



Dispute Resolution Services

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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* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The landlord and the above named tenant attended the hearing.

This hearing was reconvened from a hearing on December 6, 2021. An Interim Decision was issued by the original arbitrator in this matter on December 6, 2021.

No issue of service of the Interim Decision or notice of the adjudicative hearing was raised and the landlord submitted evidence that the tenants other than the present tenant, MH, were served in various methods.

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 residential property is a 10-unit apartment building.

The landlord indicated that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for work done to the residential property. The evidence submitted by the landlord included invoices and receipts paid indicating the following work:

Heating Gas valve, thermopile, installation \$611.94

Mansard Deposit \$5000

Mansard Progress \$17865

Heating Pump & motor \$1210.40

Mansard Final \$22814.95

Hot Water New tank \$10290

Totals:

Heating \$1822.34

Hot water \$10290.00

Mansard (Gross \$46091- early pay discount) \$45679.95

\$57792.29

The landlord submitted that necessary work was undertaken and completed to the roofing and hot water system.

Tenant's response –

The tenant did not find any errors in the landlord's evidence, did not dispute the costs of the work, and confirmed that the repairs were needed.

The tenant argued that the landlord was compensated from another source due to the unprecedented increase in property values recently. The tenant said that in the past year, property values increased by 20%.

The tenant argued that the repairs should be the landlord's cost of doing business.

The tenant stated the building was a well-maintained building, but was an older building.

No evidence was submitted that the landlord has imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Analysis

1. Statutory Framework

Sections 21 and 23.1 of the Regulations 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, the 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 the 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), 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 find the landlord has not imposed a prior or additional rent increase on the tenants.

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.

Based on the evidence before me, there are 10 units in the residential property.

4. Amount of Capital Expenditure

Based on invoices and receipts submitted, I find the landlord incurred a cost of \$57,792.29 by having the Work completed.

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
 - 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;
- 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 upgrades to the buildings' roofing and hot water systems. I find these to be major components and major systems of the residential building, as defined by the Regulation.

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

b. Reason for Capital Expenditure

Under Tenancy Policy Guideline 40, a sloped roof has a useful life of 15 years, a flat roof is 20 years, and a commercial hot water system is 20 years.

As the landlord and tenant agreed the work was necessary, I find this is sufficient to satisfy the requirement that the Work was undertaken as a covered capital expenditure.

c. Timing of Capital Expenditure

I accept the landlord's uncontroverted evidence that the payment for the work was incurred and paid within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components replaced all exceed five 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 five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

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. Tenant's Rebuttal

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 tenant agreed it was a well-maintained property.

I find the tenant submitted insufficient evidence to show that the landlord has been paid, or entitled to be paid, from another source.

The tenant argued that property values increased by 20%, without providing any evidence that this residential property's value has increased by that amount or that this would amount to being paid by another source.

7. Outcome

The landlord has been successful. He has 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 are 10 specified dwelling units and that the amount of the eligible capital expenditure is \$57,792.29.

So, the landlord has established the basis for an additional monthly rent increase for capital expenditures of \$48.16. ($\$57,792.29 \div 10 \text{ units} \div 120$). 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 40, 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 monthly rent increase for capital expenditure of \$48.16. 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 22, 2022

Residential Tenancy Branch