

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's May 5, 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 S.D. and A.D. attended the hearing, provided sworn testimony and referred to evidence.

Landlord S.D. testified that Tenants were served to the door, or in person on May 14, 2024, and referred to photos provided confirming that envelopes were left in the door, or in the mailbox for three of the four sets of Tenets. Landlord S.D. referred to proof of text messages with these three sets of Tenants to confirm that they received the document package as required.

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. I find that the Landlord served the Tenants with evidence related to payment for the re-shingling project but did not serve maintenance evidence on the Tenant.

I nevertheless find the Landlords sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages.

### **Preliminary Matters**

I used my discretion under RTB Rule of Procedure 3.19 to allow the Landlord to upload proof of service of their Notice and Evidence package on the Tenants, as well as upload proof of their tenancy agreements with the Tenants so that I could be sure that all parties significantly impacted by this application request, were properly named.

### **Issues to be Decided**

Are the Landlords entitled to impose an additional rent increase for capital expenditures in the amount claimed of \$16,111.20 for a re-shingling project at the residential property?

## **Background and Evidence**

The residential property is a side-by-side fourplex that was built in 1988.

The Landlords have owned the residential property since 2015 and provided proof of tenancy agreements with their tenants in the four rental units.

	<b>Tenants Since</b>
Unit A	December 2019
Unit B	July 2019
Unit C	March 2022
Unit D	February 2018

The Landlord A.D. testified that the shingles on the shared roof of the fourplex were replaced in spring 2023 because the previous shingles were understood to be original shingles (approximately 30+ years old) and needed to be replaced because they were curling and blowing off.

A.D testified that the shingles were replaced in 2023 to ensure that no roof leaks occurred, and that the Landlord pursued three quotes on shingle replacement costs before choosing the preferred vendor who offered the lowest costs and was available to complete the work when it needed to be done.

The Landlord provided proof of verifiable estimates and invoices from the professional company chosen to do the re-shingling project at the residential property.

Est 128	April 18, 2023	\$16,111.20
Inv 121	May 25, 2023	\$8,111.20

The Landlord also provided proof of payment in the form of cancelled cheques that equaled the amount of the April 18, 2023, Estimate:

May 8, 2023	\$8000.00	Deposit
May 28, 2023	\$8,111.20	Payment of remainder

The Landlord provided proof of “before” and “after” pictures of the new shingles as installed at the residential property.

## **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)).

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 previously applied for an additional rental increase for capital expenditure within the previous 18 months for this residential property.

### 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 find that there are four dwelling units in the residential property.

The Landlord identified four specified dwelling units as eligible for the additional rent increase for capital expenditures for the re-shingling project because the roof that was re-shingled covers all rental unit.

### 4. Amount of Capital Expenditure

The Landlord applied for \$16,111.20 for the re-shingling 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

I find that the new shingles on the roof were required because the previous shingles were curled and many were said to have flown off, and so the Landlord decided to replace them because they documented that the shingles, a major building component, were starting to fail and were close to their end of their useful life as permitted by 23.1(4)(a)(ii) of the Regulations.

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 accept the Landlords’ uncontroverted evidence that the first payment for the re-shingling project was made May 8, 2023, and the final payment was made May 28, 2023. I find that these dates are within 18 months of the landlord making this application on May 4, 2024, as required by 23.1(4)(b) of the Regulations.

c. Life expectancy of the Capital Expenditure

The new shingles are expected to satisfy, if not exceed the 15-year serviceable life that is proposed in RTB Policy Guideline 40.

I therefore find that the re-shingling project is an eligible capital expenditure because it is expected to last more than five years as required by 23.1(4)(c) of the Regulations.

6. Tenants’ Rebuttals

As stated above, the Regulations limit 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.

None of the Tenants attended the hearing.

## 7. Outcome

The Landlord has been successful. I find that they have satisfied, on a balance of probabilities, all elements as outlined above and are entitled to impose an additional rent increase for total capital expenditures of **\$16,111.20** on their Tenants.

Section 23.2 of the Regulations sets out the formula to be applied when calculating the amount of the additional rent increase as:

$$\frac{\text{Amount of Capital Expenditure} / \text{Number of Specific Dwelling Units}}{120}$$

I find that there are four specified dwelling units for the re-shingling project that cost **\$16,111.20** and that the Landlord can impose an additional rent increase for capital expenditures of **\$33.57** ( $\$16,111.20 \div 4 \text{ units} \div 120$ ). 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 and may need to implement the increase in phases.

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 may be imposed.

### **Conclusion**

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$16,111.20**. 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 Act.

Dated: July 17, 2024

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Residential Tenancy Branch