" that the aforementioned invoice did not include; I understand this fee to have been incurred in relation to the disposal of the debris from the old roof). JF testified he paid this invoice on February 4, 2021.

The tenants did not dispute that the Work was undertaken, nor do they dispute the amount that the landlords paid for the Work. Rather, they argue that the landlords should not be allowed to offload the cost of the Work onto them via an additional rent increase because the roof should have replaced prior to the start of their tenancy. The

tenants argued that the roof should have been replaced 10 to 15 years ago. The tenants stated that the useful life of the roof that was replaced was “about 20 years”. Additionally, the tenants disputed that the roof had been replaced 22 to 23 years ago and argued that the landlords had not submitted any documentary evidence to corroborate his testimony on this point. They suggested that the roof was original to the house, and therefore much older than the landlords claimed.

The tenants argued that JF intentionally waited to replace the roof until the residential property was occupied by tenants so that he could “stick [the cost of the roof replacement] to his tenants”.

The parties agreed that the landlords have not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulation in the last 18 months.

Analysis

1. Statutory Framework

Sections 21 and 23.1 of the Regulation sets 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, a landlord must prove the following, on a balance of probabilities:

- the landlord has not made an application for an additional rent increase against these tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- 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
 - o 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
 - because it 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;
 - o the capital expenditure was incurred less than 18 months prior to the making of the application
 - o the capital expenditure is not expected to be incurred again within five years.

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, or
- for which a landlord has been paid, or is entitled to be paid, from another source.

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), a 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

Based on the testimony of the parties, I find that the landlord has not imposed an additional rent increase in the past 18 months.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Act 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 tenants occupied the entire house. There is no evidence before me that the house contains any additional living accommodation for another occupant. As such, I find that the residential property has one specified dwelling unit.

4. Amount of Capital Expenditure

Based on the invoice submitted into evidence, I find that the cost the landlords incurred to replace the roof was \$9,542.40.

5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order for the Work to be considered an eligible capital expenditure, a 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

The Work amounted to replacing the entire roof of the house. Residential Tenancy Branch Policy Guideline 37 explicitly identifies a residential property's roof as a "major system".

As such, I find that the Work was undertaken to replace a "major system" of the residential property: the roof.

b. Reason for Capital Expenditure

The landlords advanced two reasons for the replacing the roof. First, JF stated that the roof was leaking water into the rental unit and secondly that the roof past the end of its useful life, so repairing it would not have been feasible.

I understand these reasons to amount to the landlords undertaking the Work because the roof had failed or was inoperative, and that the roof was close to the end of its useful life.

I must note that the Regulation is silent as to whether capital expenditures to replace or repair major systems that are *past* the end of their useful life can be considered *eligible* capital expenditure. However, for the purposes of this application it is not necessary for me to make a determination on this issue.

It is undisputed that the roof was leaking water into the rental unit. I find that this amount to the roof "failing" or "malfunctioning".

c. Timing of Capital Expenditure

I accept the landlords' uncontroverted evidence that he paid for the Work on February 4, 2021. As such, I find that the landlords incurred the cost of the capital expenditure within 18 months of making this application.

d. Life expectancy of the Capital Expenditure

RTB Policy Guideline 40 states that the useful life of a roof is between 15 to 20 years. JF testified that the life expectancy of the new roof is 30 years. It is not necessary for me to determine which of these life expectancies is accurate. For the purposes of this application, all the landlords must prove is that the capital expenditure is not expected to reoccur within five years. I find that this is the case.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work 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 landlords 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 landlords have been paid, or is entitled to be paid, from another source.

The tenants did not make any submissions on whether the capital expenditure was or could have been paid from another source.

The tenants did not specifically argue that the reason the roof needed to be replaced was due to poor maintenance. Rather, they argued that it should have been replaced sooner. This is an important distinction. There is no evidence before me that the roof, had it been better maintained, would not have leaked. I accept that older roofs are more likely to leak or otherwise fail. This is why their replacement is necessary. The tenants have not suggested that a roof can last indefinitely with proper maintenance. Were this true, I might be persuaded that the roof leaked due to inadequate maintenance on the part of the landlord. However, there is no basis in evidence for me to make such a finding. Rather, I accept that all roofs will eventually fail, and such a failure is not necessarily due to an improper amount of maintenance.

As such, in the absence of evidence that the landlords failed to adequately maintain the roof, I find that the tenants have failed to discharge their evidentiary burden to prove that inadequate maintenance or repair was the reason that the capital expenditure was incurred. I do not find that such claim can be made out solely on the basis of demonstrating that the roof is beyond its useful life.

The tenants also argued that the landlords declined to replace the roof prior to their tenancy because they wanted to be able to recoup the cost of replacement from their tenants. I must first note that the Regulation does not list this as a basis to deny an application for additional rent increase for capital expenditure. Additionally, I note that the provisions in the Regulation which permit the imposition of an additional rent increase for capital expenditure were not in existence prior to the start of the tenancy (they came into existence in 2021). As such, I do not find it likely that the landlords would have put off replacing the roof in hopes have such provisions being implemented at some point in the future.

Finally, I would note that had the landlords replaced the roof prior to the start of the tenancy he would have been entitled to increase the asking price of monthly rent for any perspective tenant in an effort to defray the cost of the roof replacement.

As such, I declined to dismiss the landlords' application on the basis that he could have or ought to have replaced the roof prior to the tenancy.

7. Outcome

The landlords have been successful. They have proved, 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. In this case, I have found that there is one specified dwelling unit and that the amount of the eligible capital expenditure is \$9,542.40.

So, the landlords have s established the basis for an additional rent increase for capital expenditures of \$79.52 ($\$9,542.40 \div 1 \text{ unit} \div 120$). This amount represents an increase of more than 3% per year. As such, it must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 40, sections 23.2 and 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 landlords have been successful. I grant the application for an additional rent increase for capital expenditure of \$79.52. The landlords must impose this increase in accordance with the Act and the Regulation.

I order the landlords 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: March 9, 2022

Residential Tenancy Branch