



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's agent ("**GG**") and caretaker ("**KH**") attended the hearing. Two tenants were present at the hearing: tenant VS (unit 110) and tenant JH (unit 210), who appeared on her own behalf and on behalf of tenant MC (unit 212). The caretaker KH is also a tenant in the residential property but did not appear in her capacity as a tenant.

This matter was reconvened from a preliminary hearing on February 8, 2022. I issued an interim decision on that same date. This decision should be read in conjunction with the interim decision.

KH testified that she personally served the tenants with copies of the notice of reconvened hearing, the interim decision, and copies of all documentary evidence the landlord intended to rely on at this year. VS and JH confirmed they received these materials from KH as described. Based on the testimony KH, corroborated by those tenants in attendance, I find that the landlord has served all tenants in accordance with the interim decision and the Act.

JH testified that she emailed several photographs to the landlord on April 29, 2022. She did not provide the Residential Tenancy Branch (the "**RTB**") with copies of these photos. In the interim decision, I ordered all tenants to serve all documentary evidence they intended to rely on at the hearing to both the RTB and the landlord no later than 14 days prior to the hearing. JH did not do this. As such, I exclude these photographs from evidence. JH was permitted to give verbal testimony as to the issues the photographs depicted.

The landlord acknowledged receiving written statements from several other tenants, which they submitted into evidence. I find that these documents have been served 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 a three-storey apartment building (the "**building**"). Each storey has 12 units located on it. In total, there are 36 rental units in the building.

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

GG testified that the landlord was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to replace all the building's exterior windows (the "**Work**"). He testified that all the windows that were replaced were original to the building, which was built in 1979. The windows that were replaced were single-paned windows, which were not energy efficient. The new windows are double-paned and sealed with a vinyl slider. He testified that they are significantly more energy efficient.

At the same time the windows were being replaced, the landlord undertook the repair and replacement of several balconies of second and third floor rental units. GG stated that the landlord is not seeking to impose any rent increase on any of the tenants in connection with the replacement of the balconies.

The landlord purchased the new windows directly from the supplier. He submitted invoices and receipts totalling \$93,323.40 for the cost of these windows.

The landlord engaged a contractor to install the new windows and remove the old ones. He submitted receipts and invoices totalling \$92,258.60 from this contractor, which includes labour, materials, and equipment rentals. However, the landlord testified that this contractor was also hired to repair and replace the balconies and did this concurrently. GG stated that a portion of the amount paid to the contractor set out above does not form part of the amount for which landlord is seeking to impose an additional rent increase. I will discuss this in more detail shortly.

Additionally, the landlord rented disposal bins at a cost of \$2,022.05. He submitted receipts and invoices supporting this amount.

I note that the documentary evidence provided by the landlord was not well-organized. It submitted quotes from both the contractor and the window supplier which differ in the amounts that the landlord actually paid. Additionally, it appears that the landlord has submitted receipts for expenses (such as the rental of portable toilets) for which he has

not sought recovery. The landlord provided a handwritten summary of costs it incurred in replacing the windows and the balconies. I have cross-referenced this summary with the invoices submitted into evidence. Some of these line items represent payments of multiple invoices.

Date Incurred	Vendor	Description	Amount
23-Aug-21	Window Supplier	Windows, screens, and sliders	\$ 6,217.35
12-Apr-21	Window Supplier	Windows, screens, and sliders	\$ 38,779.39
22-Jul-21	Window Supplier	Windows, screens, and sliders	\$ 38,326.66
9-Apr-21	Window Supplier	Windows, screens, and sliders	\$ 10,000.00
27-Jul-21	Disposal Company	Bin rental and removal	\$ 994.16
23-Aug-21	Disposal Company	Bin rental and	\$ 1,027.89
26-Jul-21	Contractor	Window install	\$ 20,000.00
13-Aug-21	Contractor	Window install	\$ 10,000.00
13-Sep-21	Contractor	Balcony removal, install, and boom rental (7 weeks)	\$ 33,652.00
1-Oct-21	Contractor	Balcony removal, install, and boom rental (3 weeks)	\$ 14,910.00
8-Dec-21	Contractor	Window install, materials, boom lift rental and delivery (1 week)	\$ 13,696.60
			\$ 187,604.05

On the summary sheet, the landlord indicated that of this amount, \$152,365.65 incurred in the course of doing the Work (meaning that \$35,238.40 was incurred as the result of the balcony removal and replacement). GG did not specifically state which of the amounts set out above should be excluded from the total amount of the cost of the Work.

GG testified that of the 11 weeks the boom was rented, it was only used for a single week in the course of installing or removing the balconies. At all other times, he testified, it was used in the course of the Work.

The invoices broke out the cost of the boom rental as follows:

Invoice date	Invoice #	Date paid	Description	Cost (inc. GST)
07-Sep-21	1168	13-Sep-21	Hire Boom Lift @ \$1150 WK July 12 to August 28	\$8,452.50
24-Sep-21	1177	01-Oct-21	Hire Boom Lift @ \$1150 WK August 29 to Sept 16	\$3,832.50
03-Dec-21	1186	08-Dec-21	Boom lift hire and delivery 1 Week	\$1,522.50
				\$13,807.50

11 tenants submitted written statements to the RTB in which the consented to the requested increase. Many of these tenants indicated their appreciation of the landlord's

replacing the windows. Tenant VS was among those tenants who submitted such statements. One tenant indicated that the replacement caused her hydro bill to decrease by 50%. At the hearing, VS testified that the windows were replaced, as claimed by the landlord, and that her electrical bill has gone down as a result of the new windows being installed.

Tenant JH opposed the rent increase. She provided a written statement in which stated that she believed rent increases to be capped at 1.5% per year. She testified that many low-income seniors lived in the building and a large increase in rent would cause them significant financial hardship.

Furthermore, JH testified that the workmanship in the installation of the windows in her unit was inadequate. She testified that there were “wide gaps” in the caulking and that this causes her rental unit to be drafty. She testified that her heating bill has not been reduced as a result of the windows being installed.

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));

- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- 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

Based on the evidence presented at the hearing, I find that the landlord has neither applied for, nor imposed, an additional rent increase against 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.

Based on the evidence presented at the hearing, I find that the building has 36 specified dwelling units.

4. Amount of Capital Expenditure

It is the landlord's responsibility to properly quantify its monetary claim and provide sufficient documentation to support that claim. In this case, the landlord's documentary evidence was disorganized and difficult to parse. I have relied on the handwritten summary of expenses prepared by the landlord and submitted into evidence. This summary does not include (as far as I can tell) the cost of a small number of invoices submitted as part of its documentary evidence (portable toilet rentals, for example). It does show the amount of capital expenditure upon which the landlord seeks to impose an additional rent increase, which is in agreement with the amount stated on the notice of dispute resolution proceeding. However, the summary sheet does not show how that exact amount was calculated. As such, I will only consider those invoices, receipts, or payments which are listed on the summary sheet, for the purposes of my analysis.

Further complicating matters, is the fact that the landlord undertook the Work and the repair and replacement of the balconies, at the same time, and using the same contractor. Additionally, this contractor rendered some invoices upon which (the landlord claims) the contractor charged the landlord for work on both these projects.

In particular, the payments made on September 13, 2021, and October 1, 2021 (totaling \$33,652 and \$14,910 respectively) include payments for the balcony removal/repairs as well as for the boom rental, which GG testified was used for both the installation of the windows and the balcony replacement and repair. In total, the landlord seeks to recover the cost of renting a boom for 11 weeks (\$13,807.50). GG testified that the boom was used for the repair and replacement of the balconies for approximately 10% of this time and that it was used in the course of the work for the remaining 90%. I accept this allocation as reasonable, given that once the structure of the patios was stable, a boom would not be needed to make the repairs, whereas the replacement windows on the second and third floors would be in constant need of the boom.

Boom rental costs comprised \$8,452.50 of the payment made September 13, 2021, \$3,832.50 of the payment made October 1, 2021, and \$1,522.50 of the payment made December 8, 2022. The balance of the amounts of the September and October payments are related to the balcony repairs, whereas the balance of the amount on the December payment was related to the Work.

As such, I find that the \$37,657.75 of the costs set out on the landlord's handwritten summary of costs sheet are attributable to the balcony repairs, calculated as follows:

Payment Date	Amount	Boom Cost	Cost of Balcony Work (excluding boom)	10% of Boom Cost	Amount attributable to Balcony work
13-Sep-21	\$33,652.00	\$8,452.50	\$25,199.50	\$845.25	\$26,044.75
01-Oct-21	\$14,910.00	\$3,832.50	\$11,077.50	\$383.25	\$11,460.75
08-Dec-21	\$13,696.60	\$1,522.50	-	\$152.25	\$152.25
Total	\$62,258.60	\$13,807.50	\$36,277.00	\$1,380.75	\$37,657.75

Accordingly, based on the summary sheet, I find that the landlord has incurred \$149,945.30 (\$187,604.05 – \$37,657.75) in expenses associated with the Work.

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

Residential Tenancy Branch Policy Guideline 37 states that “windows” are “examples of major systems or major components”.

The landlord replaced the building’s exterior windows.

As such, I find that the Work was undertaken to replace a “major system” or “major components” of a “major system” of the building.

b. Reason for Capital Expenditure

Based on GG's undisputed evidence, I find that the windows were replaced because they were past the end of their useful life (the old windows being original to the building), and that they achieved a reduction in energy use.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 40 states:

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

The landlord made this application on October 28, 2021. Based on the evidence submitted, all expenses associated with the Work were incurred within 18 months prior of the landlord making this application.

d. Life expectancy of the Capital Expenditure

RTB Policy Guideline 40 sets out the useful life of windows and window frames as 15 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. 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.

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.

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.

In response to tenant JH’s submissions that rent increases are capped at 1.5% per year, I note that the Regulation explicitly authorizes additional rent increases for capital expenditures, in the event that the aforementioned criteria are satisfied. The Regulation also authorizes an *annual* rent increase equal to the inflation rate (which is set as 1.5% at the time of writing). A landlord does not need to apply for permission to impose an *annual* increase and can impose an *annual* increase in addition to any increase authorized by this decision.

I also note that the Regulation does not contain a “hardship” provision which would prevent an additional rent increase from being imposed due to the financial circumstances of a tenant. The Regulation only allows tenants to dispute such this type of increase on the two grounds set out above.

The tenants did not make submissions on either of these two grounds, accordingly, I find that they have failed to discharge their evidentiary burden to show that either applies.

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 expenditure divided by 120. In this case, I have found that there are 36 specified dwelling unit and that the amount of the eligible capital expenditure is \$149,945.30.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$34.71 ($\$149,945.30 \div 36 \text{ units} \div 120$). 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 \$34.71. 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: June 3, 2022

Residential Tenancy Branch