



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 property manager ("**DS**") attended the hearing. None of the tenants attending the hearing.

This hearing was reconvened from a preliminary hearing held on March 15, 2022. I issued an interim decision following that hearing.

In the interim decision I ordered the landlord to serve the tenants with a notice of reconvened hearing and a copy of the interim decision.

DS testified that the landlord served the tenants with these documents. The landlord provided proof of service confirming this, except for the tenants residing in units 206 and 207, who have moved out of the residential property and the tenants residing in units 1 and 3, who DS testified were served personally. I accept this testimony.

I find that all tenants were served with the required documents.

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 DS, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The residential property is a multi-unit apartment building which contains 21 dwelling units (the "**building**").

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

DS testified that the landlord is seeking to impose an additional rent increase for capital expenditures incurred to pay for work done to replace the building's exterior windows, to replace the building's roof, and to move and maintain power lines while the roof was replaced (collectively, the "**Work**").

DS testified that all the building's old exterior windows were single-paned and that they were replaced with more energy efficient double-paned windows. The landlord incurred a total cost of \$34,125 to replace them. It submitted an invoice in support of this amount showing that a deposit of \$14,000 was paid on May 15, 2020 and the balance of \$20,125 was paid on November 10, 2020.

DS testified that the new windows have a five-year warranty and are expected to last for much longer.

DS testified that the building's old roof was close to the end of its useful life. It submitted a roof condition report dated February 27, 2020, which stated that the total life expectancy of the roof was between 20 and 30 years, and that the roof should last another 4 to 6 years.

DS testified that the Canadian Mortgage and Housing Corporation ("**CMHC**") required the landlord to replace the roof and the windows as a condition of obtain building insurance. It included an excerpt from the CMHC "special conditions forming part of the certificate of insurance" confirming this.

DS testified that the landlord paid a contractor \$78,298.48 to replace the roof. The landlord submitted invoices showing that it paid a deposit of \$36,855 on July 13, 2020 and \$34,855 on November 17, 2020. The second invoice also shows that the landlord paid the contractor \$6,588.48 for additional work that is *not* included in the capital expenditure. DS clarified that the landlord is seeking to impose a rent increase on \$71,710 of the amount it paid the contractor. He stated that the new roof is expected to last 10 to 15 years.

DS testified that in order to install the scaffolding necessary to replace the building's roof, the landlord had to pay BC Hydro to temporarily move power lines and to protect them from construction debris. He testified that without moving the power lines the landlord would have been unable to undertake the roof repairs. He testified that the landlord paid BC Hydro \$23,616.60 for this service. It submitted a bill from BC Hydro confirming this amount, which also indicated the landlord paid this amount on August 24, 2020.

DS testified 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

I accept DS's testimony that the landlord had not imposed an additional rent increase on any of the tenants in the last 18 months.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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 there are 21 specified dwelling units in the building.

4. Amount of Capital Expenditure

Based on the invoices submitted into evidence, I find that the landlord has incurred capital expenditures of \$129,451.60 as follows:

Description	Date Incurred	Total
Roof deposit	13-Jul-20	\$36,855.00
Roof final payment	17-Nov-20	\$34,855.00
Window deposit	15-May-20	\$14,000.00
Window final payment	10-Nov-20	\$20,125.00
BC Hydro powerline relocation fee	24-Aug-20	\$23,616.60
	Total	\$129,451.60

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

Section 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;

RTB Policy Guideline 37 provides examples of major systems and major components:

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 the Work related to the replacement of building's exterior windows and roof, I find that it was undertaken for the purpose of replacing major systems or major components of the building.

b. Reason for Capital Expenditure

Based on the roof inspection report, I find that the building's old roof was near the end of its useful life. Accordingly, it was replaced for a reason permitted by the Regulation. I find that the cost of relocating the power lines was a necessary expense to incur for the roof to be replaced. As the reason for the roof's replacement was valid, I find that expenses which were required to be incurred in the course of its replacement are also permitted by the Regulation.

Policy Guideline 37 states:

Any reduction in energy use or greenhouse gas emissions established by the landlord will qualify the installation, repair or replacement for an additional rent increase.

Some examples may include:

- Replacing electric baseboard heating with a heat pump;
- Installing solar panels;
- Replacing single-pane windows with double-paned windows

As such, I find that the landlord's replacement of all the building's single-paned windows with double-paned windows represents a capital expenditure which reduced the building's energy use, and was therefore incurred for a valid reason.

c. Timing of Capital Expenditure

The landlord filed this application on October 15, 2021. 18 months prior to this date was April 15, 2020.

Residential Tenancy Branch Policy Guideline 37 states:

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

Based on the invoices submitted into evidence, I find that all the capital expenditures claimed by the landlord were paid after April 15, 2020. As such, there were incurred within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

RTB Policy Guideline 40 sets out the useful life expectancy of a new roof between 15 and 20 years, and of new windows between 15 and 20 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 none of the tenants attended the hearing, and as none of them provided written submissions prior to the hearing (permitted by the interim decision), I find that the tenants have failed to discharged their onus to prove either of these factors.

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 21 specified dwelling unit and that the amount of the eligible capital expenditure is \$129,451.60.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$51.37 ($\$129,451.60 \div 21 \text{ units} \div 120$). 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 37, 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 \$51.37. 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: December 14, 2022

Residential Tenancy Branch