DECISION

Dispute Code: ARI-C

Introduction

In this application, the landlord seeks a rent increase pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the "Act") and section 23.1 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 (the "Regulation"). The landlord filed their application for a rent increase on September 14, 2021, a preliminary hearing occurred on March 11, 2022, and a hearing held on October 7, 2022.

Attending the preliminary hearing were landlord's counsel, three representatives of the landlord, and an advocate (agent) for one of the respondent tenants. Landlord's counsel confirmed that a copy of the Interim Decision (March 11, 2022) and a copy of the Notice of Dispute Resolution Proceeding for today's hearing were served on the respondents on or about March 22, 2022.

Issue to be Decided

Is the landlord entitled to a rent increase for eligible capital expenditures?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this application, and to explain the decision, is reproduced below.

For purposes of brevity and accurate reproduction of the landlord's evidence and submissions in respect of its application, lightly edited excerpts from the landlord's written submission are reproduced below:

1. The multi-residential building was constructed in 1975 and is comprised of three-storeys and 42 residential rental units, each equipped with a deck. Copies of the architectural drawings of the property were in evidence.

2. In early 2020 the landlord retained ATZ Contracting to undertake an inspection of the building to determine if the decks, shingles, and railings of the building required replacement. Following its inspection ATZ Contracting determined that there were several areas of the decks that had rotted and some of the decks were unstable. ATZ Contracting determined that the decks and railings were past their expected lifespan of approximately 20 to 25 years.

3. Subsequently, the landlord applied for and obtained a building permit for replacement of the decks, shingles, and railings for the building (the "Project").

4. In or around March 2020 ATZ Contracting began to undertake the necessary work for the Project.

5. Between March and August 2020 ATZ Contracting completed the work on the Project and invoiced the Landlord as follows:

Invoice #	Date	Amount
811899	20/March/2020	$17,703.00
737501	19/April/2020	$23,604.00
737505	22/May/2020	$15,054.90
737507	15/June/2020	$22,617.00
737508	22/June/2020	$15,057.00
737509	29/June/2020	$15,057.00
737511	20/July/2020	$45,171.00
737512	6/August/2020	$28,077.00
TOTAL =		$182,340.90

6. Submitted into evidence were the following:

   (a) A copy of the building permit issued by the City of Penticton in respect of the Project.

   (b) Copies of the invoices and cheque stubs confirming payment of same.

   (c) 5 photographs showing the work completed for the Project including some before and after images.

   (d) A letter from [G.M.], owner of ATZ Contracting, outlining the findings from the inspection, the needs for the Project as well as the Project overview.

The landlord argued and submitted that a capital expenditure is eligible for an additional rent increase if it: (1) Was incurred in the 18-month period preceding the date on which the landlord made the application.

The landlord submitted its application for additional rent increase on September 14, 2021. The preliminary hearing is scheduled for March 11, 2022. The capital expenditure occurred in the 18-month period proceeding September 14, 2021.

And (2), the expenditure is not expected to recur for at least five years. The replacement of the decks, shingles and railings of the building is expected to have a lifespan of 20 or more years. Last, the landlord submitted that the decks, shingles, and railings of the Building are a major component of the Building.

A written submission by one of the tenant respondents was considered, and both the landlord's counsel and the tenant's agent spoke to the written submission. One of the issues raised regards the amount of the rent increase. As noted below, there is a maximum amount under the Act and the Regulation by which rent may be increased.

The second issue raised has to do with whether the capital expenditures were in fact necessary due to the landlord's failure to repair and maintain the property. The ten-year lifespan was cited from the policy guideline. Counsel argued that the tenant's submission is "merely a speculation" unsupported by any evidence of neglect.

The third issue raised by the respondent tenant relates to whether tenants are entitled to "recoup" any appreciation in the value of the building should the landlord ever sell the property. (Given that this issue falls outside of the factors that must be considered in an application of this nature I will, with respect, not address this issue further.)

Last, the tenant's advocate raised the question of whether a rent increase would become permanent after the 120-month period elapses, or whether the intent of the rent increase is to pay for the capital expenditures and nothing more.

Analysis

Subsection 43(1)(b) of the Act states that a landlord may impose a rent increase only up to the amount "ordered by the director on an application under subsection (3) of the Act. Subsection 43(3) of the Act, to which the above section refers, states that

> In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

Section 23.1 of the Regulation sets out the criteria by which this application is considered. I have considered *Residential Tenancy Policy Guideline 37: Rent Increases*. Section 23.1 of the Regulation are reproduced as follows:

(1) Subject to subsection (2), a landlord may apply under section 43 (3) *[additional rent increase]* of the Act for an additional rent increase in respect of a rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.

(2) If the landlord made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.

(3) If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.

(4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:

(a) the capital expenditures were incurred for one of the following:

(i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) *[landlord and tenant obligations to repair and maintain]* of the Act; [...]

(b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;

(c) the capital expenditures are not expected to be incurred again for at least 5 years.

(5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred

(a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
(b) for which the landlord has been paid, or is entitled to be paid, from another source.

In this application, based on the evidence before me, it is my finding on a balance of probabilities that the capital expenditures were incurred for the replacement of a major component and system—namely, decks, shingles, and railings—in order to maintain the residential property, of which the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law.

It is my finding that the capital expenditures were incurred in the 18-month period preceding the date on which the landlord made its application. I find that all of the capital expenditures are substantive and not minor. Nor do I find that any of the work completed is purely for aesthetic or cosmetic purposes.

Further, based on the evidence before me, I conclude that the capital expenditures are not expected to be incurred again for at least five years, though practically speaking they will last for at least a decade if not longer.

Turning now to the respondent tenant's submissions, section 23.1(5) of the Regulation states the following:

> The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred
>
> (a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
>
> (b) for which the landlord has been paid, or is entitled to be paid, from another source.

In this case, while the respondent referenced building component lifespans as set out in the policy guideline, the longevity of such components is not relevant—in the absence of any evidence to prove otherwise—in determining whether a landlord has not made adequate repairs or maintenance. The respondent's argument is that the landlord may have had to make the repairs and replacement because of inadequate repairs or maintenance. However, there is no supporting evidence to back up this speculative claim.

For these reasons, I respectfully decline to consider the tenant's submission in respect of subsection 23.1(5)(a) of the Act.

Given the above, the landlord's application for an additional rent increase for eligible capital expenditures in the amount of $182,340.90 pursuant to section 23.1 of the Regulation and section 43(1)(b) of the Act must be granted.

Section 23.2 of the Regulation sets out the formula to be applied when determining the amount of the additional rent increase.

> (1) If the director grants an application under section 23.1, the amount of the additional rent increase that the landlord may impose for the eligible capital expenditures is determined in accordance with this section.

(2) The director must

(a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and
(b) divide the amount calculated under paragraph (a) by 120.

(3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43(1)(a) of the Act in that year by 3%.

(4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

In this application, the calculation is thus: ($182,340.90 ÷ 42 units) ÷ 120 = $36.18.

From there, the landlord must then apply subsections 23.2(3) and (4) of the Regulation.

It is, it should be noted, the landlord's responsibility to make the required calculations. The parties may wish to refer to *Residential Tenancy Policy Guideline 37*, section 23.3 of the Regulation, section 42 of the Act, and the additional rent increase calculator on the Residential Tenancy Branch website for guidance on rent increase imposition.

Conclusion

The landlord's application is hereby granted. A copy of this Decision must be served by the landlord upon each tenant within two weeks of the landlord receiving this Decision from the Residential Tenancy Branch.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 8, 2022

Residential Tenancy Branch