



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. The landlord stated the tenants were served with their application and notice of hearing and acknowledged receipt by signing a proof of service. The tenants did not appear.

Issue 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 their submissions 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 living accommodations. The landlord lives in the upper portion and the tenants are living in the lower level and currently paying a rent of \$1,700.00, per month.

The landlord testified that he has not applied for an additional rent increase for capital expenditure against 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 a work done to the residential property's the landlord stated that they had to replace the old pathways that were simply made of gravel and was a health and safety issue. The landlord stated that trees had to be removed as they were overgrown and bare at the bottom. The landlord stated that they installed a fence for the security of the property and the safety of the tenant's child and their own. (Collectively, the "Work").

	Description	Date#	Amount
Item 1	New pathways	May 17, 2021	\$17,210.00
Item 2	Tree removal	March 3, 2021	1,575.00
Items 3	Fence	April 15, 2021	\$2,074.00
Total			\$21,319.70

The landlord submitted copies of invoices supporting these amounts and photographs.

Analysis

The basic facts of this matter are not in dispute as the tenants did not appear, although duly served.

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
 - o 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.

Prior Application for Additional Rent Increase

I accept the landlord's undisputed testimony that they have not made a previous application for an addition rent increase against the tenants.

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 find the landlord did not calculate the amount of dwelling units correctly. As there are two dwellings, the upper where the landlord resides and lower level where the tenants resides. The calculation must be based on two (2) dwelling units; Rather, than one (1).

Amount of Capital Expenditure

	Description	Date#	Amount
Item 1	New pathways	May 17, 2021	\$17,210.00
Item 2	Tree removal	March 3, 2021	1,575.00
Item 3	Fence	April 15, 2021	\$2,074.00
		Total	\$21,319.70

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.

Type of Capital Expenditure

The Work amounted to upgrades to the dwelling property. The Residential Tenancy Branch Policy Guideline (the “PG”) 37 in part reads as follows,

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 system, including things like cameras or gates to prevent unauthorized entry; and elevators.

Item 1 - I am satisfied that the removal of gravel pathways and the installation of pavers, was to replace a major component that is essential to support the residential property, as it is reasonable that pathways leading to the access points of the living accommodations would have a greater importance than that of a parking facility as this is to comply with health, safety, and housing standard. It is reasonable to conclude that the capital expenditure is not expected to incur again within five years as the PG 40 give a useful 10 to 20 years for concrete.

Item 2 - I am not satisfied that the tree removal meets the definition of a major system or major components that is essential to support the premises. When trees are overgrown that is normally due to lack of maintenance and further trees are not essential for the dwelling.

Item 3 - I am satisfied that when the trees were removed that fencing was installed as major component to the dwelling property, as this was for the security of the property to prevent unwanted access and for the children to be able play within it safely. It is reasonable to conclude that the capital expenditure is not expected to incur again within five years as PG 40 give a useful lifespan for a fence of 15 years.

As such, I find that the Work, to the pathways and fencing was undertaken to replace or install “major components” of the residential property.

I accept the landlord’s evidence that the work was incurred within 18 months of the landlord making this application.

Outcome

The landlord has been successful on items 1, 3, 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 Regulate sets out the formula to be applied when calculating the amount of the addition 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 two (2) specified dwelling unit and that the amount of the eligible capital expenditure is \$19,284.00.(\$17,210.00 + \$2,074.00)

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$80.35 ($\$19,284.00 \div 2 \text{ units} \div 120$). As this amount is limited to maximum of 3% per year the landlord is entitled to apply the rent increase as follows.

The first year of increase for 2022,

\$25.50 Maximum annual allowable rent increase for 2021 (1.5%)

\$1,725.50 Rent amount with annual allowable rent increase

\$51.77 Maximum additional rent increase allowed for unit (3.0%)

\$1,777.27 Maximum rent amount with all rent increases applied

\$28.58 Remaining eligible amount for additional rent increase in second year

The second-year additional rent increase (estimate only, as 2023 maximum annual rent increase has not yet been set)

\$26.66 *Maximum annual allowable rent increase (using 2022 rate of 1.5% for estimating purposes only)*

\$1,803.93 *Rent amount with annual allowable rent increase*

\$28.58 *Maximum additional rent increase allowed for unit (3.0%)*

\$1,832.51 *Potential maximum rent amount with all rent increases applied*

\$0.00 Remaining eligible amount for third 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 partially successful with their application. I grant the application for an additional rent increase for capital expenditure.. 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 10, 2021

Residential Tenancy Branch