



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 was represented at the hearing by its accountant ("**SJ**") and building manager ("**BM**"). The tenants from unit 317 ("**CD**") and unit 119 ("**JM**") attended the hearing.

This hearing was reconvened from a preliminary hearing on July 18, 2022. On the same day, the presiding arbitrator issued an interim decision making several procedural orders.

SJ testified that the landlord served the all tenants with copies of the notice of reconvened hearing and the interim decision by posting them on the door of the each rental unit. CD and JM confirmed that they were served in this way. Accordingly, I find that the tenants 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 contains a multi-story apartment building (the "**building**"), which contains 62 dwelling units.

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

SJ testified that the landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for the replacement of the building sewer main and boiler (collectively, the **“Work”**).

SJ testified that the landlord conducted its annual inspection of the boiler in January 2022 and discovered a leak in the bottom of the tank. She testified that the boiler was 10 years old and that its warranty had expired. The landlord sourced a new boiler at a cost of \$9,523.01 plus \$590.63 for delivery. It engaged a plumbing company to install the boiler for \$2,414.51 and paid a moving company \$493.00 to assist in the transportation of the boiler. The landlord provided invoices supporting all of these amounts.

SJ testified that the landlord could have purchased the new boiler directly from the plumbing company who installed it, but that it would have cost significantly more than purchasing it from a third-party vendor and paying to have it delivered and then moved again. In total, the landlord paid \$13,021.15 to replace the boiler, as follows:

Description	Invoice date	Total
Boiler purchase	01-Feb-22	\$9,523.01
Boiler delivery	01-Feb-22	\$590.63
Boiler transport	09-Feb-22	\$493.00
Boiler installation	09-Feb-22	\$2,414.51
	Total	\$13,021.15

SJ testified that the new boiler is expected to last at least 10 years and has a 10 year warranty.

SJ testified that the landlord had received reports of sewer backups in tenants' bathtub. The landlord conducted an investigation, which involved augering pipes around the building to determine the cause of these backups. As a result of this investigation, the landlord discovered that the sewer pipes in the building's parkade were blocked with years of grease and oil buildup. The landlord submitted photos of a cross section of one of the pipes, which shows it to be almost completely blocked.

SJ testified that the pipes were original to the building, which was built in 1976 and that they were 3 inches in diameter, as opposed to 4 inches, which is currently required for such pipes.

As such, the pipes needed to be removed and new ones installed. SJ testified that the landlord undertook their replacement in stages and hired a contractor who started the replacement in June and July 2021. The landlord paid two invoices of \$2,579.50 and \$6,184.27 for this portion of the replacement work. SJ testified that this contractor became unable to complete the replacement work due to contracting COVID-19. The landlord hired a second contractor to complete the replacement of the pipes in March

2022, at a cost of \$4,453.85. In total, the landlord paid \$13,217.62 replacing the blocked sewer pipes, as follows:

Description	Invoice date	Total
Remove and replace pipe	03-Jun-21	\$2,579.50
Remove and replace pipe	08-Jul-21	\$6,184.27
Remove and replace pipe	07-Mar-22	\$4,453.85
	Total	\$13,217.62

She testified that the newly installed pipes are made of PVC, which are less likely to clog and have a life expectancy of 100 years.

After SJ completed her submissions, tenant CD withdrew her opposition to the application. However, tenant JM argued that the landlord should have detected these problems prior to purchasing the building in 2019. He argued that, as the landlord did not conduct adequate due diligence before purchasing the building, it should not be able to recover the cost of the Work from the tenants.

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:
 - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
 - 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 testimony of the parties, I find that the landlord has not imposed any 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 the building has 62 dwelling units, and that all of them are specified dwelling units for the purposes of this application.

4. Amount of Capital Expenditure

Based on the invoices submitted into evidence, I find that the landlord has incurred capital expenditures when undertaking the Work as follows:

Description	Invoice date	Total
Remove and replace pipe	03-Jun-21	\$2,579.50
Remove and replace pipe	08-Jul-21	\$6,184.27
Boiler purchase	01-Feb-22	\$9,523.01
Boiler delivery	01-Feb-22	\$590.63
Boiler transport	09-Feb-22	\$493.00
Boiler installation	09-Feb-22	\$2,414.51
Remove and replace pipe	07-Mar-22	\$4,453.85
	Total	\$26,238.77

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.

The Work amounted to the replacement of elements of the building's mechanical system. The Regulation explicitly identifies a residential property's mechanical system as a "major system". The landlord replaced pipes and a boiler. These elements are significant components of the mechanical 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 building.

b. Reason for Capital Expenditure

I accept SJ's testimony on this point in its entirety. I find that the landlord discovered a leak in the boiler in early 2022, which necessitated the boiler's replacement. Such a leak amounted to the boiler having "failed", which is a permitted reason for incurring a capital expenditure under the Regulation.

I find that all expenses incurred in relation to the replacement of the boiler, including the transportation and shipping costs to have been reasonably and necessarily incurred, and ought to be considered eligible capital expenditures for the purpose of this application.

Based on SJ's testimony, I find that the pipes in the building's parkade needed to be replaced. They were original to the building and were almost entirely clogged by years of grease accumulation and other debris. I find that such clogs caused the pipes to be inoperative or malfunctioning. Accordingly, the cost of their replacement is an eligible capital expenditure for the purpose of this application.

c. Timing of Capital Expenditure

The landlord made this application on March 24, 2022. 18 months prior to this date was September 24, 2020

Residential Tenancy Branch Policy Guideline 37 states:

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

SJ did not give evidence as to when the landlord paid the invoices submitted into evidence, although she did state that they had all been paid. All of the invoices are dated within 18 months of the landlord making this application. As such, I find that all of the capital expenditures were incurred within the permitted time frame.

d. Life expectancy of the Capital Expenditure

I accept SJ's testimony as to the life expectancy of the new boiler and the replacement pipes. I do not find that the cost of replacing either of these components can reasonably be expected to reoccur within five years.

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.

The tenants did not make any submissions on either of these two points. Accordingly, I find that they failed to discharge their burden to prove either.

The argument for dismissing the application advanced by tenant JM does not have any basis in the Act or the Regulation. Neither requires that a purchaser conduct an inspection of a property before it purchases it. Additionally, even if the landlord had done this and had discovered any deficiencies in the building, there is nothing in the Act or Regulation that would have prevented the landlord from imposing an additional rent increase if the landlord undertook repairs. Similarly, if the prior owner had not sold the building, but instead undertook the Work, it would have been entitled to impose an additional rent increase.

A landlord has an obligation to repair and maintain the building. The Regulation grants landlords who comply with this obligation the ability to recover expenditures that meet certain criteria. The fact that the landlord had recently purchased the building does not

remove its obligation to maintain the building and similarly does not remove its ability to recover certain costs associated with maintaining it.

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 62 specified dwelling units and that the amount of the eligible capital expenditure is \$26,238.77.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$3.53 ($\$26,238.77 \div 62 \text{ units} \div 120$). 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 \$3.53. 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 15, 2022

Residential Tenancy Branch