



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding Cumbrae Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: ARI-C

Introduction

The landlord has made eligible capital expenditures and is seeking an additional rent increase pursuant to subsections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the “Act”) and section 23.1 of the *Residential Tenancy Regulation* (the “Regulation”).

A hearing was convened, by way of a teleconference, on June 17, 2022 at 11:00 AM in respect of the landlord’s application. Attending the hearing was the landlord’s agent (hereafter the “landlord” for brevity). No respondent tenant attended the hearing which ended at 11:10 AM.

The landlord testified, under oath, that he had served the Notice of Dispute Resolution Proceeding along with the evidence by registered mail on all 18 tenants. Copies of the Canada post registered mail receipts and tracking numbers were submitted into evidence. It is my finding based on this evidence that the tenants were served with the appropriate documentation, in compliance with the Act, necessary for them to participate in the dispute resolution process.

Issue

Is the landlord entitled to the additional rent increase being requested?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this application, and to explain the decision, is reproduced below.

The landlord gave the following oral and documentary evidence:

1. this is the landlord's first application for a rent increase under subsection 23.1(1) of the Regulation;
2. the capital expenditure was in the amount of \$12,026.77;
3. the capital expenditure was incurred for the replacement of a major component of the residential property, namely the carpets. The carpets not only needed to be replaced because of their age, but they were also presenting a tripping hazard to the tenants;
4. the capital expenditure was made in March 2021, and thus incurred within the 18-month period preceding the date on which the landlord made its application (the application was made on February 28, 2022); and,
5. the capital expenditure is not expected to be incurred again for at least 5 years. In this case, the carpets have a useful life expectancy of at least 10 years.

Submitted into documentary evidence were proof of the capital expenditures, proof of installations and replacement, and proof that the work was completed.

Analysis

[Subsection 43\(1\)\(b\)](#) of the Act states that a landlord may impose a rent increase only up to the amount "ordered by the director on an application under subsection (3) of the Act.

Subsection 43(3) of the Act, to which the above section refers, states that

In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

[Section 23.1](#) of the Regulation sets out the criteria by which an application for a rent increase is considered. This section is reproduced in full, for the benefit of the reader:

- (1) Subject to subsection (2), a landlord may apply under section 43
- (3) *[additional rent increase]* of the Act for an additional rent increase in respect of a rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.

(2) If the landlord made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.

(3) If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.

(4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:

- (a) the capital expenditures were incurred for one of the following:
 - (i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [*landlord and tenant obligations to repair and maintain*] of the Act;
 - (ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
 - (iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:
 - (A) a reduction in energy use or greenhouse gas emissions;
 - (B) an improvement in the security of the residential property;
- (b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
- (c) the capital expenditures are not expected to be incurred again for at least 5 years.

(5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred

(a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or

(b) for which the landlord has been paid, or is entitled to be paid, from another source.

In this application, based on the evidence before me, it is my finding that (1) the capital expenditure was incurred for the replacement of a major component—that is, carpets—in order to maintain the residential property, and to ensure the safety of the tenants (through the elimination of a tripping hazard), (2) the capital expenditure was incurred in the 18-month period preceding the date on which the landlord made the application, and (3) the capital expenditure is not expected to be incurred again for at least 10 years. In the absence of any argument or submissions from the tenants, I need not consider subsection 23.1(5) of the Regulation.

Given the above, I grant the landlord's application for the rent increase based on capital expenditures of \$12,026.77, and it is so ordered pursuant to section 43(1)(b) of the Act.

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 13 specified dwelling units and that the amount of the eligible capital expenditure is \$12,026.77.

Therefore, the landlord has established the basis for an additional rent increase for capital expenditures of \$7.71 ($\$12,026.77 \div 13 \text{ units} \div 120$). 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 *Residential Tenancy 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's application is hereby granted.

A copy of this Decision must be served by the landlord upon each affected tenant within 2 weeks of the landlord receiving a copy of this Decision from the RTB.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 17, 2022

Residential Tenancy Branch