



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

This hearing addressed the Landlord's application 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 (the Regulation) for an additional rent increase for capital expenditure.

The parties listed on the coverage page attended the hearing on October 31, 2024.

The parties confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. The parties stipulated that they corresponded with each other by email. I find the Tenants were served with the required materials and each party confirmed they were ready to proceed on the Landlord's application.

Issue for Decision

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

Background and Evidence

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants at each hearing. However, not all details of the respective submissions are included in this Decision. Only relevant and material evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The Landlord's application requests an additional rent increase from the Tenants as a result of certain capital expenditures made by the Landlord for repairs to the unit bathroom sink and cabinet. The Landlord's application requested an additional rent

increase based upon a capital expenditure for this item in the amount of \$682.50, including tax.

The Landlord submitted the contractor's invoice for the work done. The invoice was dated May 23, 2024, and the Landlord testified to those line items included in the application to repair a leak in the bathroom sink and install a cabinet panel that had been damaged by the leaking water. The Landlord testified the invoice was paid the date of the invoice. The Landlord stated a previous application for additional rent increase had been made but was withdrawn and not served to the Tenants. The Landlord further testified there was no collateral source of payment for the amount requested.

The Landlord had also requested amendment of the application to include a request from the Tenants for the value of "meal replacements" related to the alleged malfunction of the refrigerator in the unit. The parties were informed at the start of the proceeding this item was not a capital expenditure appropriate for an additional rent increase and would not be addressed in this proceeding.

The Landlord testified the Tenants at some point had contacted him regarding a leak in the bathroom sink. He stated he in turn contacted a plumber who could not find a source of the leak. He thereafter contacted a contractor and the contractor sent his plumber to investigate the leak and make necessary repairs. The contractor K.C. testified at the hearing. K.C. stated he did not personally attend to the unit for the plumbing repair but was informed by the plumber in his employment whom he tasked to make repairs that there was water pooling on top of the surround to the bathroom sink. He stated the plumber reached the conclusion the Tenants were splashing water which was then spilling over down the side of the cabinet which resulted in damage. The Landlord submitted photographs of the damaged cabinet. The contractor testified that as a general preventative measure in these types of repairs the plumber replaced the faucets. However, this did not solve the issue. Upon inquiry, the contractor testified the plumber found no issues with the plumbing pipes. The contractor K.C. stated the plumber informed him the source of the leak was the Tenants' misuse of the faucet, water splashing which resulted in the water dripping over the side of the cabinet and damaging it.

The Tenants testified they moved into the rental unit on November 1, 2024. They stated they first notified the Landlord on December 5, 2023, about a leak in the bathroom sink. The Tenants testified the plumber came on January 13, 2024, and replaced the faucets but the leaking persisted and was damaging to the side of the cabinet in which the sink was situated. The Tenants stated that on March 23, 2024, the plumber returned but the Landlord stated to them he did not want to repair the leak as he intended on selling the unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord has the burden of proof.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

Statutory Framework for Additional Rent Increase

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

In this case, based upon the evidence, I find the repair undertaken by the plumber on the bathroom sink and cabinet does not qualify for an additional rent increase. Policy Guideline 37C, which addresses applications for additional rent increase for capital expenditures, states in relevant part:

Repairs should be substantive rather than minor....The following is a non-exhaustive list of expenditures that would **not** be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:

- repairing a leaky faucet or pipe under a sink.... (emphasis in original).

I find based upon the contractor's testimony, the testimony of the parties and the documentary evidence, the plumber's work for the repair of the leak to the bathroom sink and replacement of the water-damaged cabinet is a minor repair and thus does not qualify for an additional rent increase for capital expenditure as opposed to an application for monetary compensation under the Act.

Conclusion

I dismiss without leave to reapply the Landlord's application for an additional rent increase for a capital expenditure in the amount of \$682.50.

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 issued 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 03, 2024

Residential Tenancy Branch