



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.

The landlord was represented at the hearing by three agents ("**LM**", "**TG**", "**RS**") and its building manager ("**RC**"). None of the tenants were present at the hearing.

This matter was reconvened from a preliminary hearing on February 28, 2022 before a different arbitrator. On the same date, the presiding arbitrator issued an interim decision making several procedural orders.

Preliminary Issue – Service and Change of Tenants

LM testified that RC served all tenants with the notice of reconvened hearing and a copy of the interim decision by taping them to the door of the rental units on March 21, 2022. The landlord provided a spreadsheet which listed the names of all the tenants as well as their unit numbers. Beside each of their names, RC had signed, which LM testified indicated that they had been served by RC. RC confirmed this. The spreadsheet had some tenants' names crossed off and substituted with other individuals' names.

After some investigation, LM testified that the tenants whose names were handwritten on the spreadsheet for units 203, 205, 210, 215, 302, 305, 306, and 309 had tenancies which started after this application was filed and were not named as parties to the application. TG testified that she instructed RC to serve all of the occupants of the residential property regardless of when their tenancy started, as she wanted to ensure that none of the tenants who are named on this application were missed.

The landlord named the former occupants of those units as parties to this application. However, as they no longer live at the residential property, I cannot order that their rent be increased. As such, I dismiss the application against tenants MS (unit 203), RS (unit 205), AN (unit 210), SA (unit 215), JB & GV (unit 302), SG (unit 305), and BS & CR (unit 309), as they no longer reside at the residential property.

Preliminary Issue – Amendment of Application

At the outset of the hearing, LM requested to withdraw a portion of the landlord's claim. He stated that \$15,870.31 of the amount upon which the landlord has applied to impose an additional rent increase does not represent an amount that was spent on capital expenditures. Rather, he stated this amount related to the building's operating expenses.

As such, I amend the landlord's application to reduce the amount of the capital expenditure the landlord relies on to impose an additional rent increase by \$15,870.31 (from \$237,154.43 to \$221,284.12).

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 three-story apartment building containing 45 dwelling units (the "**Building**").

LM testified that the landlord has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application nor has landlord imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

LM testified that the landlord was seeking to impose an additional rent increase for capital expenditures incurred to pay for the replacement of the Building's boiler and to pay for extensive remediation to the exterior of the Building to repair water damage caused by inappropriate construction methods used when the Building was first built (collectively, the "**Work**").

1. Boiler

The landlord called a witness from the contractor who replaced the boiler ("**GR**"). Prior to the hearing, GR prepared the following written statement, which was submitted as part of the landlord's evidence package:

The boiler [the was replaced] was at the end of its working life. The boiler metal casing we're starting to get holes in it and would not have made another heating season without leaking products of combustion into the building. The boiler would then have to be taken out of service instantly. The boiler supplies the building

with all the hot water and heat to the building. The old boiler was original to the building. The new boiler if maintained properly should last 20 to 30 years.

At the hearing, GR testified that the building was built in 1977. He testified that the new boiler would be “slightly” more efficient than the old boiler. LM testified that the landlord paid GR’s company \$24,932.00 to remove the old boiler and replace it with a new boiler (supplied by the contractor). The landlord submitted an invoice dated July 31, 2021 showing it paid a deposit of \$12,466.00 plus \$623.30 in GST and the balance of \$13,089.30 (consisting of \$12,466.00 for the work plus \$623.30 in GST). I note that the amount claimed as “eligible” by the landlord for this expenditure would seem to not include the GST cost for this expense.

2. Exterior Remediation

Prior to the hearing, RS prepared a written statement explaining the reason for the exterior remediation. He wrote:

A contractor noticed that the partition wall on a patio was not stable. The contractor was repairing a section of fence that connects to a partition wall on a patio and when pressure was put on the partition it had more give than should be expected from a wall attached to the frame of the building. To investigate holes were drilled in the siding and rot was found on the ground level.

Once we opened up the partition walls and started removing the siding we discovered that the wood of the walls of the building was placed directly on the concrete roof of the parkade with no gasket or curb to protect the wood from rot. This allowed moisture to rot the wood behind the siding without anything visible either inside or outside the building.

The extent of the damage could only be seen once the siding and metal flashing was taken off.

The repairs include replacing partition walls. Some partition walls went up all 3 storeys. Some of the stucco and rot on upper floors near partitions also had to be replaced but the majority of the damage was on the ground floor. The siding up to the first storey was replaced as well as the windows and wood rotten areas repaired. The walls had to be jacked up so holes could be drilled for rebar to be placed into the concrete foundation. The rebar supported the new curb that was added to the concrete. A gasket was placed between the concrete and the wood frame of the building.

We resealed the roof of the carpark at the back and side of the building where the concrete roof makes up the patios of the units. The waterproofing starts below the cold joint and finishes part way up the wall of the building including under the patio doors to reduce the risk of leaking.

Every effort was made to ensure the work done to the building will ensure the siding, walls, partitions, windows, patios and carpark will not require any further major repair for at least their expected useful life according to the *GL40 - Useful Life of Building Materials*.

The landlord then called JH as a witness. JH is the director of the contracting company that undertook the bulk of the remediation work. JH confirmed that much of the framing was not properly sealed and sits on concrete, which caused them to rot. He testified that his company installed new windows and patio doors, was responsible for demolition, framing, pouring concrete, installing rebar and replacing sill plating. He testified that his company worked on the Building for "more than five months". His company issued the landlord two invoices for this work: the first, dated August 31, 2020 for \$57,506.20; and the second, dated October 31, 2020, for \$1,482.24. The first invoice was for labour and materials and the second was for additional material required to carry out the labour indicated on the first. The landlord submitted copies of both invoices into evidence.

LM testified that the landlord incurred other expenses in the course of repairing the exterior of the Building. The landlord had to ensure that every connection where wooden walls meets concrete were waterproof and rot-free as well as ensure that the concrete itself was waterproofed. The landlord hired another contractor to waterproof the concrete roof of the garage and install drainage. This work cost \$39,558.75. The landlord submitted copies of two receipts confirming this amount (the first for \$28,008.75 dated July 10, 2020 and the second for \$11,550 dated August 17, 2020).

Additionally, the landlord incurred \$7,628.99 in cost associated with purchasing waterproofing materials for the front patios of the building. It submitted an invoice dated May 21, 2020 for this amount into evidence.

The landlord hired a contractor in late May and early June 2020 to install the siding on the Building. However, this contractor was unable to accommodate the scale of the job (which grew as more rot was discovered) and was frequently late. As such, the landlord hired a different contracting company to complete the installation of the siding throughout the Building. The landlord paid the first contractor \$2,025 (supported by two invoices dated May 25, 2020 and June 12, 2020) and the second company \$25,910.25 (supported by an invoice dated August 24, 2020).

The landlord purchased new windows and patio doors, which were double paned and replaced older, single paned windows and doors at a cost of \$20,707.41. The landlord submitted a ledger statement and two invoices confirming this amount dated May 20, 2020, May 29, 2020, and July 31, 2020 respectively. These were installed by JH's company.

The landlord purchased additional supplies in the course of undertaking the Work. It purchased vinyl siding which was water resistant (\$6,150.47), roll-on waterproofing

sealant for the front of patios of the Building (\$7,628.99), and a significant amount of hardware and building materials purchased from a building supply company on an “as needed” basis between May 31, 2020 and November 30, 2020 totaling \$27,774.24. It submitted four invoices supporting the first two amounts (dated May 15, May 21, June 11, and June 15, 2020) and a ledger entry listing all of the transactions with the building supply company supporting the third amount.

The landlord also rented two 40-yard garbage bins to remove all of the debris and damaged components from the Building at a cost of \$1,317.75. It submitted two invoices (dated June 10 and June 22, 2020) supporting this amount.

Finally, throughout the course of the Work, the landlord hired additional three additional contractors to supplement JH’s company in completing the demolition, repairs, and remediation of the exterior of the Building. It submitted invoices totaling \$6,290.82 as follows:

Date	Amount
26-Jun-20	\$1,968.75
03-Jul-20	\$1,080.00
30-Sep-20	\$3,242.07
	\$6,290.82

In summary, the landlord incurred expenses totaling \$221,284.12 in the course of completing the Work, as follows:

Description	Invoice Date	Amount
Building hardware	31-May-20 to 31-Nov-20	\$27,774.24
First Siding Contractor	25-May-20	\$1,487.50
First Siding Contractor	12-Jun-20	\$537.50
Garbage bin rental	22-Jun-20	\$658.88
Garbage bin rental	10-Jun-20	\$658.87
Supplemental Labour	30-Sep-20	\$3,242.07
Supplemental Labour	26-Jun-20	\$1,968.75
Supplemental Labour	03-Jul-20	\$1,080.00
JH's company	31-Aug-20	\$57,506.20
JH's company	31-Oct-20	\$1,482.24
Siding Contractor	30-Aug-20	\$25,910.25
Supply and install of boiler	31-Jul-20	\$24,932.00
Vinyl Siding material	15-May-20	\$4,464.31
Vinyl Siding material	11-Jun-20	\$1,508.08
Vinyl Siding material	15-Jun-20	\$178.08

Waterproof materials	21-May-20	\$7,628.99
Waterproofing Contractor	10-Jul-20	\$28,008.75
Waterproofing Contractor	17-Aug-20	\$11,550.00
Window and patio door supply	20-May-20	\$10,472.00
Window and patio door supply	29-May-20	\$9,563.41
Window and patio door supply	31-Jul-20	\$672.00
Total		\$221,284.12

The landlord made this application on September 17, 2021.

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));
 - o 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));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o 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 accept LM's undisputed testimony that the landlord has not imposed any additional rent increase on any of the named tenants 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.

I accept LM's undisputed testimony that the Building contains 45 units. All of these units are "specified dwelling units" within the meaning of the Regulation.

4. Amount of Capital Expenditure

All of the amounts claimed by the landlord are supported with invoices or ledger entries. I accept each of these documents as genuine and that the landlord incurred the costs stated thereon.

As noted above, based on the invoice submitted, the landlord appears to have incurred a cost of \$26,178.60 when replacing the old boiler. However, the landlord has only claimed a rent increase based on a cost of \$24,932.00. This lesser amount is likely due to the landlord's failure to include GST in the amount claimed against when preparing its application. I do not find it appropriate to amend the landlord's application to increase the amount of the capital expenditure upon which the landlord seeks to impose an additional rent increase. As such, any cost incurred above the amount claimed is abandoned.

I find that the total cost of the work incurred by the landlord upon which it may seek to impose an additional rent increase is \$221, 284.12

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.

The boiler is a significant component of the Building's heating system, and, per Policy Guideline 37, a heating system is a major system. As such, the boiler is a "major component" as defined by the Regulation.

The exterior of the Building is a structural system, as is the roof of the garage. The siding, windows, and patio doors are significant components of this system. As such, I find that they are "major systems" or "major components" as defined by the Regulation.

b. Reason for Capital Expenditure

I accept GR's evidence that the boiler was at the end its useful life and that it was over 40 years old when it was replaced. This is a permitted reason to incur a capital expenditure under the Regulation.

I accept RS's evidence, supported by JH's testimony, that there was significant rot in the structure of the Building caused by water seeping into the internal walls from the concrete below. This amounts to a failure or malfunction of the building envelope system. This is a permitted reason to incur a capital expenditure under the Regulation.

I accept LM's testimony that the windows and patio doors are double-paned, and that they are therefore more energy efficient that the single-paned windows and doors they replaced. This is a permitted reason to incur a capital expenditure under the Regulation.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered "incurred" when payment for it is made.

The landlord made this application on September 17, 2021. 18 months before that date was March 17, 2020. All of the receipts, invoices, and ledger entries are dated after this

date. Accordingly, I find that all the costs incurred by the landlord in the course of doing the Work were incurred within the 18 months preceding the making of this application.

d. Life expectancy of the Capital Expenditure

I accept GR's testimony that the new boiler can expect to have a lifespan of between 20 and 30 years.

I find that it is more likely than not that the remediation work done to the exterior of the Building (including the installation of new windows and patio doors) can be expected to last more than five years.

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.

None of the tenants attended the hearing, nor did any tenant provide written submissions in advance of the hearing. In light of the lack of submissions to the aforementioned bases to set aside the application, I find that the tenants have failed to discharge their onus to prove either of these bases.

7. Outcome

The landlord has been successful. It 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 45 specified dwelling unit and that the amount of the eligible capital expenditure is \$221,284.12.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$40.98 ($\$221,284.12 \div 45 \text{ units} \div 120$). 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

As they no longer reside at the residential property, I dismiss the application against tenants MS (unit 203), RS (unit 205), AN (unit 210), SA (unit 215), JB & GV (unit 302), SG (unit 305), and BS & CR (unit 309).

The landlord has been successful against all other named tenants. I grant the application for an additional rent increase for capital expenditure of \$40.98. 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: July 20, 2022

Residential Tenancy Branch