



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

This hearing was conducted by way of conference call in response to an Application for Dispute Resolution filed by the Landlord August 05, 2022 (the “Application”). The Landlord states that they have eligible capital expenditures and are seeking an additional rent increase.

This matter came before me November 24, 2022, and was adjourned. An Interim Decision was issued November 25, 2022. The Interim Decision should be read with this Decision.

The Landlord and B.P. appeared at the second hearing. Tenants J.P., K.F., D.S. and H.W. appeared at the second hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure. The parties provided affirmed testimony, except for H.W.

At the second hearing, the Landlord had submitted evidence. The Tenants had not submitted evidence.

I addressed service of the hearing package and Landlord’s evidence at the first hearing. The Landlord was ordered to complete service in the Interim Decision. At the second hearing, the Landlord testified that all documents ordered to be served in the Interim Decision had been served and were either signed for by the Tenants or sent by registered mail to the Tenants. The Landlord submitted documentary evidence showing the documents were received by the Tenants November 29 and 30, 2022, and sent by registered mail to three Tenants November 30, 2022, 14 and 15 days prior to the second hearing. Pursuant to section 71 of the *Residential Tenancy Act* (the “Act”), I find the Tenants were sufficiently served with the hearing package and evidence for this matter. I note that the Tenants present at the second hearing did not raise any substantive service issues.

The Landlord confirmed the Application relates to one building and that all four capital expenditures claimed apply to all Tenants and units on the Application.

None of the Tenants raised an issue with there being valid tenancy agreements between them and the Landlord.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to impose an additional rent increase due to eligible capital expenditures?

Background and Evidence

The Application sets out four capital expenditures the Landlord is applying for an additional rent increase in relation to:

1. Removed old hot water storage tank and installed new Rinnai duo on demand hot water tank. \$18,742.50
2. Replaced fuse boxes with new circuit breaker panels. Fuse boxes were a fire hazard. \$22,796.78
3. Repaired and replaced drywall around the circuit breaker panels. Electrician had to cut out more drywall to remove the old box and then needed room to rewire for the new circuit breaker panel. \$3,360.00
4. Of the three boilers, only one was functioning and beginning to malfunction. Soot oozes from the boilers and the boilers are failing. Two new boilers currently installed. \$43,328.25

The parties provided the following testimony and evidence in relation to these expenses.

1. *Removed old hot water storage tank and installed new Rinnai duo on demand hot water tank. \$18,742.50*

The Landlord testified as follows. A plumber attended the building and said they could put a screwdriver through the whole hot water tank, and it was leaking. The hot water tank had to be replaced. There was only one hot water tank for the whole building, and it was 18 years old. The hot water tank was what supplied hot water to the whole building. The new hot water tank is expected to last at least 20 years.

The Landlord submitted the invoice for this claim. The Landlord submitted photos of the new hot water tank. The Landlord submitted proof of payments for this claim.

Tenant D.S. submitted that they agree with the installation of the new hot water tank but not removal of the old hot water tank. D.S. referred to a recent RTB Decision; however, this is not before me. D.S. submitted that once the old hot water tank was detached, it was simply an appliance that was moved which is not a capital expenditure.

In response to a question by D.S., the Landlord testified that they just recently looked into rebates for this claim, submitted applications and were granted \$2,000.00 for the storage tank and \$7,200.00 for the boilers.

2. *Replaced fuse boxes with new circuit breaker panels. Fuse boxes were a fire hazard. \$22,796.78*

3. *Repaired and replaced drywall around the circuit breaker panels. Electrician had to cut out more drywall to remove the old box and then needed room to rewire for the new circuit breaker panel. \$3,360.00*

The Landlord testified as follows. There were old fuse boxes in each unit which were installed in 1967. The Landlord's insurance company said the fuse boxes were a fire hazard. The Landlord had no choice but to replace the fuse boxes for insurance purposes. The old fuse boxes were removed and new circuit breaker panels were installed. The new circuit breaker panels were a different size than the old fuse boxes and so the Landlord had to hire someone to fix the drywall around the new circuit breaker panels. The drywall was a small expense of \$3,000.00.

The Landlord submitted the invoice for this claim from the electrical company. The Landlord submitted a Craigslist advertisement for the drywaller with notes on it. The

Landlord submitted a photo of the new circuit breaker panels. The Landlord submitted proof of payments in relation to this claim. The Landlord submitted the electrical permit for this claim.

Tenant J.P. asked if the amount for this claim had been paid in full and the Landlord confirmed it has been. In response to questions by D.S., the Landlord confirmed the old fuse boxes were 55 years old. The Landlord testified that no steps were taken to replace the old fuse boxes sooner because this was not necessary. The Landlord testified that the cost of this claim was not considered in their annual budget. The Landlord confirmed the drywaller did not provide an invoice for the drywall work. D.S. submitted that the Tenants should not be responsible for this claim because the old fuse boxes were 55 years old.

4. Of the three boilers, only one was functioning and beginning to malfunction. Soot oozes from the boilers and the boilers are failing. Two new boilers currently installed. \$43,328.25

The Landlord testified as follows. The Landlord put a lot of money into the boilers in the building over the past three years. The Landlord was having the boilers repaired and did not realize they were failing. The boilers were 18 years old, and it turned out they were failing. When the boilers were taken apart, they were long beyond repair. The boilers provide hot water heat to the building, which is included in the Tenants' rent. The boilers had to be replaced before winter and were replaced in August. The Landlord withheld \$3,000.00 of the payment for this claim until December 2022 because there were problems with the new boilers and getting heat to the third floor.

The Landlord submitted the invoice for this claim as well as proof of payment. The Landlord submitted photos of the old boilers and new boilers.

Tenant J.P. raised an issue with the invoice showing one boiler was replaced when two were replaced. The Landlord advised this was a typo by the person who wrote the invoice.

Analysis

Section 43(3) of the *Act* allows for additional rent increases.

Sections 23.1 and 23.2 of the *Residential Tenancy Regulation* (the “*Regulation*”) addresses additional rent increases for eligible capital expenditures and states:

23.1 (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...

(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;
- (ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
- (iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:
 - (A) a reduction in energy use or greenhouse gas emissions;

(B) an improvement in the security of the residential property;

(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.

23.2 (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).

Section 23.3 of the *Regulation* addresses the implementation of additional rent increases for eligible capital expenditures.

RTB Policy Guideline 37 addresses additional rent increases for eligible capital expenditures and provides further details about the requirements outlined above. I have not reproduced the guideline here; however, it is available on the RTB website.

1. *Removed old hot water storage tank and installed new Rinnai duo on demand hot water tank. \$18,742.50*

I accept the testimony of the Landlord about this claim, I did not have concerns about the reliability or credibility of the testimony. I find the testimony is supported in part by the documentary evidence.

I accept the hot water tank was replaced. The hot water tank is a “major system” or “major component” because it is part of the system that supplies hot water to the Tenants and is integral to providing an expected service to the Tenants. I accept the hot water tank was 18 years old and leaking and therefore failing. I also find the hot water tank was past or at the end of its useful life (see RTB Policy Guideline 40 page 7). I find section 23.1(4)(a) of the *Regulation* has been established.

The invoice for this claim is dated July of 2021. The “Find Report” shows the invoice was paid June 21, 2021 and July 19, 2021. The expenditure was therefore incurred July 19, 2021, within 18 months of August 05, 2022, when the Application was filed. I find section 23.1(4)(b) of the *Regulation* has been established.

I accept that the new hot water tank is expected to last at least 20 years and note that the useful life of domestic hot water tanks is 10 years and commercial 20 years (see RTB Policy Guideline 40 page 7), both well beyond 5 years. I find section 23.1(4)(c) of the *Regulation* has been established.

I do not agree that the capital expenditure should not include removal of the old hot water tank because this was a necessary part of completing replacement of the old hot water tank.

I accept that the Landlord has been granted a total of \$9,200.00 in rebates for the capital expenditures claimed and reduce the amount granted by \$9,200.00 pursuant to section 23.1(5)(b) of the *Regulation*.

- 2. Replaced fuse boxes with new circuit breaker panels. Fuse boxes were a fire hazard. \$22,796.78**
- 3. Repaired and replaced drywall around the circuit breaker panels. Electrician had to cut out more drywall to remove the old box and then needed room to rewire for the new circuit breaker panel. \$3,360.00**

I accept the testimony of the Landlord about this claim, I did not have concerns about the reliability or credibility of the testimony. I find the testimony is supported in part by the documentary evidence.

I accept the old fuse boxes in each unit were replaced. I find fuse boxes and circuit breaker panels are a “major system” or “major component” because they are part of the electrical system in the building and are integral to the building and providing services to the Tenants. I accept the old fuse boxes had to be replaced for insurance purposes because they were a fire hazard and also because they were more than 50 years old. I accept the Landlord had to replace the old fuse boxes to maintain the residential property in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32(1)(a) of the *Act* and because they were past their useful life (see RTB Policy Guideline 40 page 7). I find section 23.1(4)(a) of the *Regulation* has been established.

In relation to the drywall, I find this is part of the capital expenditure regarding replacing old fuse boxes because I accept that drywall had to be cut out to replace the old fuse boxes and install the new circuit breaker panels and therefore the drywall had to be repaired.

The invoice for replacing old fuse boxes with circuit breaker panels is dated from June 24, 2021 to August 17, 2021. The “Find Report” shows the Landlord paid \$22,794.78 for the work between June 24, 2021, and August 17, 2021. The Craigslist advertisement has notes showing the cost of the drywall work with dates of August 13, 2021, and August 20, 2021. The “Find Report” shows the Landlord paid \$3,900.00 for the drywall work from August 13, 2021, to November 10, 2021. All of these dates are within 18 months of the Application being filed. I find section 23.1(4)(b) of the *Regulation* has been established.

I find the new circuit breaker panels are expected to last more than five years and again refer to RTB Policy Guideline 40 page 7 in relation to “Electrical panel and wiring” which

is expected to last 15 years. I find section 23.1(4)(c) of the *Regulation* has been established.

There was no requirement that the Landlord replace the fuse boxes sooner. Not replacing the fuse boxes sooner is not the same as not repairing or maintaining the old fuse boxes. There is no evidence before me that the old fuse boxes were not repaired or maintained as necessary. There is no evidence before me that waiting to replace the old fuse boxes increased the replacement cost.

Whether the Landlord accounted for the cost of a capital expenditure in their annual budgets is not relevant under section 23.1 of the *Regulation*.

I do not find it concerning that the drywaller did not provide an invoice for their work. The Landlord provided the Craigslist advertisement with their notes about the work and proved payment for the work. None of the Tenants took the position the work was not done, and I note that the work was done in each of the Tenants' units. Further, I find the cost claimed reasonable for the work done.

The age of the old fuse boxes is not a basis to find this capital expenditure ineligible under section 23.1(5) of the *Regulation*.

4. Of the three boilers, only one was functioning and beginning to malfunction. Soot oozes from the boilers and the boilers are failing. Two new boilers currently installed. \$43,328.25

I accept the testimony of the Landlord about this claim, I did not have concerns about the reliability or credibility of the testimony. I find the testimony is supported in part by the documentary evidence.

I accept the boilers were replaced. I accept the boilers are a "major system" or "major component" because they are part of the heating system for the building and are integral to providing services to the Tenants. I note that RTB Policy Guideline 37 specifically contemplates boilers being a major system or major component at page 8. I accept the boilers were 18 years old and failing. Heating systems have a useful life of 15 years and therefore I accept the boilers were past their useful life. I find section 23.1(4)(a) of the *Regulation* has been established.

The invoice for this claim is dated July 2022. The payment information shows the Landlord paid for this work from August 05, 2022, to November 30, 2022. All of these dates are within 18 months of the Application being filed. I find section 23.1(4)(b) of the *Regulation* has been established.

I find the boilers are expected to last at least five years because they are part of a heating system, and these have a useful life of 15 years (see RTB Policy Guideline 40 page 6). Further, boilers are specifically referred to as being major systems or major components that are expected to last at least five years in RTB Policy Guideline 37 at page 8. I find section 23.1(4)(c) of the *Regulation* has been established.

I do not find the invoice showing one boiler was installed relevant because the photos clearly show three were removed and two were installed.

Summary

I find all four capital expenditures claimed are eligible capital expenditures under section 23.1(4) of the *Regulation*. None of the costs claimed are for routine maintenance. All of the costs claimed are for the very type of costs contemplated by section 23.1 of the *Regulation* and RTB Policy Guideline 37.

Based on my analysis, I find the total amount of eligible capital expenditures is as follows:

- \$18,742.50 for hot water tanks (amount sought and paid)
- + \$22,794.78 for replacing fuse boxes (amount paid in "Find Report")
- + \$3,360.00 for drywall (amount sought)
- + \$43,328.25 for boilers (amount sought)
- - \$9,200.00 in grants received by the Landlord (see above)
- = **\$79,025.53**

I accept that there are 36 specified dwelling units in the building based on the Application. The relevant calculation pursuant to section 23.3 of the *Regulation* is:

$$\text{Total ARI} = \frac{\$79,025.53 \div 36}{120} = \$18.29$$

The Landlord must do the remainder of the calculations and must impose the additional rent increase in accordance with the *Act*, *Regulation* and RTB Policy Guideline 37.

Conclusion

The Landlord is entitled to impose an additional rent increase. The amount calculated pursuant to section 23.2(2) of the *Regulation* is \$18.29. The Landlord must do the remainder of the calculations and must impose this additional rent increase in accordance with the *Act*, *Regulation* and RTB Policy Guideline 37.

A copy of this Decision must be served by the Landlord on the Tenants within two weeks of the Landlord receiving this Decision from the RTB.

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

Dated: January 13, 2023

Residential Tenancy Branch