



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 attended the hearing. Two tenants were present at the hearing, S.P. and S.D. The tenant S.D. did not participate in the hearing after asking questions about the effective date for the proposed rent increase. S.D. advised that he did not dispute the landlord's application before disconnecting.

The landlord provided tracking numbers to prove they sent each tenant in the affected units a copy of the Notice of Dispute Resolution Hearing via registered mail on June 13, 2023. I deem the tenants in each of the affected units effectively served with the Notices of Dispute Resolution Hearing packages on June 18, 2023, the fifth day after being sent via registered mail in accordance with sections 89 and 90 of the Act.

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 landlord's claim and my findings are set out below.

The landlord testified that there are 74 units in the building, however they have only included 66 of them in this application. The landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord gave the following testimony. The original metal bedroom windows in all apartments, built about 1980, were replaced with new vinyl windows. The work required the removal of a small amount of hazardous materials (asbestos) around the window

sills. The landlord replaced and painted the trim around the windows inside and outside. (collectively, the “**Work**”).

The landlord testified the Work was done because the new windows will allow the apartments to remain warmer and more comfortable in the winter months in a building where the tenants pay their own electric heat. The original windows were single paned and were not energy efficient, while the new windows are vinyl and double paned which provides more effective insulation.

The landlord testified that they are not eligible for any rebates to assist in paying for the work and no insurance claims were filed to offset the costs. The landlord has not imposed an additional rent increase for capital expenditure pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

The landlord provided a general ledger breaking down the description of the work done and submitted copies of invoices supporting these amounts. The landlord testified that the bulk of the work was done in July and August 2022 and the last invoice was paid on January 24, 2023.

The tenant attending the hearing did not dispute the cost of the Work, just her ability to pay the additional rent increase.

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));
- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- 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

None.

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 find there are 74 dwelling units between the two buildings. As each of the units in the buildings was affected by the installation of the new windows, each of the units is eligible for an additional rent increase.

4. Amount of Capital Expenditure

\$335,983.70

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 37C 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, and elevators.

The Work amounted to replacement of the buildings' windows. The Regulation explicitly identifies a residential property's windows as a "major system". The landlord replaced the original 45 year-old single paned windows with new, energy efficient double-paned vinyl windows throughout the residential property. 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

Residential Tenancy Branch Policy Guideline PG-40 suggests the useful life of a window is 15 years. I find it reasonable that the landlord was required to replace the original windows of the 45 year-old building to achieve a reduction in energy use or greenhouse gas emissions.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37C states:

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

I accept the landlords uncontroverted evidence that the first payment for the Work was incurred in July of 2022 and the final payment was incurred in February, 2023. Both dates are within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the component replaced exceed five years. There is nothing in evidence which would suggest that the life expectancy of the windows 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. Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. 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 single tenant attending this hearing did not raise any objection based on the above criteria. She stated that the proposed rent increase is too high, given her financial situation and that it is simply unaffordable.

7. Outcome

The landlord has been successful. They have proven, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure.

In this case, I have found that there are 74 specified dwelling unit and that the amount of the eligible capital expenditure is \$335,983.70. $\$335,983.70 \div 74 \text{ units} \div 120 = \textbf{\$37.84}$. 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

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$37.84. 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: October 13, 2023

Residential Tenancy Branch