



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 was represented at the hearing by its president ("**BR**") and vice president ("**NR**"). None of the tenants were present at the hearing.

This matter was reconvened from a preliminary hearing which took place on December 6, 2021. I issued an interim decision on the same day (the "**Interim Decision**").

BR testified that the landlord served the notice of dispute resolution proceeding package and a copy of the Interim Decision to all the tenants via registered mail in December 2021. The landlord submitted Canada Post tracking numbers to confirm these mailings. I find that the tenants have been 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 landlord, not all details of its submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The tenants reside in rental units located in an apartment building. The apartment building has 24 units, although only 19 of them are rented to tenants. The apartment building was built in the mid-1950s.

The landlord testified that he has neither applied for nor imposed an additional rent increase any of the tenants prior to this application. The landlord made this application on September 3, 2021.

BR testified that the landlord was seeking to impose an additional rent increase for a capital expenditure incurred to pay for work done to the residential property's roof and plumbing system. He testified that the landlord replaced the building's roof in the summer of 2020 and that the landlord replaced "gate valves" which control the water flow to each rental unit with "ball valves" in December 2020 (collectively, the "**Work**").

1. The Roof

The landlord hired an inspector to inspect the building's roof in October 2019. The inspection report revealed that there were "splits" in the roofing material which caused water to leak into the building. The landlord submitted a copy of the inspection report into evidence. It stated that the "ply is separating" and that "the splits are very bad. This is not something that can be easily fixed. Areas may need to be re-roofed."

The report also indicated that the roof was allowing water to pool, which the report attributed to either "a flaw in how the original roof was designed [..] or [that] the underlying insulation has collapsed due to age or weight and created a low area of the roof which is now holding water." The report recommended that this "is best corrected during a re-roof project." The report indicated that the roof had "less than one year of service life remaining."

BR testified that the roof was about 25 years old. He testified that, on the advice of the inspector, the landlord decided to replace the building's roof. He testified that life expectancy of this new roof is approximately 25 to 30 years.

The landlord hired a contractor to replace the roof. It submitted 3 invoices, accompanied by copies of checks made out to the contractor, showing the cost as follows:

Description	Date#	Amount
First Installment (30%)	June 9, 2020	\$12,596.85
Second Installment (60%)	June 24, 2020	\$25,193.70
Third Installment (10%)	July 9, 2020	\$4,198.95
Total		\$41,989.50

2. The Ball Valve

BR testified that the water flow to each rental unit is controlled by a shut off valve. These valves are only accessible through the ceiling of the units located on the building's ground floor. Prior to their replacing, the shut off valves were of a "gate" design and were original to the building (meaning that they were over 50 years old). When they were used to shut off the water to a particular rental unit (which is necessary to do plumbing repairs) the gate valves would leak, causing damage to the ground level units they were located in. BR testified that the landlord would have to shut the water off

to the entire building to prevent such damage, causing a great deal of inconvenience to all occupants of the building.

BR testified that in December 2020 the landlord replaced each of the “gate” valves with valves using a “ball” design. These valves are more reliable and do not cause water to leak into the rental units they are located in. He testified that these valves have a 50-year warranty.

The landlord submitted an invoice dated December 4, 2020 for \$10,086.88, representing the cost the landlord claims as a capital expenditure. I note that this invoice also shows that the landlord paid a \$3,000 deposit for the valve replacement. However, BR stated that the landlord was not claiming recovery of this amount.

Analysis

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:
 - 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; and
 - 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 BR's undisputed testimony that the landlord has neither applied nor imposed an additional rent increase on any of 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.

I accept BR testimony that there are 24 specified dwelling units in the building, although only 19 of them are rented to tenants.

4. Amount of Capital Expenditure

Based on the documentary evidence submitted by the landlord, I find that the landlord has incurred costs as follows:

Description	Amount
Valve Replacement	\$10,086.88
Roofing - 1st installment	\$12,596.85

Roofing - 2nd installment	\$25,193.70
Roofing - 3rd installment	\$4,198.95
Total	\$52,076.38

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.

I will address each of these in turn.

a. Type of Capital Expenditure

The Work amounted to the replacement of the buildings' roof and of parts of the plumbing system. Residential Tenancy Branch Policy Guideline 37 explicitly identifies a residential property's roof and plumbing system as "major systems".

The term "major component" means a component of the residential property that is integral to the property or a significant component of a major system. The water shut off valves are a significant component of the plumbing system (which is a "major system"), as with them, the only way to do maintenance on the plumbing system is to shut the entire building's water off.

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

b. Reason for Capital Expenditure

Based on the inspection report I find that the roof was within one year of the end of its useful life and needed to be replaced to address the splits in the roof material.

Based on BR's testimony I find that the "gate" valves are over 50 years old and were malfunctioning by allowing water to leak into the rental units when they were used to shut off water flow.

Such reasons fall under the categories set out in the Regulation for eligible capital expenditures.

c. Timing of Capital Expenditure

This application was made on September 3, 2021. 18 months prior to that date was March 3, 2020. As such, in order to be eligible capital expenditures, an expenditure must have been incurred after March 3, 2020.

Residential Tenancy Branch Policy Guideline 40 states:

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

Based on the Receipts entered into evidence, I find that all amounts claimed by the landlord were paid after March 3, 2020.

d. Life expectancy of the Capital Expenditure

I accept BR's testimony that the life expectancy for the roof is between 25 and 30 years and for the "ball" valves is 50 years. The life expectancy of the roof would appear to exceed the useful life set out at Policy Guideline 40 (between 15 to 20). However, this difference is not important for the purposes of this application, as all that the landlord must demonstrate is that the capital expenditure is not expected to reoccur within five years. I'm satisfied that the landlord has demonstrated this for both the roof and the valves.

For the above-stated reasons, I find that the capital expenditures incurred to undertake the Work are eligible capital expenditures, 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), a 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.

As none of the tenants attended this hearing, I find that they have failed to discharge their evidentiary burden to prove either of the aforementioned points.

7. Outcome

The landlord has been successful. It 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 expenditures divided by 120. In this case, I have found that there are 24 specified dwelling unit and that the amount of the eligible capital expenditure is \$52,076.38.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$18.08 ($\$52,076.38 \div 24 \text{ units} \div 120$). 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.

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 \$18.08. 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: March 21, 2022

Residential Tenancy Branch