



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1305259 B.C. LTD.
and [tenant name suppressed to protect privacy]

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 ("Application").

The Landlord's agents, P.E. and K.T. ("Agents") attended the two hearings. Two Tenants were present at the Preliminary hearing, as well: [E.B. and T.M-S.]; however, only the two Agents attended the main hearing; no Tenants attended beyond the preliminary hearing.

I considered service of the Notice of Hearing documents and evidence by the Landlord to the Tenants. The Agents said they had emailed the Notice of Hearing documents to all Tenants on July 23, 2022, and delivered the same documents to the Tenants in person the following week. The Agents said that they served eight Tenants this way, and obtained their signed acceptance of the service. The Agents said that they could not connect with the two remaining Tenants directly, so in addition to emailing the documents, the Agents also taped the documents to the two respective rental unit doors. Further, at the main hearing, the Agents said they had served my Interim Decision following the Preliminary Hearing to all of the Tenant via email. The Agents said they have been given approval by all Tenants to serve them by email.

I have reviewed the Landlord's submissions, which contain a document with the rental unit numbers, Tenants' names, and Tenants' respective signatures acknowledging service of the Notice of Hearing documents and evidence. Based on the evidence before me, I find that the Landlord has complied with the service requirements of the legislation.

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.

In the hearing, the Agents described the residential property, as follows:

The building is a 10 unit building we acquired 18 months ago, as a Mom & Pop 3-storey walk up building built in 1972. It was well maintained, but not significantly modified. The infrastructure in questions was installed in about 1991. The original boilers were replaced in 1991. It had two oil-fired boilers that were about 30 years old and at end of life. There were issues with them continuing to operate. They were not efficient and not conducive to a clean environment.

The Agents testified that the Landlord has not applied for an additional rent increase for capital expenditure against any of the Tenants prior to this Application.

The Agents testified that they seek to impose an additional rent increase for a capital expenditure incurred replacing the residential property's heating system. They said this includes heating both the building and the hot water, which affects each rental unit equally. The Agent testified that he has replaced the two oil-fired boilers with two new devices, which have a high efficiency of 97%+, and which take in combustion air from the outdoors. He said that the new system is safer, more efficient, and more reliable. (collectively, the "**Work**").

The Agents testified that the Work was done, because the boilers:

...were from the early 1990s, and oil-fired, which was very inefficient and unreliable. We have had two to three heat outages and we've only owned the building coming up to two years. They were very in need of replacement.

The Tenants at the Preliminary hearing provided the following comments on the need for this capital expenditure. E.B. said:

The necessity is purely determined by the Landlord. I'm no expert on heating systems, so didn't know if it was absolutely necessary or done as a decision to save energy. I don't dispute that it was done - it was definitely replaced – but I dispute that the Tenants should pay extra for it. It was made so the Landlord could continue to pay heat and hot water with the required rent.

T.M-S. said:

It's not really fair to raise the rent for this, because I'm having trouble with the heating, and the contractor came, but I'm losing heat. The house stays warm. The other heater was not having that issue, the house was warm, but when we didn't have oil, then there was trouble, but not a heat issue.

I'm just saying that in winter, generally, there was no issue warming the house. There was no issue when the register was on. Now it's like I don't know - the window and doors have issues - and maybe that's why I'm losing heat. .. the Landlord knows about it.

The Agents responded to the Tenants' comments:

Commenting on what [E.B.] said, from a Tenant's point of view, yes, they would have seen several outages of the system running out of fuel – it was highly inefficient. The oil delivery company had trouble keeping up with it. It was extremely unstable and old; maintenance staff were coming on a monthly basis to address one or both boilers. Those are things we provide that wouldn't have been known by the residents

As to T.M-S.'s comments:

We have certainly been working with her and her unit for some time. It is a very drafty unit, and we're amending the windows and doors there. We also had the heating contractor in to each unit three times to get the system as optimized as possible. We understand she has a concern, but that concern has not been recognised by other Tenants. We're working with T.M-S. and her husband on how they use the heat. The legacy system had a higher temperature, it was oil and not natural gas hot water; it just delivered hotter water more quickly. The new system is more of a constant warm heat, other than this unit, there have been no other complaints or challenges.

Cost of Work:

Description	Date	Amount
Gas contractor	April 2022	
Gas fitter	April 2022	
Gas permit	April 2022	
	Sub-total	\$35,437.50
Thermostat Installation	Into each unit	\$ 807.98
	Total	\$36,245.48

The Landlord submitted copies of invoices supporting these amounts. The Agent said that the useful life of the new heating system is 20 to 30 years, and that it has a ten-year full guarantee.

The Tenants further testified, starting with E.B.:

I am questioning whether this kind of infrastructure upgrade is to the building and the ownership, it is solely reaped by ownership. We had no choice in make of what it needs or what type of system. This is not as hot as it was, and there are some definite issues with the change out and this style of change – decisions that were solely made by the Landlord that we're having to live with.

The Parties agreed that the Landlord has not 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:

- 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.

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

The Landlord has never applied for an additional rent increase before this.

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 undisputed evidence before me is that there are ten specified dwelling units in the residential property.

4. Amount of Capital Expenditure

The cost of the new heating system, including installation of thermostats in each unit is **\$36,245.48**.

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 building's heating and hot water system. The Regulation identifies a residential property's "major components" as integral to the residential property. The Landlord replaced oil-fired boilers with a more efficient and more reliable system that is conducive to a cleaner environment. I find these upgrades are consistent with the "major components" as defined in the Regulation.

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

b. Reason for Capital Expenditure

The replacement of the heating system was undertaken, because the old oil-fired boilers were approximately 30 years old and at the end of their useful life. Heat outages occurred with these boilers, as they were not as efficient as the gas-fired heating system subsequently installed.

c. Timing of Capital Expenditure

I accept the Landlord's uncontroverted evidence that the first payment for the work was incurred on April 1, 2022, when the Landlord made a downpayment on the expenditure. The final payment was incurred on April 7, 2022. Both of these dates are within 18 months of the Landlord making this Application on June 23, 2022.

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 be within five years of the installation. Rather, the Agents said the life expectancy is 20 to 30 years. They noted that the system is guaranteed for ten years.

For these reasons, 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. 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 Tenants 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 Tenants did not raise these issues in their testimony. Rather, they questioned the need for the type of heating system to be installed. However, pursuant to the Act and Regulation, this argument is not a basis to dispute the Landlord's Application.

I note, however, that the Agents acknowledged that the Landlord has received a rebate from the gas company of \$2,700.00. I, therefore, deduct this amount from the total claimed: $\$36,245.48 - \$2,700.00 = \$33,545.48$

7. Outcome

The Landlord is successful. I find that the Agents have proven on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for a capital expenditure. Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the addition 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 ten specified dwelling unit and that the amount of the eligible capital expenditure is \$33,545.48.

So, I find that the Landlord has established the basis for an additional rent increase for capital expenditures of $(\$33,545.48 \div 10 \text{ units} \div 120) = \27.95 .

This amount may not exceed 3% of a tenant's monthly rent, and if so, the Landlord

may not be permitted to impose a rent increase for the entire amount in a single year.

The Landlord is directed to RTB **Policy Guideline #37** ("PG #37"), Part C, page 11 to properly calculate the rent increase in accordance with the Regulations, as this is the Landlord's responsibility.

In addition to PG #37, the Parties are also directed to section 42 of the Act to learn about annual rent increases (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 is successful in their Application. I grant the application for an additional rent increase for capital expenditure of **\$27.95**. 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: April 20, 2022

Residential Tenancy Branch