



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 by two of its property managers (ND and EL) at the hearing. Five tenants were present at the hearing: tenant JD, unit 201; tenant EF, unit 401; tenant JJ, unit 403; tenant TL, unit 407; and tenant YT, unit 505.

ND testified that the landlord served all of the tenants with the notice of dispute resolution proceeding package and all supporting evidence personally, With the exception of units 309 and 408, which were served by registered mail. The landlord provided copies of statements signed by each tenant acknowledging service.

All the tenants in attendance confirmed that they were served as stated by ND.

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.

ND testified that the residential property is a single building with five storeys (the "**building**"). He testified that there are 47 units in the building: the first floor has 6 units; the second and third floor have 12 units each; the fourth floor has 11 units (there is a patio in place of the 12th unit); and the fifth floor has 6 units.

The landlord made this application on August 13, 2021 and has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

ND testified that the landlord was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the building's roof, hot water tank, and plumbing system. He testified that the roof membrane of half the roof of the building was replaced and that half of the roof was re-sloped, that the hot water boiler (the "**boiler**") was replaced, and that the landlord installed a "backflow valve" which prevents water in the building's plumbing system from re-entering the municipal water system (collectively, the "**Work**").

ND testified that the roofing contractor advised him that the former roof was at the end of its life. He testified that the landlord had only owned the building for 10 years, but that the roofer estimated the roof was between 25 to 30 years old. He testified that the landlord had experienced leaks in the roof in the past, and that it repaired the leaks as they occurred. Additionally, he testified that once per season the landlord conducts an inspection of the roof. Following the most recent inspection, the landlord discovered a one- to two-inch-deep standing pool of water on the roof and that the landlord needed to re-slope it to prevent this from occurring again. He characterized the re-sloping and replacement of the roof membrane as "preventative maintenance".

ND testified that the landlord incurred a cost of \$79,275 for re-sloping and replacing the roof membrane and for the removal and disposal of the former roof. He submitted an invoice into evidence supporting this amount dated March 12, 2021. He testified that the contractor provided a 10-year warranty on workmanship, and that he expected the new roof to last at least five years.

ND testified that the landlord had to replace the boiler because the former boiler "died" due to the heat exchanger had failed. He testified that the boiler was roughly 10 years old (the landlord having installed it just after it purchased the building), but that it was sufficiently old that replacement parts for it were not available. He testified that this is the only boiler for the entire building. He testified that the landlord hires a company to inspect the boiler two times a year and that it advised that the landlord replaced the boiler.

ND testified that the life expectancy of the new boiler was between 15 and 20 years. The landlord incurred the cost of \$12,390 to install the new boiler. It submitted a receipt dated July 12, 2020 into evidence supporting this amount.

ND testified that the regional district in which the building is located requires that all *newly constructed* buildings in the district have a backflow valve. He provided no evidence for the proposition that *existing* buildings had to retrofit their plumbing systems to install such a valve. The landlord paid \$7,080.92 for the installation of the backflow device. The landlord submitted an invoice dated January 27, 2021 supporting this amount.

ND testified that prior to its installation, the building did not have a backflow device.

Many of the tenants in attendance opposed the imposition of an additional rent increase.

Tenant TL stated that he thought that the landlord may have been entitled to recover some of the cost of the capital expenditure from its insurance company or some kind of tax refund. However, he was not able to direct me to any specific policy or piece of legislation which would support this. ND stated that no grants or insurance funds were available to the landlord to defray the costs of the capital expenditures and that he was not aware of any tax refund available to the landlord.

TL argued that any expenditures incurred for the maintenance of the building should be “on the landlords docket”, and that if an additional rent increase is granted, it should be discontinued once landlord has recouped the cost of the capital expenditure. He stated that many tenants are “living on a razor's edge” and that an increase in rent would be unduly burdensome on them.

Tenant JD stated that a backflow of sewage water occurred in his rental unit twice over the last 10 years and that the landlord is aware of this issue. He argued that the landlord should have also been aware of the issue prior to their purchasing of the building. ND stated that the landlord did an inspection of the building and used its best judgment as to the condition of the building when making a decision to purchase it. He testified that the landlord did not have any concerns with backflow into rental units at the time they purchased the building.

JD also argued that the rent increases should be imposed on a square footage basis, rather than as an equal amount for each rental unit. He echoed TL submissions that the rent increase should be rolled back once the landlord had recouped the cost of the capital expenditure

Tenant EF stated that she did not necessarily oppose the rent increase, but just wanted to observe the proceeding. She testified that it is important for her to have a home that was in a well-maintained building.

Tenants JJ and YT made joint submissions. If they had lived in the building for 13 years, and that the roof leaked “all the time” and then some of the leaks were “really bad”. They argued that they should not have to pay for the repair of the roofs as the leaks had been a problem for 13 years. They argued it is taken too long for the landlord to repair the roof, and that the repair should have been done along time ago.

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

1. Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set 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 successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- 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 (S. 23.1(4));
 - o the Work was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
 - because the system or component:
 - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
 - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
 - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
 - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

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 (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

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

The landlord has not made an application for an additional rent increase against any of the tenants prior to this application.

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 ND's testimony that there are 47 units in the building. As all of them are located in the same building, I find that each of them is a "specified dwelling unit" for the purposes of this application.

4. Amount of Capital Expenditure

Based on the invoices submitted into evidence, I find that the landlord incurred the following expenses in undertaking the Work:

Description	Amount
Re-slope and replace membrane of half of roof	\$79,275.00
Replace boiler	\$12,390.00
Install backflow valve	\$7,080.92
Total	\$98,745.92

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 Regulation defines “major system” and “major component” as follows:

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

(a) to the residential property, or

(b) to providing services to the tenants and occupants of the residential property;

"major component", in relation to a residential property, means

(a) a component of the residential property that is integral to the residential property, or

(b) a significant component of a major system;

RTB 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.

As such, I find that the roof is a major system or a major component thereof. Additionally, both the boiler and the backflow valve are major components of the building's plumbing system (which is itself a “major system”). As such, all elements the building touched upon by the Work are major systems or major components.

b. Reason for Capital Expenditure

Based on the undisputed testimony of ND, I find that half of the roof was re-sloped and its membraned replaced was because the roof was malfunctioning (in that it frequently leaked) and that it had exceeded its useful life. RTB Policy Guideline 40 lists the useful life of roofs as between 15 to 20 years. I accept ND's estimate that the roof was approximately 25 years old.

Based on ND's testimony, I find that, due to a broken heat exchanger, the boiler had failed and needed to be replaced. I accept his testimony that the new boiler's useful life is between 15 and 20 years. This is consistent with Policy Guideline 40, which lists the life expectancy of hot water tanks as between 10 and 20 years.

The landlord has not provided any documentary evidence to show that it was required to install a backflow valve to comply with health, safety, or housing standards. ND testified that it was a municipal requirement that *new* buildings be constructed with such a valve. However, there is nothing to suggest that such a requirement applied to existing buildings. As such, I find that the landlord failed to discharge its evidentiary burden to prove it was more likely than not that the backflow valve was installed to comply with health, safety, or housing standards.

There is no basis in the evidence to show that the backflow valve was installed for any other reason which the Regulations allow, in order for a capital expenditure to be considered "eligible". Its installation was not a repair; it was an upgrade.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 40 states:

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

Based on the invoices submitted into evidence, I find that the landlord incurred the costs associated with the roof on March 12, 2021 and for installing the boiler July 12, 2020.

The landlord made this application on August 13, 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 roof and the boiler 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 roof and the boiler replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditures associated with the roof and the boiler are eligible capital expenditures, as defined by the Regulation.

I do not find that the capital expenditure associated with the backflow valve to be an eligible capital expenditure

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.

Tenant TL suggested the landlord was able to be paid of course some or all of the cost of the capital expenditures from another source. However, he was unable to provide any evidence of this. The act places the onus to prove such a fact on the tenant. in the absence of any specific evidence showing such an entitlement, I find that the tenants have failed to discharge their evidentiary burden.

Tenants JJ and YT stated that the roof leaked for multiple years. This could be construed as a suggestion that the landlord has not adequately maintained it. However, ND testified that the landlord conducted regular inspections of the roof and made repairs as necessary. Furthermore, the tenants did not provide any evidence (documentary or otherwise) which showed that either the landlord did not do such inspections, or that such inspections were insufficient to reasonably maintain the roof. I cannot say why the roof leaked for multiple years (it may be the result of improper installation, materials, or maintenance, to name but a few possible reasons). The tenants bear the onus to prove that it was due to inadequate maintenance or repair period in the absence of any evidence supporting such, I find that the tenants have failed to discharge this evidentiary burden.

The Regulation only provides the aforementioned two bases on which tenants can dispute an additional rent increase. The Regulation explicitly allows a landlord to impose such an increase if it has incurred eligible capital expenditures. As such, I have no authority to dismiss the landlord's application due to the financial circumstances of tenants or on the basis that it would be unfair to tenants to past the cost of the building's upkeep on to them. Similarly, I cannot substitute a scheme for imposing rent increases (such as on a square foot basis, or that the increase be discontinued once the landlord has recouped the cost of the capital expenditures) that differs from the scheme set out in the Regulation.

7. Outcome

The landlord has been partially 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 the capital expenditures associated with the roof and the boiler.

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 47 specified dwelling unit and that the amount of the eligible capital expenditure is \$91,665 (\$79,275 + 12,390).

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$16.25 ($\$91,665 \div 47 \text{ units} \div 120$). 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 \$16.25. The landlord must impose this increase in accordance with the Act and the Regulation.

I order the landlord to serve all 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: May 9, 2022

Residential Tenancy Branch