Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the Landlords' 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's agent TS (the "Landlord's Agent") attended the hearing. The Tenant was not present at the hearing.

The Landlords provided a Canada Post tracking receipt and tracking number showing that they served the Tenant with the Notice of Dispute Resolution and evidence (collectively, the "Proceeding Package") by registered mail. The Canada Post tracking number shows that the Proceeding Package was delivered to the Tenant. Pursuant to section 90 of the Act, I find the Tenant was deemed served with the Proceeding Package 5 days after they were sent by registered mail. I find the Landlord sufficiently served the Tenant with the Proceeding Package.

The Landlord's Agent advised that the Landlords did not receive any evidence from the Tenant. The Tenant did not attend the hearing or submit any evidence to substantiate that they served the Landlords with their evidence. Based on the above, I am excluding the Tenant's evidence from consideration, per Rule **3.17**.

Issues to be Decided

Are the Landlords 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 Landlord's Agent explained that this application applies to a residential property that has one rental unit, which is rented by the Tenant.

The Landlord's Agent testified the Landlords are seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's oil furnace, which is the residential property's heating system (the "Work").

Description	Date	Amount
Replace oil furnace	June 8, 2023	$6,372.21
	Total	$6,372.21

Replace Oil Furnace

The Landlord's Agent stated that the Landlords took possession of this property July 1, 2021. On September 23, 2021, the Landlords had the oil furnace inspected and they performed the annual maintenance on the oil furnace. Copies of the job invoices are submitted into evidence to support this. The undisputed evidence of the Landlord's Agent is that on October 27, 2022, the Landlords had a technician perform the annual maintenance and on the invoice the technician stated "1983 Furnace with all original parts is due to be changed out" and "time for a new furnace". A copy of the invoice was provided. Next, the Landlord's Agent advised, the Tenant contacted the Landlords about the furnace not working around February 2023 and the Landlords sent in the technician and once again the invoice stated, "As noted before, this 40-year-old furnace needs to be replaced/ or at the very least major parts installed". A copy of the invoice was provided.

The Landlord's Agent advised the Landlords had a mini split heat pump installed on June 8, 2023, as the oil furnace was past its useful life and this pump would reduce reliance of fossil fuels. The Landlord's Agent also stated they paid $6,372.21 for the furnace replacement. The Landlord's Agent advised the Landlords investigated rebates for green initiatives, but they did not qualify because their contractor who installed the new furnace was not an HPCN member, which is a requirement of the rebate. A copy of the text message between the Landlords and the contractor and the rebate requirements were submitted into evidence.

The Landlords submitted copies of invoice to support their claim.

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:
    - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
    - 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 this tenant within the last 18 months.

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.

The Landlord's Agent explained that there is 1 specified dwelling unit on the residential property. I accept that there is only 1 specified dwelling unit.

4. Amount of Capital Expenditure

The Landlords applied for $6,372.21 for the replacement of the heating system (oil furnace).

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 Work amounted to upgrades to the buildings’ heating system. The Regulation explicitly identifies a residential property’s heating system as a “major system”. The landlord replaced the oil furnace which provided heat to rental unit. These amount to significant components of the heating system, which cause them to be “major components”, as defined by 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

I am satisfied that the Work was completed to replace an aging building component. I am satisfied that the furnace was approximately 40 years old and was close to the end or past its useful life expectancy. This is supported by the technician’s invoices. I am also satisfied that the oil furnace had already started malfunctioning and failing. Additionally, the oil furnace was replaced with a mini split pump and the undisputed evidence of the Landlord’s Agent is that this reduces the reliance on fossil fuels, which in turn reduces greenhouse gas emissions. As such, I am satisfied the Work was completed to reduce greenhouse gas emissions.

c. Timing of Capital Expenditure

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 the t payment for the Work was incurred in June 8, 2023. This falls within 18 months of the Landlords making this application.

d. Life expectancy of the Capital Expenditure

Policy Guidelines #40 sets out the useful life expectancy for typical building components. I note that the guideline indicates that heating systems are expected to last around 15 years.

I find that the life expectancy of the component 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.

As the Tenant did not attend the hearing and they did not provide their evidence to the Landlords, no rebuttal was provided by the Tenant.

7. Outcome

The Landlords have been successful. They have 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 is 1 specified dwelling unit and that the amount of the eligible capital expenditure is $6,372.71

So, the Landlords have established the basis for an additional rent increase for capital expenditures of $53.11 ($6,372.71 ÷ 1 unit ÷ 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 Landlords have been successful. I grant the application for an additional rent increase for capital expenditure of $53.11. The Landlords must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenant 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: November 20, 2023

Residential Tenancy Branch