



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.

JF, KF, CG and SK attended the hearing as agents for the corporate landlord. One tenant was present at the hearing.

JF testified that they served all of the tenants to their rental unit addresses on August 4, 2023. In support of this, the landlord provided Canada Post Receipts containing tracking numbers. The tenant confirmed receipt of the Landlord application, Notice of Dispute Resolution Proceeding, and evidence.

Based on the testimony and evidence of the parties, I find that the tenants were served with the required documents in accordance with section 89 of the Act. Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if sent by registered mail on the fifth day after it is mailed. In this case, the tenants are deemed to have received the materials on August 9, 2023, in accordance with section 90(a) 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 parties' claims and my findings are set out below.

JF testified that the property is an apartment complex which consists of three separate buildings each of which contain 12 units for a total of 36 rental units. JF testified that the landlord has owned the building since 2004 and they believe the buildings were built in the late 1960s. The tenant testified that the buildings were built in 1964.

JK testified that the landlord has not applied for an additional rent increase for capital expenditure against any of the tenants in the last 18 months prior to this application. The tenant agreed that they had not been served with another additional rent increase for capital expenditure in the 18 months prior to this application.

JK testified that that they are seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's roof and water main system.

JK applied for permission to impose an additional rent increase for capital expenditures that were incurred to pay for two separate items, totaling \$172,156.09 as follows:

- 1) \$105,481.09 – Water Main replacement
- 2) \$66,675.00 – Roof replacement

JK spoke to each of the above noted items, as follows:

- 1) \$105,481.09 – Water Main replacement

JK testified that the original main water supply lines at all three buildings in the complex required replacement between June 2022 to March 2023. JK testified that each system failed leading to water leaking underground and onto the property outside the buildings. Upon digging, it was confirmed that the water lines were leaking. Given the age of the water supply lines, it made sense to replace them. JK testified that the useful life of the water main supply lines is 50-60 years.

JK testified that the work required a contractor to dig into the ground outside the three buildings and replace the water line from the main city line to the buildings. The water line inside the buildings also needed to be replaced up to the water meter. Following this, the ground outside the building was repaired and filled and some landscaping was completed.

The work was completed between June 2022 and May 2023, and copies of invoices were provided.

- 2) \$66,675.00 – Roof replacement

JK testified that the shingles on the three buildings were approximately 20 years old and required replacement. JK testified that the roofs of the buildings are sloped and that prior to the completion of the work, the old shingles were failing, curling, and some were blowing away during heavy wind. JK testified that some roof leaks had been experienced in the years prior to the replacement. JK testified that their contractor inspected the roofs and did not recommend any further repairs be made.

JK testified that the life expectancy of the roofs is 20 years in a cold climate such as Prince George.

The work was completed in July 2022, and a copy of the invoice was provided.

The tenant took issue with the fact that some of the costs in relation to the water main replacement were incurred in 2022. The tenant argued that the costs from 2022 should be removed from the bill. The tenant further testified that the repairs are not unexpected maintenance, and the landlord should have reserve fund to cover these issues.

Finally, the tenant took issue with the formula used to calculate the additional rent increase and argued that increase should not be calculated over a period of 10 years, but rather should be calculated based on the expected useful life of the element of the building that is being replaced.

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 21.1, 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

I am satisfied that the landlord has not successfully applied for an additional rent increase against the tenants within the last 18 month. There is no dispute on this issue.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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 the undisputed evidence that there are 36 units between three buildings and I find that these units are both dwelling units and specified dwelling units.

4. Amount of Capital Expenditure

The landlord applied for permission to impose an additional rent increase for capital expenditures that were incurred to pay for two separate items, totaling \$172,156.09 as follows:

- 1) \$105,481.09 – Water Main replacement
- 2) \$66,675.00 – Roof replacement

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.

I will address each of the items in the same order they were laid out above:

1) Water Main Replacement.

I am satisfied the water main replacement work that was completed is a considered a repair to a “major component”, of a “major system” as it is used to provide services to the tenants and occupants of the residential property and it integral to the residential property.

The tenants did not take issue with the costs related to the water main replacement work as indicated in the invoices provided by the landlord, save for their concern as to when the work was completed which will be addressed below.

Based on the foregoing, I find that work in relation to the water main replacement was undertaken to replace “major components” of a “major system” of the residential property.

1) \$66,675.00 – Roof replacement

I am satisfied the roof replacement is considered a repair to a “major component”, of a “major system” as the roof is essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property.

The tenants did not take issue with the costs related to the roof replacement work as indicated in the invoices provided by the landlord.

Based on the foregoing, I find that work in relation to the roof replacement was undertaken to replace “major components” of a “major system” of the residential property.

b. Reason for Capital Expenditure

With no evidence to the contrary, I am satisfied that the work to replace the roofs and water mains was completed to repair, remediate, and replace aging building components that were at the end of their useful life expectancy and malfunctioning as a result.

c. Timing of Capital Expenditure

The Landlord made their application on July 21, 2023.

Residential Tenancy Branch Policy Guideline 37 states:

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

I accept the landlords uncontroverted evidence that all invoices were paid within one week of the invoice date. Therefore, I find that the first payment for the Work was incurred in June 2022 and the final payment was incurred in May 2023. Both of these dates are within 18 months of the landlord making this application. Therefore, I find that the work was incurred not less than 18 months prior to this application as is required.

d. Life expectancy of the Capital Expenditure

I accept that the useful life of the components replaced exceeds five years. There is nothing in evidence which would suggest that the life expectancy of the components 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. 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.

While the tenant took issue with the formula used to distribute the costs among tenants, and asserted that the repairs are regular maintenance, the costs of which should be covered by the landlord, I find that these arguments do not form a basis to dispute the application.

The tenants did not present any evidence to demonstrate that the capital expenditures were incurred due to inadequate repairs or maintenance, or that the Landlord was entitled to be paid from another source.

7. Outcome

The landlord has been successful. He 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 32 specified dwelling units and that the amount of the eligible capital expenditure is \$172,156.09.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$44.83 ($\$172,156.09 \div 32 \text{ units} \div 120$). 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

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$44.83. 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 29, 2023.

Residential Tenancy Branch