



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

On August 31, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting the Director’s approval of an Additional Rent Increase for eligible capital expenditures in relation to the rental units within the residential property. The matter was set for a participatory hearing via conference call.

The Landlord’s Agents (the “Landlord”) and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Landlord testified that they served their documentary evidence to the Tenants and the Tenants replied that they had no concerns regarding service. As such, I find that the evidence before me is admissible for this hearing.

Issue to be Decided

Should the Landlord be granted an Additional Rent Increase for eligible capital expenditures, pursuant to section 23.1 of the *Residential Tenancy Regulation* (the “Regulation”)?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision. I note that the Tenants did not submit any documentary evidence for this hearing.

The Landlord applied for an Additional Rent Increase for capital expenditures and originally stated that there were six rental units, as part of the residential property, that would be affected by this Application.

After hearing testimony from the Tenants and considering the definition of a “specified dwelling unit”, pursuant to the Regulation, the Landlord acknowledged that there were 11 specified dwelling units (the “units”) on the residential property. The parties described the residential property as a “gated community” and clarified that, besides the two buildings that contained the units (the “buildings”), there was also a separate 6-car garage on the residential property that was not used by the Tenants.

The Landlord submitted invoices and testified that the buildings required a roof replacement as the previous roof had been over 25 years old and was beginning to deteriorate and leak. The Landlord submitted two receipts from a professional roofing company, dated April and June 2021, for a total of \$41,412.50 to replace the roof over each of the buildings. The Landlord expects the rooves to last for approximately 25 years.

The Tenants agreed that the roof replacement of the buildings had been completed as stated by the Landlord. The Tenants raised their concerns about a separate six-car garage, which is not used by the Tenants, that had also had some roof replacement and repair completed. The Tenants stated that the roofing invoices did not clearly indicate whether the repairs to the garage were included or excluded in the total costs that were claimed by the Landlord.

The Landlord testified that he has not included the costs for the repairs to the roof of the six-car garage. The Landlord clarified that the roof of the garage was not replaced, only repaired and that a separate arrangement for the contractor to complete those repairs had been arranged.

The Tenants stated that unit #1, in one of the buildings, is a double unit and much larger than the other units; therefore, should be responsible for a larger piece of any additional rent increase.

The Landlord responded and stated that unit #1 is not a double unit, rather that it has one extra bedroom and a garage which meant that the unit required a small amount of extra roofing.

The Landlord submitted an invoice, dated September 3, 2020, and testified that the main entrance gate to the residential property required a new gate opener and the receipt showed the cost for new motors and the included repair. The gate provides security for the tenants of the residential property and although there has been maintenance conducted on the gate over the years, the motors that had to be replaced

were approximately 25 years old. The Landlord's capital costs, according to the invoice, were \$6,798.75. The Landlord testified that he does not expect to incur a similar capital expenditure within the next five years.

The Tenants testified that they all use the entrance gate to gain access to the residential property; however, felt that the Landlord and other non-tenants also used the gate; therefore, the repair should not be placed solely on the Tenants.

The Landlord responded that he and various trades must access the residential property, via the entrance gate, to provide services and maintenance to the grounds of the residential property and the rental units.

Analysis

Residential Tenancy Policy Guideline 37: Rent Increases ("Policy Guideline 37") speaks to Additional Rent Increases for residential tenancies:

A landlord may apply to the director for an order approving an additional rent increase if they have eligible capital expenditures.

In this case, the Landlord has applied for an additional rent increase in relation to two capital expenditures: the replacement of the roof on the buildings, and the replacement of the entrance gate motors for the residential property.

A capital expenditure is eligible for an additional rent increase, pursuant to section 23.1(4) of the Regulation if it:

- was incurred in the 18-month period preceding the date on which the landlord made the application;
- is not expected to recur for at least five years; and
- was incurred for one or more of the following reasons:
 - to install, repair or replace a major system or major component in order to maintain the residential property in a state of repair that complies with section 32(1)(a) of the RTA;
 - to install, repair or replace a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life; or
 - to install, repair or replace a major system or major component in order to:
 - reduce energy use or greenhouse gas emissions; or
 - improve the security of the residential property.

As noted in Policy Guideline 37, major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or

support a critical function of the residential property. 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.

In this case, based on the description in Policy Guideline 37, I find that the roof is a major component of the residential property. I find, based on the undisputed evidence before me, that it required replacement, in accordance with section 23.1(4) of the Regulation.

Regarding the main gate, I note that all the parties agreed this is the gate that secures the residential property. Based on the evidence in front of me, I find that the main gate is a major system that required repair to maintain and improve the security of the residential property, in accordance with section 23.1(4) of the Regulation. In response to the Tenants statements that more than just the Tenants use the main gate, I note that this is not a factor considered under the Act or Regulations (regarding additional rent increases) and decline to consider this as a factor.

Based on the undisputed testimony and documentary evidence of the Landlord, I find that the two capital expenditures, roof replacement and gate repair, were incurred in the 18-month period preceding the date of this Application, in accordance with section 23.1(1) of the Regulation.

I note there is no evidence in front of me to suggest that the capital expenditures were incurred for repairs or replacement required because of inadequate repair or maintenance on the part of the Landlord, or for which the Landlord has been paid, or is entitled to be paid, from another source.

The Tenants did raise the question about the accuracy of the invoices regarding the roof replacement. The Tenants stated that the roof of the six-car garage was also repaired and that the invoices submitted by the Landlord were "vague". The Landlord provided affirmed testimony that he has not submitted any costs associated to the six-car garage in this claim and only provided invoices related to buildings on the residential property. When I review the invoices, I note that they indicate the work included "complete tear off of existing roof..." and that there is no mention of repairs to the garage roof. As such, I find, on a balance of probabilities, that the Landlord's invoices for the capital expenditures for the roof replacement are accurate.

I have found that the roof repairs and main gate repairs were, respectively, incurred to replace a major component that that was close to the end of its useful life and to repair a major component that achieves an improvement in the security of the residential property. Furthermore, I have found that these capital expenditures were incurred in the 18-month period preceding the date on which the Landlord made this Application and

are capital expenditures that are not expected to be incurred again for at least 5 years. As such, I find that the Landlord has established that they incurred **eligible capital expenditures**, pursuant to section 23.1(4) of the Regulation, in the amount of \$48,211.25.

Section 21.1 of the Regulation sets out the definition of a specified dwelling unit and it includes 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. A dwelling unit includes rental units, units occupied by a landlord or other units not occupied under a tenancy agreement (for example, a short-term vacation rental).

In this case, based on the testimony by both parties, I find that there are 11 "**specified dwelling units**" as part of the residential property and related to each capital expenditure, pursuant to the definition set out in section 21.1 of the Regulation.

When an additional rent increase for capital expenditures is granted, it must be calculated in accordance with the formula set out in section 23.2 of Regulation.

The **eligible capital expenditures** are divided by the number of **specified dwelling units**. This number is then divided by 120 (months) to provide the total **Additional Rent Increase**.

In this case, the **eligible capital expenditures** have been established at \$48,211.25.

The **specified dwelling units** have been established at 11.

$\$48,211.25 \text{ divided by } 11 = \$4,382.84$

$\$4,382.84 \text{ divided by } 120 = \36.52

In this case, I find that the Landlord has established a total **Additional Rent Increase in the amount of \$36.52 for each rental unit**.

The Tenants raised a concern about the difference in size of unit #1 and whether I would consider if that unit should have a larger rent increase than the others. Upon review of the Policy Guideline 37 and the Regulation, I find that the relative size of a specified dwelling unit is not a factor that is considered when assessing the amount of an Additional Rent Increase.

The parties may refer to Residential Tenancy Policy Guideline and/or the Residential Tenancy Regulation, section 23.3 for further guidance regarding the imposition of additional rent increases for eligible capital expenditures.

Conclusion

The Landlord is successful with their Application and has established a **total Additional Rent Increase for capital expenditures in the amount of \$36.52 for each rental unit.**

The landlord may impose an additional rent increase in accordance with section 23.3 of the Regulation, which sets out restrictions on when and how the rent increase can be imposed.

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: December 13, 2021

Residential Tenancy Branch