



Dispute Resolution Services

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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 section 43 of the Residential Tenancy Act (the "Act") and section 23.1 of the Residential Tenancy Regulation (the "Regulation") for an additional rent increase for capital expenditures.

One tenant, FB, attended the hearing. FB was accompanied by their son, JB, who acted as their representative. The Landlord was represented at the hearing by their agents CH, MR, and JK. All in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. All parties were advised of section 6.11 of the Residential Tenancy Branch Rules of Procedure, prohibiting the recording of these proceedings, and confirmed that they understood.

The remaining Tenants listed on the Landlord's application did not attend this hearing, although I left the teleconference hearing connection open until 11:33 a.m. in order to enable these Tenants to call into this teleconference hearing scheduled for 11:00 a.m.

The Landlord's agents testified in the hearing that all tenants were either personally served with the landlord's application and evidence package, or sent the package by way of registered mail. The landlord provided proof of service in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I am satisfied that all the respondents were served with the landlord's hearing materials. The tenants did not submit any written evidence for the hearing.

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 comprised of two buildings. One building has 24 units, while the other has 28, for a total of 52 dwelling units on the residential property.

A landlord may apply for an additional rent increase if they have incurred eligible capital expenditures or expenses to the residential property in which the rental unit is located.

To raise the rent above the standard (annual) amount, the landlord must have either the tenant's written agreement, or apply to the RTB for either an Additional Rent Increase for Expenses (ARI-E) or an Additional Rent Increase for Capital Expenditures (ARI-C).

The landlord is seeking to impose an additional rent increase for a capital expenditure of \$300,528.90 incurred to pay for work done in both buildings. The landlord had testified that they had purchased the buildings in 2019, and that the previous owners had failed to maintain the building and perform repairs as required. MR, agent for the landlord, testified that many components were in disrepair, and the landlord had no choice but to bring the building up to code, which cost the landlord a substantial amount.

The landlord testified that although the coin-operated washer and dryers did generate income, the amount of income generated was insufficient to cover the actual cost of replacing the four items due to excessive wear and tear. The landlord testified that exterior locks had to be changed for security reasons. The landlord applied on January 13, 2022. The 18-month period prior to the application therefore began July 13, 2020. The landlord submitted the following list of capital expenditures and corresponding invoices.

Description	Amount
Building A tenants -28 units	
50% Flooring for lobby and front deck, stairs. Completed September 30, 2021	\$ 10,011.75
New Roof—completed September 29, 2021	89,958.75
50%-Updated electricals. Completed November 23, 2021	332.06
50%- electrical work. Completed August 31, 2020	25,051.64
50% new locks & keys- completed June 24, 2021 for safety	1,546.70
50% new coin operated washer & dryers - completed August 18, 2020	3,164.00
50% - 4 refrigerators/3 stoves	1,955.80
Subtotal	\$132,020.70
Building B tenants -24 units	
50% of \$20,023.50.. Flooring for lobby and front deck, stairs. Completed September 30, 2021	\$ 10,011.75
New Roof. Completed September 29, 2021	115,421.25
50%-Updated electricals. Completed November 23, 2021	332.06
50%- electrical work. Completed August 31, 2020	25,051.64
50% new locks & keys- completed June 24, 2021 for safety	1,546.70
50% new coin operated washer & dryers - completed August 18, 2020	3,164.00
50% - 4 refrigerators/3 stoves-purchased January 7, 2021	1,955.80
New Hot Water Tank -October 26, 2020	11,025.00
Subtotal	\$168,508.20
Total	\$300,528.90

The landlord testified the above work was required, and completed within the 18 months before this application was filed.

The landlord submitted copies of invoices supporting these amounts.

None of the tenants provided written consent for the applied increase. Only one tenant attended the hearing, FB, along with their son and representative to voice concerns about how only four units benefitted from the new refrigerators, and three units benefitted from new stoves. The tenant argued that the appliances, locks, keys, and heaters were not capital expenditures. The tenant argued that not all of the rental units benefitted from the above work. The tenant also argued that the landlord collected revenue from the laundry machines and dryers, and are therefore not entitled to collect any further money from the tenants for their maintenance or replacement.

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 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
 - 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.

2. Prior Application for Additional Rent Increase

Based on the testimony of the parties, I am satisfied that the landlord has not previously imposed an additional rent increase on any of the tenants within 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.

As the specified work was performed in both buildings, I find that all units located in each building (52 in total) are "specified dwelling units". I note that the landlord only applied to impose additional rent increases for this capital expenditure against a total of

42 tenants for both buildings. The *Act* requires that all units in the building where the repairs or replacement was carried out be considered specified dwelling units. I also note that Policy Guideline 37 exempts dwelling units *not* located in the building where the capital expenditure was incurred, not those which are located in the building, but not affected.

4. Amount of Capital Expenditure

The landlord provided a comprehensive list of expenditures incurred in the 18 months prior to the filing of this application, which the tenant FB argued contained expenditures that should not qualify. See below for a specific analysis of each expenditure.

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
 - 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.

I will address this below.

a. Type of Capital Expenditure

Pursuant to section 23.1(4) of the Residential Tenancy Regulation, I find the capital expenditures were incurred for the replacement, upgrading, and installation of major systems, which include the roof for both buildings, updating and replacing the electrical systems, a new hot water tank for one of the buildings, as well as installing new flooring. The Work took place to maintain the residential property in a state of repair in compliance with the Regulation pursuant to section 23(4)(a)(i).

The Work included to upgrades to the buildings' electrical system. The Regulation explicitly identifies a residential property's electrical system as a "major system". The

landlord replaced various electrical components throughout the residential property. These amount to significant components of the electrical system, which cause them to be “major components”, as defined by the Regulation.

As such, I find that the Work was undertaken to replace “major components” of a “major system” of the residential property, and qualifies under the Act and Regulation.

I find that the new locks and keys were installed to improve the security of the residential property, which qualifies as a capital expenditure.

The tenant challenged whether the new washer and dryers should qualify as capital expenditures considering that the landlord received revenue from the washer and dryers. Residential Tenancy Policy Guideline #37 states the following:

If an amount of a capital expenditure is recovered or could have been recovered through grants, rebates or subsidies, insurance plans or claim settlements, that amount becomes ineligible, and must be deducted from an order for an additional rent increase (see below). For example, a landlord may be eligible to receive a rebate for installing a high-efficiency boiler. Repairs required due to a fire are typically covered by an owner's insurance. Similarly if repairs become necessary because of inadequate work by an earlier tradesperson, those repairs can often be claimed through a lawsuit.

Tenants bear the onus to establish on a balance of probabilities (in other words that it is more likely than not) that what is otherwise an eligible capital expenditure is ineligible. Tenants should gather and submit any relevant evidence before the dispute resolution hearing.

I note that although the washer and dryers may be revenue generating vehicles for the landlord, the revenue generated from the washer and dryers do not equate to a grant, rebate, or subsidy. I am not satisfied that the tenant(s) have established that the landlord has received any funding, grants, or rebates towards the replacement of the washer and dryers. I am satisfied that the washers and dryers have reached the end of their useful life, which is 15 years according to the Residential Tenancy Policy Guideline #40, and required replacement. Accordingly, I find that the replacement of the washer and dryers also qualify as a capital expenditure.

Lastly, the tenant challenged whether the four new refrigerators and three new stoves should qualify considering that only three or four units benefitted from these new purchases. As noted in the Policy Guideline, to be eligible, the capital expenditure must not be expected to be incurred again for at least 5 years. As the useful life of these appliances is 15 years, I am satisfied that the refrigerators and stove would qualify. However, despite providing a receipt for these items, the landlord failed to establish which specific units and building benefitted from this capital expenditure. As there are two buildings included in this application, and as the landlord failed to provide the

necessary and specific information required to determine whether the units should be exempt or not, I am not satisfied that the landlord has established their entitlement to a rent increase based on this expenditure.

b. Reason for Capital Expenditure

As noted above, I accept the landlord's reasons for the above capital expenditures, which include required upgrades to an aging building, as well as for the purpose of increasing security in the building.

c. Timing of Capital Expenditure

I accept that the landlord has met the timing requirements for this application, and that the incurred expenses occurred within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components replaced all 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 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.

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditures. I find the tenants have not met the burden of proof under section 23.1(5), which includes proving that that the repairs or replacement were due to inadequate repairs or maintenance on part of the landlord, or that the landlord has been paid, or is entitled to be paid, from another source.

7. Outcome

Summary

I find the landlord has met the burden of proof on a balance of probabilities that the total of **\$ 296,617.30** is an eligible capital expense. I find the landlord has established all elements necessary for an additional rent increase for the eligible capital expenditures as set out in the table below.

Description	Amount
Building A tenants -28 units	
50% Flooring for lobby and front deck, stairs. Completed September 30, 2021	\$ 10,011.75
New Roof—completed September 29, 2021	89,958.75
50%-Updated electricals. Completed November 23, 2021	332.06
50%- electrical work. Completed August 31, 2020	25,051.64
50% new locks & keys- completed June 24, 2021 for safety	1,546.70
50% new coin operated washer & dryers - completed August 18, 2020	3,164.00
Subtotal	\$130,064.90
Building B tenants -24 units	
50% of \$20,023.50.. Flooring for lobby and front deck, stairs. Completed September 30, 2021	\$ 10,011.75
New Roof. Completed September 29, 2021	115,421.25
50%-Updated electricals. Completed November 23, 2021	332.06
50%- electrical work. Completed August 31, 2020	25,051.64
50% new locks & keys- completed June 24, 2021 for safety	1,546.70
50% new coin operated washer & dryers - completed August 18, 2020	3,164.00
New Hot Water Tank	11,025.00
Subtotal	\$166,552.40
Total	\$ 296,617.30

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 28 specified dwelling units in Building A, and that the amount of the eligible capital expenditure for that building is **\$130,064.90**.

I have found that there are 24 specified dwelling units in Building B, and that the amount of the eligible capital expenditure for that building is **\$166,552.40**.

Accordingly, I find the landlord has established the basis for an additional rent increase for capital expenditures of eligible capital expenditure as noted above ÷ number of units for that specific building ÷ 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 expenditures as specified above. 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: August 25, 2022

Residential Tenancy Branch