



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the landlord's 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.

The landlord attended the hearing. Three tenants were present at the hearing: tenant **TS**, tenant **JO**, and a representative of tenant KS ("**MJ**"). JO and KS advised me that they did not oppose the landlord's application. MJ disconnected from the call shortly thereafter. JO remained on the line for the duration of the call but did not make any submissions. TS stated that he had some questions for the landlord and made brief submissions at the end of the hearing.

None of the tenants provided written submissions in advance of the hearing (as I permitted them to do in my interim decision dated September 27, 2021).

The landlord testified that the residential property caretaker served all respondents with the notice of reconvened hearing, copies of my November 10, 2021 interim decision, and all documentary evidence he intends to rely on at the his hearing on December 10, 2021 by posting it on the door of each rental unit. He submitted a written statement from the caretaker and a witness confirming this. The tenants present at the hearing confirmed they received these documents as specified by the landlord. As such, I find that the respondent tenants were served with the required documents in accordance with the Act.

Issues to be Decided

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

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 parties' claims and my findings are set out below.

The residential property is comprised of two buildings, each with its own civic address. Between the two buildings there are 155 dwelling units. On his application, the landlord indicated that there were 181 tenants (each named as a respondent in this proceeding) living in these 155 dwelling units. He testified that since he made the application, some of the tenants have vacated the rental unit. He is not seeking to impose an additional rent increase on any new tenants.

The landlord submitted rent rolls showing the names and unit numbers of the tenants. In my review of them, I noted that the unit numbers listed skip some numbers. For example, on the first floor of one of the buildings units the rent rolls do not list units 112, 114, 115, and 116. I asked the landlord if this was because those units were vacant and as such were excluded from the rent roll. He testified that this was not the case and that the buildings have a unique numbering system which pre-dated his tenure as landlord. He testified that all of the units, regardless of their status of occupancy on the rent rolls, were listed as specified dwelling units on his application. He testified that this included the unit occupied by the building's caretaker. He testified that any gaps in units' numbers on the rent rolls does not indicate that a unit has not been listed. Rather, a unit with that number simply does not exist.

TS testified that he had never noticed any "missing units", but testified that he was unsure how many units were located at the residential property.

The landlord testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's electrical system. He testified that each electrical outlet and electrical fixture in all common areas and in all units had to be replaced and that the wiring had to be changed to a new type of wire (he did not specify which) and spliced into the electrical system of the buildings (collectively, the "**Work**").

The landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord testified that this was done so as to bring the buildings up to the current electrical code. He testified that the buildings were built in 1973, and the electrical system had not been updated since then. He testified that his insurance company required that the electrical system be upgraded to current building code in order for it to be insurable. He did not submit any documentation corroborating this.

TS agreed that the Work was done but asked the landlord why he did not make upgrades on a rolling basis, as units became vacant. The landlord stated that, until the insurance company required him to make the upgrades as a condition of getting insurance, he did not have any reason to incur such a cost. He stated that once the requirement was put in place, he had to comply with it immediately.

The landlord testified that on April 27, 2021 he obtained a quote from an electrical company to undertake the Work at a cost of \$154,035. The Work was completed In July and August 2021. He testified he paid for the Work in four installments, as follows:

Date	Invoice #	Amount
01-Jun-21	311	\$32,156.25
26-Jun-21	314	\$33,888.75
01-Sep-21	325	\$55,440.00
26-Sep-21	330	\$31,683.00
Total		\$153,168.00

The landlord submitted copies of invoice 311 and 314 into evidence. TS did not dispute the cost of the Work.

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Analysis

The basic facts of this matter are not in dispute. The landlord had replaced each outlet and electrical fixture in all common areas and in all units and replaced the wiring that connected these items to the buildings' electrical system in July and August 2021. The items replaced were original to the buildings and installed in 1973. The landlord undertook the Work to bring the buildings up to code, as a condition of obtaining insurance for the building. The landlord paid \$153,168 to have the Work completed.

I accept the landlord's explanation as to the number of units in the building and why they do not all have sequential numbers. The tenants did not dispute this portion of the landlord's testimony. Accordingly, I find that the buildings have 155 rental units between them.

1. Statutory Framework

Sections 21 and 23.1 of the Regulations sets 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 made an application for an additional rent increase against these tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- 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

- 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
 - because it 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.

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, or
- for which the landlord has been paid, or is entitled to be paid, from another source.

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 accept the landlord's undisputed evidence that he has not made a previous application for an additional rent increase against the tenants.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Act 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.

As stated above, I accept the landlord's explanation as to why the room numbers of the rental unit were non-sequential. I accept his testimony that there are 155 living accommodations in the residential property. As such, there are 155 "dwelling units". Furthermore, I find that these units are "specified dwelling units" as each is located in a building where the Work was undertaken.

4. Amount of Capital Expenditure

I accept the landlord's evidence that the total cost of the Work was \$153,168, paid in four installments as follows:

Date	Invoice #	Amount
01-Jun-21	311	\$32,156.25
26-Jun-21	314	\$33,888.75
01-Sep-21	325	\$55,440.00
26-Sep-21	330	\$31,683.00
Total		\$153,168.00

This amount is slightly less than the April 27, 2021 quote. This fact lends credence to amounts of each of the September 2021 installments (for which invoices were not submitted). As such, I find that the total cost of the Work was \$153,168.

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
 - because it 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.

I will address each of these in turn.

a. Type of Capital Expenditure

The Work amounted to upgrades to the buildings' electrical system. The Regulation explicitly identifies a residential property's electrical system as a "major system". The landlord replaced outlets, fixtures, and wiring throughout the residential property. These amount to significant components of the electrical system, which cause them to be "major components", as defined by the Regulation.

As such, I find that the Work was undertaken to replace "major components" of a "major system" of the residential property.

b. Reason for Capital Expenditure

The landlord testified that the outlets, fixtures, and wiring in the residential property were original to the buildings. As such they were roughly 50 years old. RTB Policy Guideline 40 states that the useful life of light fixtures is 15 years and "rewiring" is 25 years. It does not provide a useful life for power outlets. However, I think it reasonable to conclude that the useful life of such an outlet would not exceed that of the wiring and certainly be less than 50 years.

Accordingly, I find that that the "major components" replaced during the work were well past the end of their useful life. This is sufficient to satisfy the requirement of the Regulation that the work be undertaken because the component is "close" to the end of its useful life. It would make little sense for a landlord to be unable to impose an additional rent increase to make repairs to components that even more outdated and in need of replacement (that is past their useful life) while being able to impose an additional rent increase to make repairs to components whose useful life has not yet passed.

c. Timing of Capital Expenditure

I accept the landlords uncontroverted evidence that the first payment for the work was incurred in June 2021 and the final payment was incurred in September 2021. Both of these dates are within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components replaced all exceed five years. There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40. For this reason, I find that the life

expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

As such, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

6. Tenants' Rebuttals

As stated above, 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 did not provide any evidence to support either of these propositions. I note that the Regulation does not recognize the basis that the Work ought to have been done earlier or on a rolling basis as a reason for the landlord being unable to impose an additional rent increase. As such, I find that the tenants have failed to establish either of the two bases on which they could defeat this application.

7. Outcome

The landlord has been successful. He has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure. Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there are 155 specified dwelling unit and that the amount of the eligible capital expenditure is \$153,168.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$8.34 ($\$153,168 \div 155 \div 120$).

The parties may refer to RTB Policy Guideline 40, 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 made be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$8.34. 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 *Residential Tenancy Act*.

Dated: February 18, 2022

Residential Tenancy Branch