



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 submitted February 27, 2024, 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 cover page attended the hearing. It is noted that Landlord R.W. excused herself for work-related reasons shortly before the hearing concluded.

The parties confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence submitted by the Landlord. I find the Tenants were served with the required materials in accordance with the Act on June 9, 2024.

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 parties and submission of counsel. However, not all details of the respective submissions are reproduced 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 for certain capital expenditures made by them:

- Roof replacement - \$18,957.75. The work was completed and paid for on April 16, 2024; and,

- Hot water tank replacement - \$3,024.00. The replacement of the hot water tank was completed and paid for on May 21, 2024.

The Landlord testified the residential rental building is a century home and consists of a basement suite and main floor living area. The basement suite is currently occupied by the Tenants and the Landlord occupies the main floor of the residence. The Landlord purchased the rental property on August 18, 2023. In connection with the purchase, the Landlord retained an inspector to assess the condition of the building. A copy of the home inspection report, dated July 29, 2023, was provided in evidence.

The report states the roof, comprised of “composite hybrid type shingles,” has an estimated age of 20 to 25 years. A photograph of a portion of the roof depicts significant wear to the shingles. The inspector states:

Deficiencies & Recommendations

- Shingles are aging. Surface granules missing – exposed shingle mat.
- Ridge cap shingles are damaged or cracked. Repair required.
- Roof surface appears to be at the end of it’s life expectancy. Roof needs replacement in the near future.

The report also included a review of the condition of the hot water tank:

Deficiencies & Recommendations

- Older tank is not leaking but past warranty period and may have limited life expectancy. Replacement recommended.

The inspector estimated the water tank to be 10 years old at the time of the inspection.

With regard to the roof, the Landlord submitted a quote from a licensed roofing company dated November 17, 2023, for the work. Landlord R.W. stated they tried to have the roof replaced sooner but the roofing company’s schedule would not permit for an earlier date. Additionally, Landlord R.W. stated they had tried to obtain an energy efficient hot water tank with a rebate but the rebates available had expired prior to their undertaking the tank replacement.

The Tenants leased the rental unit on October 1, 2023. Tenant A.L. stated that when viewing the unit, the Landlord informed them it was a century home and required work. However, she stated, they were not informed that their rent could increase as a result of that work. Landlord C.W. stated that the Tenants were not informed that an additional rent increase would not be sought for work to the rental property.

The Landlord's position is the capital expenditures were incurred to repair or replace a major system or a major component of a major system that had failed, was malfunctioning or inoperative, or was close to the end of its useful life.

The Landlord has not previously applied for an additional rent increase within the past 18 months for capital expenditure as required by 23.1(2) of the Regulations for the residential rental property. The Landlord states they were not entitled to be paid from another source for the work listed in this application. The Landlord provided copies of all invoices for work completed and included in the application.

The Tenant's counsel's position is based in Policy Guideline 40 which provides, in relevant part:

Applications for additional rent increases

A landlord may apply for an additional rent increase in an amount greater than the basic Annual Rent Increase in extraordinary circumstances. One of those circumstances is when a landlord has completed significant repairs or renovations that could not have been foreseen under reasonable circumstances and that will not recur within a reasonable time period [footnote omitted]. When reviewing applications for additional rent increases, the director may use this guide to determine whether the landlord could have foreseen the repair or renovation.

Tenant's counsel states that additional rent increases are limited to "extraordinary circumstances." He relies on the home inspection report commissioned by the Landlord prior to their purchase of the rental property as providing the Landlord with knowledge and foresight these capital expenditures would be required. Consequently, Tenant's counsel states, the Landlord's request for an additional rent increase based upon the capital expenditure for significant repairs must be denied.

The Landlord states that Policy Guideline 37C applies. Tenant's counsel replied that there was no dispute as to the nature of the repairs, the cost for those repairs or a calculation of the rent increase; but rather, that as a threshold issue, the rent increase is precluded as the Landlord was aware these were repairs were necessary prior to purchasing the rental property and entering into the tenancy.

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 bears the burden of proof to support their application.

In this case, the inspection report provided the Landlord with knowledge prior to the close of the sale for the rental property that replacement of the roof and hot water tank, which form the basis of the application, were required. Tenant's counsel correctly notes Policy Guideline 50 requires that when a landlord can reasonably foresee significant repairs will be necessary or required, the repair cannot be the subject of an additional rent increase. The time between the inspection report (July 29, 2023) informing the Landlord the roof and hot water tank would require imminent replacement and purchasing the property (August 18, 2023) and then entering into the tenancy (October 1, 2023) is sufficiently proximate that the Landlord had the opportunity to negotiate for these repair costs as part of the purchase of purchase of the property and/or factor in these costs in at the time of negotiating the rental of the subject unit.

This contrasts with those situations where the significant repair or replacement of a major component or system occurs after years of useful life have elapsed (with maintenance of the system or component during that time) or a sudden unexpected failure of the major component or system occurs. Over the course of the useful life of a major component or system, several tenancies may occur with adjustment of rental rates with each new tenancies affording the landlord an opportunity to recoup maintenance, repair and other operating costs associated with a rental unit.

The Landlord raised Policy Guideline 37C which sets forth the requirements necessary for an application for additional rent increase for capital expenditures as found in regulation 23.1. To the extent there is any conflict between the Policy Guideline 37C and regulation 23.1 with Policy Guideline 50, it is noted the British Columbia Supreme Court has held that with regard to the Act, any ambiguities in drafting are to be resolved in favor of the benefitted group; that is, tenants. *Berry and Kloet v. British Columbia (Residential Tenancy Act)*, 2007 BCSC 257 at ¶23 (*internal case citations omitted*). Having acquired a rental property in need of repair and renting a unit with foreseeability those repairs were necessarily required, it is inequitable to now shift those costs to the Tenants.

Upon this basis, I find the Landlord could reasonably foresee the roof would require replacement and the hot water tank had reached the end of its useful life upon their receipt of the inspection report prior to the close of their purchase of the rental property and subsequently entering into the tenancy. Therefore, in accordance with Policy Guideline 50, I find the Landlord is not entitled to an additional rent increase for these repairs.

Conclusion

The Landlord's application is dismissed without leave to reapply.

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: August 14, 2024

Residential Tenancy Branch