



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 s. 23 of the *Regulation*.

The Landlord and the single Tenant involved attended the hearing. The Landlord testified, and the Tenant confirmed, that they served the Tenant with copies of the Notice of Dispute Resolution Proceeding package, and their supporting evidence. The Tenant did not prepare documentary evidence for this hearing; however, I consider their testimony as evidence they presented in this matter.

Issues to be Decided

Is the Landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

I have considered the documentary evidence and the testimony of both parties. I reproduce herein the details that are only relevant and important to the Landlord's Application.

The rental unit is a single detached home. The Tenant occupied the entire house. The parties agreed that this tenancy started on September 15, 2011. The current monthly rent is \$1,705.60.

The Landlord did not apply for any rent increase for a capital expenditure in this tenancy prior to this Application.

The Landlord presented that they are seeking to impose an additional rent increase for a capital expenditure they incurred to pay for work done to the residential property's septic system.

The nature of the work required a consultation for a drafting system plan/report in 2020, and the Landlord presented this was the first phase, necessary to install the system. This cost was not included in this Application from the Landlord.

They testified the entire septic system was replaced. For this work, they paid one-half of the amount – totaling \$17,192.18 on July 12, 2021 – and paid the second half (i.e., \$17,912.18) of the amount on July 23, 2021. The total amount of this portion is \$34,384.36. This was from the contractor they hired to complete the work. As set out on the two invoices, the work involved “supply & install complete septic system.”

Additionally, they presented that the work entailed “moving earth from the site of the septic field and installing [the] electrical system to the septic field.” For this work, they submitted an invoice dated July 23, 2021 for \$3,608.64, paid on that same date. As set out in this invoice, the work involved use of an excavator, a bobcat, and provision of electrical conduit and cable.

Also, the Landlord presented the work entailed removal of Poly B waterlines and replacement with “pex waterlines”. This work was completed on February 11, 2022 as shown in the invoice dated February 23, 2022. The total amount of this portion is \$5,576.10.

In total, the amount for which the Landlord seeks capital expenditure reimbursement via rent increase is \$43,569.10. The Tenant did not dispute the cost of this work.

The Landlord presented that the septic field was original to the rental unit property since 1992. They had “long trouble” with the septic field, aside from the tank replacement in the past. In their evidence they submitted a copy of the local Interior Health Authority required letter of certification. This correspondence included the maintenance plan, and set out that they sewage system was installed on the property in July 2021.

The Tenant confirmed the work was “definitely done” and was needed since they moved into the rental unit property in 2011. The Tenant did not dispute the amount that the Landlord paid for the work. They presented that a new neighbour in the area raised questions about the state of the septic field as it caused a health nuisance, and this necessitated an examination and recommendation from the local health authority.

Analysis

1. Statutory Framework

The *Regulation*, s. 21.1, s. 23.1 and s. 23.2, set out the framework for the determination of whether a landlord is entitled to impose an additional rent increase for capital expenditures. A landlord must prove, on a balance of probabilities:

- they have not made an application for an additional rent increase for this tenancy within the last 18 months
- the number of specified dwelling units on the residential property;
- the work was an *eligible* capital expenditure:
 - to repair, replace, or install a major system or component of a major system
 - 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.

A tenant may prove the need for a cancellation of a landlord's application 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 a 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), a

landlord may impose an additional rent increase pursuant to s. 23.2 and/or s. 23.3 of the *Regulation*.

2. Prior Application for Additional Rent Increase

Based on the Landlord's testimony, and the Tenant's confirmation here, I find the Landlord did not impose an additional rent increase of this nature in the past 18 months.

3. Number of Specified Dwelling Units

The *Regulation* s. 21.1(1) 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.

The Tenant occupies the entire rental unit property. There is no evidence before me that the house contains any additional living accommodation for another occupant. As such, I find that the residential property has one specified dwelling unit.

4. Amount of Capital Expenditure

Based on the invoices that the Landlord submitted into evidence, I find the cost the Landlord incurred to replace the septic system was \$43,569.10.

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:

- a. the Work was to repair, replace, or install a major system or a component of a major system
- b. 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;
- c. the capital expenditure was incurred less than 18 months prior to the making of the application;
- d. 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* s. 21.1 of the Regulation defines “major system” and “major component”:

"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;

The *Residential Tenancy Branch Policy Guidelines* provide a statement of the policy intent of the legislation. Specific to rent increases for capital expenditures, *Residential Tenancy Policy Guideline 37* provides examples of major systems and major components, a description of compliance with s. 32(1)(a) of the *Act* (*i.e.*, compliance with health, safety and housing standards required by law), and useful life of building elements.

The work presented by the Landlord here involved a replacement of the rental unit property's septic system. I find the *Regulation* refers to “a system that is integral . . . to providing services to the tenants . . .” and that includes the septic system. The Landlord replaced the septic system, completed work for that installation, and replaced pipes. Part of this amount to significant components of the septic system, by which I find they are “major components” as defined by the *Regulation*.

As such, I find that the Landlord's work was undertaken to replace "major components" of a "major system" of the residential property.

b. reason for capital expenditure

The Landlord presented the reason for replacement of the septic system as necessitated by the local health authority. The Tenant agreed that the system clearly was malfunctioning and causing concern and possibly jeopardizing their health. I find the Landlord undertook this work to comply with health, safety and housing standards required by law. Evidence on this point is the local health authority's correspondence to the Landlord specifically on the septic field system.

Also, the old septic system was beyond 20 years old, the useful life of this system as set out in the *Residential Tenancy Policy Guideline* 40. The evidence on this point was the Landlord disclosing that the septic field and all components was in place since 1992.

c. timing of capital expenditure

The *Residential Tenancy Policy Guideline* 37 states that "A capital expenditure is considered "incurred" when payment for it is made."

I accept the Landlord's unchallenged evidence that the first payment for the Work was incurred in 2021 and the final payment was incurred in 2022. 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 of the components replaced here all exceeded five years. There is nothing in the evidence that suggests the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out in the *Residential Tenancy Branch 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.

In sum, for all the above-stated reasons, I find that the capital expenditure incurred to undertake the completed work is an eligible capital expenditure, as defined in the *Regulation*.

6. Tenant's Response

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 a landlord must prove (set out above), a 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.

From the testimony of the Tenant in the hearing, I find they did not present arguments that form a basis for dispute of the Landlord's Application.

7. Outcome

I conclude the Landlord is successful in this Application. They have proved, on a balance of probabilities, each of the elements required, in order to be able to impose an additional rent increase for capital expenditure.

The *Regulation* s.23.2 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 is 1 specified dwelling unit and that the amount of the eligible capital expenditure is \$43,569.10.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$363.08 ($\$43,569.10 \div 1 \text{ unit} \div 120$). This amount is an increase of more than 3% per year. As such, the Landlord must impose successive rent increases in accordance with the *Regulation* s.23.3.

The parties may refer to the *Residential Tenancy Policy Guideline 37*, the *Regulation* s. 23.3, the *Act* s. 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 Residential Tenancy Branch's website for further guidance regarding how the Landlord must impose this rent increase.

Conclusion

The Landlord was successful on this Application. I grant their Application for an additional rent increase for capital expenditure of \$363.08. The Landlord must impose this increase in accordance with the *Act* and the *Regulation*.

I order the Landlord to serve the Tenant with a copy of this decision in accordance with s. 88 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 24, 2022

Residential Tenancy Branch