

## DECISION

ARI-C

### Dispute Codes

### Introduction

In this application, the landlord seeks a rent increase pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the “*Act*”) and section 23.1 of the Residential Tenancy Regulation, B.C. Reg. 477/2003.

The landlord filed the application for a rent increase on March 31, 2022 and a preliminary hearing was held on August 8, 2022. There was a pre-hearing conference held on August 8, 2022 with an Interim Decision issued on that date. This decision should be read in conjunction with that Interim Decision.

In the Interim Decision I ordered that this matter would proceed with written submissions only and no participatory hearing. I made the following orders regarding service of materials:

1. The landlord must serve the tenants with the copy of this Interim Decision and all written submissions and evidence by August 19, 2022.
2. The tenants must serve, no later than September 2, 2022, their written submissions and evidence to the landlord and provide copies of each to the Branch.

The tenants have not submitted any materials. The landlord, in addition to their initial submissions and evidence submitted together with their original application for dispute resolution have provided signed and witnessed Proof of Service forms for each of the respondents showing they were all served on August 19, 2022. Based on the documentary evidence I am satisfied that all respondent tenants have been duly served with the Interim Decision and all materials of the landlord on August 19, 2022 in accordance with sections 88 and 89 of the *Act* and as ordered in the Interim Decision.

### Issue to be Decided

Is the landlord entitled to impose an additional rent increase for capital expenditures?

### Background and Evidence

While I have turned my mind to all the documentary evidence, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This is the landlord's first application for a rent increase under subsection 23.1 of the Residential Tenancy Regulation. The landlord purchased the 31-unit rental property in 1989.

The landlord submits that there are presently 28 specified dwelling units that the landlord has named as respondents to this application.

The landlord submits that the total eligible capital expenditure is \$58,500.00 for replacement of the roof which occurred in September and October 2020. The landlord submitted receipts showing the scope of the work and the breakdown of costs.

The landlord submitted additional documentary materials showing their periodic maintenance, inspection and repairs to the roof during the prior years. A report from a third-party roofer submitted into documentary evidence states that the expected useful life of a roof is about 35 years and no further work is expected at this time.

### Analysis

The landlord bears the evidentiary burden of establishing on a balance of probabilities, meaning it is more likely than not, that the capital expenditures meet the requirements to be eligible for an additional rent increase.

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 this application is considered. The issue is further clarified in Policy Guideline 37.

In the present case I accept the undisputed evidence of the landlord that they have no imposed a prior rent increase for capital expenditures in the 18 months prior to their application. I further accept that the work is not expected to recur for at least five years.

I accept that the capital expenditures were incurred in October 2020 and the landlord filed their application in March 2022, therefore the expenditure was made within the 18 month period preceding the date the application was filed.

I find that the work performed by the landlord, as detailed in their documentary evidence including work orders and receipts, were for the purposes of replacing the roof of the rental property. I find it reasonable to characterize the roof of a building as a major component and I therefore find that the work was for replacement of a major component of the rental property.

I am satisfied with the evidence that the replacement was required not due to any negligence or failure to maintain on the part of the landlord but the age of the building element. I find that the landlord took reasonable steps for many of the prior years through periodic repairs, upgrades and maintenance and the need for replacement is not attributable to any action or negligence on the part of the landlord. I find that the roof was at the end of its useful life and its replacement qualifies as an eligible capital expenditure.

I find no evidence that the landlord has been paid or is entitled to be paid from another source for these expenditures.

Accordingly, I find the landlord has established, on a balance of probabilities that they are entitled to an additional rent increase for eligible capital expenditures of \$58,500.00 pursuant to section 23.1 of the Regulation and 43(1) of the *Act*.

Regulation 23.2(2) provides the calculation by which the amount of an eligible capital expenditure may be determined as follows:

- (2) The director must
  - (a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and
  - (b) divide the amount calculated under paragraph (a) by 120.

In the present case the landlord has submitted that there are 28 specified dwelling units and the total eligible capital expenditure is \$58,500.00.

Therefore, the calculation is  $(\$58,500.00/28)/120 = \$17.41$

I find it appropriate to note that subsections 3 and 4 of the Regulation provide:

(3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43 (1) (a) of the Act in that year by 3%.

(4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

I leave it to the landlord to make the required calculations under the subsections to determine the actual amount of the allowed rent increase.

I further direct the attention of the parties to section 42 of the *Act*, section 23.3 of the Regulations and Policy Guideline 37 for guidance on how a rent increase may be given and imposed.

### Conclusion

The landlord's application is granted.

A copy of this Decision must be served by the landlord upon each affected tenant within two weeks of the landlord receiving a copy of this Decision. The landlord may provide a copy of this Decision to any of the tenants by email if preferred.

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: September 12, 2022

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Residential Tenancy Branch