



DECISION

Introduction

This hearing dealt with the Landlord's April 22, 2024, 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.

Landlord K.S. and B.P. attended for the Landlord, a corporate entity.

Tenants J.K, S.D., and A.W. attended for the Tenants.

All parties were given an opportunity to provide sworn testimony and present evidence.

Tenant C.K. joined the 30-minute hearing just prior to closing and indicated that Tenant J.K. is their sibling. J.K. stated that they would update their sibling.

The Landlord K.S. indicated that Tenants were served in person or to the door on May 10, 2024, with Notice of the Dispute and associated supporting information relating to the Landlord's claim. Proof of service was provided for all Tenants, and the Tenants who attended the hearing confirmed receipt of service on May 10, 2024.

Rule 11.4 of the Residential Tenancy Branch Rules of Procedure requires the Landlord submit maintenance records in their possession for each component or system that was repaired.

The Landlord K.S. testified that they purchased the 42-unit residential property in April 2021 and that the multi-unit property was built in 1976. The Landlord testified that they did not provide or serve copies of professional assessment documents related to the building components as evidence in this dispute.

I therefore find that the Landlords failed to provide relevant service and maintenance records related to the projects identified in this application.

I find the Landlord has otherwise sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages as required by the Act and RTB Rules of Procedure.

The Tenant J.K. testified that they served the Landlord with 3 documents on June 20, 2024, which the Landlord acknowledged receipt of on June 28, 2024. I reviewed the Tenant's evidence and find that it consists of Notice from the Landlord about when the roof replacement project would be occurring, consisting of three separate notices that the project would be occurring:

- August 8 – 30, 2022
- September 8 – 30, 2022
- September 20, - October 25, 2022

I find that these are documents that the Landlord would have otherwise had in their possession and that therefore, they are sufficiently served with evidence from Tenant JK. as required by the Act and RTB Rules of Procedure.

Preliminary Matters

The Landlord requested to remove the following projects from their claim:

- Building Exterior Lighting & Signs \$573.64
- New Appliances Unit # 212 \$649.05
- Renovation Unit #101 & New appliances \$1,437.12
- Renovation Unit #201 \$13,099.08
- Renovation Unit #208 \$7,611.27
- Renovation Unit #107 \$7,201.56
- Renovation Unit #312 \$380.58

The Tenants present at the hearing agreed to the removal of this claim and so I permitted them to be withdrawn from the Landlord's claim under RTB Rule of Procedure 7.12.1 and section 64(3)(c) of the Act.

I do not give leave to reapply for this claim because the Landlord agreed during the hearing that none of these projects represent major components of the residential property as required by RTB Policy Guideline 37(c).

The Landlord also requested to reduce their financial claim for the flat roof repair project down from \$143,705.10 to \$140,555.10. I permitted this amendment under section 64(3)(c) of the Act.

Issues to be Decided

- Is the Landlord entitled to impose an additional rent increase for capital expenditures in the amount claimed of \$140,555.10 for a flat roof replacement project?

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 claims from the parties and my findings are set out below.

The residential property is a 42-unit building constructed in the 1970s. The Landlord has owned and operated this residential property since April 2021.

Regarding the flat roof replacement project, the Landlord testified that:

- The roof was a tar and gravel roof that was previously torched over.
- The torch over portion of the roof was failing because as the torch-on settles, gravel will poke through.
- There were a number of roof leaks at the multi-unit residential property, so the Landlord decided to replace the whole flat roof section because it had deteriorated.
- The Landlord located a professional assessment on the roof prior to replacement in their files, but did not serve copies of this report as evidence because the assessment report was located after evidence service deadlines had passed.
- The Landlord is currently in the process of gathering quotes for replacing the top side shingles and the siding of the residential property.
- The Landlord gathered 3 quotes for flat roof replacement.
- The Landlord provided the two invoices for the work completed.
- The Landlord hired a separate contractor to do a final report on the roof and this resulted in some correction work being done by the chosen contractor.
- The roof replacement project started in October 2022 and finished in May 2023 with a delay in the middle because the roofing contractor was busy with their other projects.
- The Landlord provided the RTB with proof of payment for the roof replacement project, but this evidence was not provided to the Tenants.

The Tenant J.K. disputed the project, testifying that:

- They occupy one of the units that experienced a leak in January 2022 and alleged that the leak was caused by the Landlord failing to shovel the roof after snow, which was followed by freezing rain.
- The Tenant lost quiet enjoyment for two weeks in October 2022 when the roof replacement occurred.
- The Landlord should have gotten a discount on the purchase price in April 2021 because the flat roof needed work when the multi-unit property was purchased. .

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));
 - 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.

2. Prior Application for Additional Rent Increase

I find that the Landlord has not applied for an additional rental increase for capital expenditure for this residential property within the previous 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.

There are 42 dwelling units in the residential property.

The Landlord provided proof a rent roll to the RTB to document current rental rates paid by Tenants in the residential property and to confirm that all 42 units are occupied by the Tenants.

4. Amount of Capital Expenditure

As shown in RTB Policy Guideline 37(c): "the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made."

The Landlord provided the following invoices for what I find to be major components of the roof:

Inv 9608-1	\$125,123.67	September 29, 2022
Inv-9608-2	\$16,218.93	December 21, 2022
Total	\$141,342.6	

The Landlord also provided the RTB with proof of payment:

Amount	Issued	Cleared
\$125,123.67	November 16, 2022	November 30, 2022
\$15,431.43	May 5, 2023	May 12, 2023
\$140,555.10		

I find that that the Landlord incurred costs as claimed in the amount of **\$140,555.10** related to the flat roof replacement project.

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.

a. Reason for Capital Expenditure

The Landlord claimed that the flat roof needed to be replaced because the roof had failed and was at, and or beyond the end of its expected useful life.

b. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

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

I find that the Landlord established on the balance of probabilities that the roofing replacing project was completed May 2023, because this was when the final payment was made to the roofing contractor responsible for replacement of the roof.

I find that May 2023 is within the 18-month period from April 22, 2024, when the Landlord applied to the RTB for this application for additional rent increase for capital expenditure.

c. Life expectancy of the Capital Expenditure

As shown in RTB Policy Guideline 40, the expected useful life of a flat roof is 20 years.

I therefore find that the roof replacement project will exceed five years.

6. Tenants' Rebuttals

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.

The Tenants disputed the eligibility of the roof replacement project as permitted by section D(4) of RTB Policy Guideline 37(c), arguing that:

- The project was needed to due to lack of maintenance by the Landlord.
- The Landlord ought to have received a reduction in the April 2021 purchase price for the residential property to account for the costs of any repairs or replacements needed.

I find that the Tenants have successfully challenged the Landlord's claim that the roof replacement project is an eligible capital replacement project simply because the roof was said to be deteriorating and at the end of its serviceable life and that the Tenants' dispute of this project is based on the Landlord's failure to provide relevant supporting document as required by section C(4) of RTB Policy Guideline 37(c).

As seen in section C(1) of RTB Policy Guideline 37(c):

Policy Guideline 40: Useful Life of Building Elements establishes general timeframes for the useful life of various elements, including some major systems and major components. The timeframes set out in Policy Guideline 40 will be used to determine the expected useful life of a capital expenditure, except in cases where the arbitrator determines that documentary evidence is required to establish the useful life of a capital expenditure.

I find that the Landlords failed to establish on the balance of probabilities that:

- The flat roof was indeed at the end of its life because no verifiable evidence was provided to confirm the age of the roof, or its overall condition.
- How the torch on roof was maintained until it was replaced.

I find that these points are relevant because the Tenants argued that the leak only occurred because the Landlord allegedly failed to shovel snow off the roof before freezing rain occurred in January 2022.

I find that the Tenants established on the balance of probabilities that the roof replacement project was required due to lack of maintenance of the flat roof membrane by the Landlord.

I also find it relevant that the Landlord failed to provide verifiable evidence of professional assessments on the roof at time of purchase in April 2021, because as the Tenant mentioned, purchase contracts are typically reduced to reflect the costs of any necessary repair work, such as a new roof.

I find that the Landlord failed to establish on the balance of probabilities that their only option for recovering costs for the flat roof was through their Tenants and not through alternative means, such as a lower contract price when they purchased this building, only a few years prior, in April 2021.

I refer to the following quote from 2021 communications regarding the introduction of ARI-C applications like this one, in support of my finding:

“Given that landlords have been extremely restricted in their rent increase opportunities over the last several years (and entirely banned from increasing the rent between March 30, 2020, and January 1, 2022), the opportunity to offset significant building expenses comes as welcome news. The additional rent increase opportunity originates from early recommendations from the BC Rental Housing Task Force.”

I make this reference because I find that it provides a good summary of the Landlord's failure to satisfy their onus under the Act, regulations and policy guidelines, and how the Tenants have instead demonstrated that the Landlord's roof replacement project is not eligible for an additional rent increase for capital expenditure.

7. Outcome

The Landlord has not been successful.

Conclusion

The Landlord's application is dismissed in its entirety, without leave to reapply.

I order the Landlord 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 Act.

Dated: July 3, 2024

Residential Tenancy Branch