



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 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 and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord's Application and documentary evidence package. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenant confirmed that they did not submit any evidence in response to the application.

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 Landlord stated that the rental property is a duplex, which the Landlord occupies one side, while the Tenants occupy the other side.

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

The landlord testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's windows. He testified that the windows were replaced only on the Tenants' portion of the rental property (collectively, the "**Work**"). The Landlord stated that he did not replace the windows on the Landlord's unit, as they had been replaced 10 years ago.

The landlord testified the Work was done because the windows on the Tenants' side of the rental property were the original windows from 1989 and that they had surpassed their useful life. The Landlord stated that they were drafty, and that there was visible rot forming around the window frames. The Landlord replaced the windows to meet efficiency standards.

The Tenant stated that they do not oppose the work.

Description	Date#	Amount,
13 windows, 1 patio door	July 25-26, 2022	\$18,777.41
Total		\$18,777.41

The landlord submitted copies of invoices supporting these amounts.

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

I accept that the Tenants are not in dispute of the Addition Rent Increase.

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:
 - o the Work was to repair, replace, or install a major system or a component of a major system
 - o 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

I accept the Landlord has not submitted a prior application for additional rent increase.

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.

I find that the windows were only replaced on the Tenant's unit, therefore, it is only the Tenants' dwelling unit that had the work carried out and is eligible for capital expenditure.

4. Amount of Capital Expenditure

I accept that the Landlord incurred a cost of \$18,777.41 to replace the windows in the Tenants' rental unit.

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 each of these in turn.

a. Type of Capital Expenditure

I find that the replacement of the windows in the Tenant's unit represents a major component of the rental unit.

b. Reason for Capital Expenditure

According to Policy Guideline 40, windows have a useful life of 15 years. I accept that the Landlord replaced the original windows in the Tenants' rental unit as they had been installed in 1989, therefore, they had surpassed their useful life.

c. Timing of Capital Expenditure

I accept the landlords evidence that the final payment was incurred in July 25, 2022. I find this date is 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 5 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.

The Tenants do not dispute the capital expenditure or any of the statements or evidence provided by the Landlord.

7. Outcome

The landlord has been successful. He 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 is 1 specified dwelling unit and that the amount of the eligible capital expenditure is \$18,777.41.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$156.47 ($\$18,777.41 \div 1 \text{ unit} \div 120$).

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 may be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$156.47. The landlord must impose this increase in accordance with the Act and the Regulation.

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: January 09, 2023

Residential Tenancy Branch