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. None of the tenants were present at the hearing.

The landlord testified that he served each tenant with a copy of the notice of dispute resolution proceeding package and copies of all of his supporting documentary evidence by registered mail on October 8, 2021. He testified that he also enclosed a USB stick with additional pieces of documentary evidence on it. He testified that he confirmed with each tenant that they could access the files contained on the USB stick via email. The landlord provided Canada Post registered mail tracking numbers for each of the mailings as well as copies of the emails confirming receipt of digital files. I find that the tenants have been served with the required documents in accordance with section 88 and 89 of 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 a single-detached house. It has four floors and contains four separate rental units. Three of these units are three to four bedrooms and one unit is a single bedroom. Landlord purchased the house in 2017. All four units are occupied and all the occupants are named as respondents to this application. He submitted a copy of a tenancy agreement for each unit into evidence.

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 he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for the replacement of the residential property's exterior patio membranes as well as for the building of a fence enclosing the boundaries of the residential property (collectively, the "**Work**").

1. The Fence

The landlord testified that he hired a contractor to build the fence, which is comprised of a cedar posts and metal slats, to enclose the perimeter of the residential property, and another contractor to provide and install a locking security gate. He testified that the reason for installing the fence and gate was for security of the residential property, as one of the tenants had reported seeing a prowler in the backyard. He testified that since the fence was built, he has not received any more complaints of trespassers in the backyard.

The landlord submitted two invoices into evidence relating to the installation of the fence and gate:

1) An invoice dated January 24, 2020 for the installation of the security gate at a cost of $4,687.20.
2) An invoice dated December 22, 2019 for the installation of the fence at a cost of $13,000.

The December 22, 2019 invoice includes a payment summary which shows landlord made as follows:

1) December 22, 2019 $10,000
2) June 15, 2020 $1,200
3) June 15, 2020 $800
4) July 15, 2020 $1,000

As such, I do not understand that this invoice was issued on December 22, 2019.

The landlord testified that the December 22, 2019 payment represented a deposit that he put down prior to the construction of the fence being started.

He testified that he expected the security gate and fence to have a life expectancy of significantly more than five years.

2. The Patio Membranes

The landlord testified that in early 2020, when work on the fence was getting started, he observed that water was dripping from the third-floor patio. He testified that the sky was clear that day, so he was unsure where the water would be coming from. He testified that he returned the following day to investigate and determined that water had seeped underneath the membrane of the patio, saturating the parts of the underlying wood

causing it to drip through. He testified that he drilled holes in the bottoms of the third floor and fourth floor patios to create a channel for water to drain out (as opposed to allowing it to slowly seep through the wood) and that water poured out when he finished the drilling.

The landlord testified that it was necessary to replace the protective membranes on both patios so as to prevent further water damage to the patio structure. He testified that the project was too small of a job to warrant employing a general contractor, so he acted as general contractor for the project and hired trades as necessary. He testified that he and a day labourer did much of the demolition and removal of debris themselves. He is not seeking any compensation for this work.

As the landlord acted as his own general contractor, he did not receive a single invoice covering all the work that was undertaken to replace the patio membranes. Instead, he incurred costs as they arose during the process of installing the patio membranes. He submitted 119 unique receipts and invoices totaling $47,309.08**,** upon which he seeks to impose additional rent increase.

The landlord testified that he expects the patio to have a life expectancy of significantly more than five years.

During the hearing we reviewed these receipts individually. I will not describe all of the invoices in this decision but will rather discuss those receipts that may fall short of the standard required to be eligible for compensation.

The landlord numbered each receipt, and I will use these numbers and writing this decision.

Many of the receipts were for building materials and supplies, equipment rentals, cost of disposing of materials, surveying costs, and subcontractor fees. However, several of the receipts were for (either in whole or in part), the purchase of:

- tools used by the landlord when removing the old membranes (receipts 6, 22, 47, 50, 53, totaling $1,915.71)
- equipment (such as earplugs, gloves, work boots, respirators) used by the landlord when removing the old membranes (receipts 34, 43, 44, 46, 49, totaling $605.15); and
- fuel for the landlords' vehicle driving to and from the residential property (receipts 31, 42, 57, 58, 67, 70, 73, 80, 88, 91, 94, 95, 104, 105, 11, totaling $750).

Additionally, two of the receipts included charges for snacks (receipts 28 and 74, totaling $9.45) and one was for window washing after the patio membranes were completed (receipt 121 totalling $512.40).

During the hearing, the landlord advised me that the receipts 17, 30, and 39 (totaling $2,939.19) were included in this application by accident and should be excluded.

Finally, receipts 2 and 3 (totaling $497.55) were dated March 9, 2020 and March 12, 2020. The landlord testified he paid them on these dates as well. All three of these dates are more than 18 months prior to the date the landlord made this application (September 18, 2021).

The landlord testified that he has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulation in the last 18 months.

Analysis

I accept the landlord's testimony in its entirety. Throughout the hearing he was forthright, admitted errors he might have made when they were drawn to his attention, and volunteered information that he knew to be detrimental to his position without being prompted.

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
    - 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 testimony that he has not imposed a prior rent increase for capital expenditure in the last 18 months.

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.

Based on the landlord's testimony and the copies of the tenancy agreements submitted into evidence, I find that there are four specified dwelling units in the residential property.

4. 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

Residential Tenancy Branch Policy Guideline 37 states:

> 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.

The fence and security gate fit within this definition as they are part of the security system designed to prevent unauthorized entry to the residential property. As such I find that they are both “major systems” as defined by the Regulation.

The replacement of the patio membranes amounts to the replacement of a component of the building envelope, as its purpose is to keep water of out the structure of the building. This system is essential to enclose the building, and as such amounts to a “major system” of which the patio membranes are a “major component”.

Accordingly, I find that the Work was undertaken to install a “major system” and to replace a “major component” of the residential property.]

b. Reason for Capital Expenditure

I accept the landlord’s testimony that the fence and security gate were installed to improve the security system of the residential property.

I accept the landlord's testimony patio membranes were replaced because the prior patio membranes had failed and allowed water to reach the underlying wooden patio structure.

Such reasons are consistent with the Regulation's requirements for an eligible capital expenditure.

c. Timing of Capital Expenditure

The landlord made this application on September 18, 2021. 18 months prior to that date was March 18, 2020. As such, any capital expenditures incurred prior to the state are ineligible to be recovered by an additional rent increase.

Residential Tenancy Branch Policy Guideline 37 states:

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

As stated above, three of the landlord's invoices (invoice 1 totalling $4,687.20 for the supply and installation of the security gate and invoices 2 and 3 totaling $497.55, relating to the patio membranes) were dated and paid prior to March 18, 2021. Accordingly, these expenses (which includes the cost of the supply and installation of the security gate) are excluded.

The landlord testified that he paid the contractor who constructed the fence a deposit of $10,000 on December 22, 2019. He argued that as this payment was a deposit, it should not be considered to have been made prior to March 18, 2021. Rather, he took the position that it should be considered "incurred" when the contractor was permitted to retain it (that is, once the fence was completed).

There is no documentary evidence before me relating to the nature of the December 22 2019 payment (a contract or receipt, for example). The invoice itself makes no reference to this payment being a "deposit". As such I do not find it more likely than not that this payment was a "deposit" as opposed to a payment of the first installment of the amount owing to the contractor.

However, I do not find that such a distinction precludes this amount from being eligible to be recovered pursuant to an additional rent increase.

Neither the Regulation nor Policy Guideline 37 addresses when a capital expenditure is considered to be "incurred" when the total cost of the capital expenditure is payable over multiple instalments. I do not find that it is in keeping with the purpose up the Regulation to exclude some portion of a capital expenditure while including others. It is possible for some capital expenditures (although not in this case) to require work which would take more than 18 months to complete (a rolling remediation of a large apartment

building, for example). In such a case it would be impossible for a landlord to recover the full amount of the capital expenditure.

As such, in the circumstances when a capital expenditure is paid for in installments or by multiple payments, I find it appropriate to consider a capital expenditure "incurred" when the *final* payment for it is made. I find that the landlord's payment of $10,000 on December 22, 2019 is eligible, as the final payment for the fence was made on July 15, 2020.

d. Life Expectancy of the Capital Expenditure

I accept the landlord's testimony that the life expectancy of the fence, the gate, and the patio membranes is more than five years.

Additionally, 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 (15 years for both a patio membrane and a wood fence). For this reason, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditures to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

5. Amount of Capital Expenditure

a. Fence

Based on the invoice submitted into evidence, I find that the landlord paid $13,000 for the construction of the fence. He is entitled to impose an additional rent increase to recover this amount.

As stated above, the cost of the security gate was incurred more than 18 months prior to the landlord making this application. As such, he is not entitled to impose an additional rent increase to recover that particular capital expenditure.

b. Patio Membranes

On his application, the landlord listed capital expenditures related to the replacement of the patio membranes as $47,309.08. He provided invoices and receipts for each of these expenditures. However, at the hearing, the landlord stated that three receipts totaling $2,939.19 were mistakenly included. As such, that amount is not recoverable as an eligible capital expenditure.

Similarly, two of the receipts included line items for the purchase of snacks totaling $9.45. Snacks are not eligible capital expenditures, and their cost is not recoverable.

The landlord submitted invoices for the purchase of tools used to do the Work in the amount of $1,806.75. I do not find that the Regulation allows a landlord to recover the cost of purchasing tools. Such a purchase is not eligible as, once the Work is complete, the landlord continues to own the items purchased. Therefore, he continues to derive a benefit from the purchase. I do not find it appropriate for the tenants to subsidise the landlord expanding his tool collection. For similar reasons I exclude the cost the landlord incurred for purchasing equipment such as steel-toed boots, respirators, and ear protection, in the amount of $648.74.

I must note that the landlord has also claimed expenses relating to the rental of tools. I find that these expenses are eligible, as the landlord does not derive a benefit from the expense once the Work is complete. The cost of the rental was incurred by the landlord for the sole reason of completing the Work.

As stated above, two of the invoices totaling $497.55 were dated and paid prior to March 18, 2021 and are excluded.

The landlord has also claimed $750 in fuel expenses he incurred driving to and from the residential property when undertaking the Work. I do not find that such expenses are eligible capital expenditures. These expenses are more in the nature of the cost of landlord's labour, which is not recoverable. I find that such fuel costs are better characterized has a cost of doing business that any landlord should expect to incur when managing a rental property and I do not find it appropriate for tenants to subsidize the landlords fuel charges.

Finally, the landlord submitted an invoice $512.40 for cleaning the windows after the work was completed. I understand that the Work may have caused dust and debris to circulate in the air and stick to the rental unit windows. However, I do not find that the cleaning of these windows is an expense which ought to be recoverable. I do not find that the cleaning of exterior windows is a necessary part have the Work (unlike the removal of debris from the patio and transport to a dump, which is necessary). Cleaning of exterior windows is something that routinely happens during the tenancy. Individual tenancy agreements vary as to whether a landlord or a tenant is responsible for such cleaning. Under either circumstance, the windows will ordinarily need to be cleaned during the course of tenancy. I need not determine whether it is the landlord's responsibility or the tenants' to clean the exterior windows, as in either case, the windows' cleaning would have been one of the parties' responsibility in the ordinary course of events. I do not find that the undertaking of the work would have changed this responsibility and as such this amount is not recoverable.

I find all other invoices submitted by the landlord to represent eligible capital expenditures.

To summarize, I find that the landlord has demonstrated that he incurred $40,145 in eligible capital expenditures, calculated as follows:

Original Amount Claimed	$ 47,309.08
Mistaken Inclusion	$ -2,939.19
Snacks	$ -9.45
Tool purchase	$ -1,806.75
Equipment purchase	$ -648.74
Older than 18 months	$ -497.55
Fuel	$ -750.00
Window Cleaning	$ -512.40
Total	**$ 40,145.00**

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.

As none of the tenants attended the hearing to make submissions, they have failed to discharge their evidentiary burden to prove either of these points.

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 four specified dwelling unit and that the amount of the eligible capital expenditure is $53,145 ($13,000 for fence and $40,145 for patio membranes).

So, the landlord has established the basis for an additional rent increase for capital expenditures of $110.72 ($53,145 ÷ 4 units ÷ 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 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 made be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of $110.72. 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 16, 2022

Residential Tenancy Branch