



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 September 14, 2022 (the “Application”). The Landlord states that they have eligible capital expenditures and are seeking an additional rent increase.

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package and their evidence were sent to the Tenant by registered mail and that Tracking Number 505 relates to this. The Landlord testified that the Tenant was out of town when the package was sent but picked it up October 13, 2022. The Landlord submitted documentary evidence of service. I looked Tracking Number 505 up on the Canada Post website which shows the package was sent October 07, 2022, and delivered October 13, 2022.

Based on the undisputed testimony of the Landlord, documentary evidence of service and Canada Post website information, I am satisfied the Tenant was served with the hearing package and Landlord’s evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I find the Tenant received the package October 13, 2022, in sufficient time to prepare for, and appear at, the hearing. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was 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. Are the Landlords entitled to impose an additional rent increase due to eligible capital expenditures?

Background and Evidence

The Landlord submitted a written tenancy agreement between the parties which started January 01, 2022.

The Landlord testified that the rental unit address is a house with an upper main residence and lower basement suite. The Landlords live in the upper main residence and the Tenant lives in the lower basement suite.

The Application sets out four capital expenditures that the Landlords are applying for an additional rent increase in relation to:

1. **\$21,546.00:** Cedar roof had 200+ holes (have an assessment that shows end of life, imminent need of new roof). Cedar conversion completed with Asphalt Shingles. Completed by New Horizons Roofing...
2. **\$6,405.00:** Livwell Collective had to upgrade our panel for the new HVAC Capital expenditure. As we had a Heat pump installed with a new gas furnace, the main panel and electrical service had to be upgraded...Total invoice was \$8505 but \$2100 was solely for the benefit of the landlord and not to be expected the tenant pay anything towards (Garage sub panel and new plugs in garage).
3. **\$21,659.25:** Furnace was original to the house and at end of life. To be able to service the tenant properly, as well as the main unit, we had a new high efficiency gas furnace installed, as well as a high efficiency heat pump that supplies most of the heating, as well as added air conditioning to both units. The Hepa filter keeps the air separated from both units so there is no "back flow" into

the other unit. Rebate to be received: \$3000 hence not posting full invoice amount for expenditure.

4. **\$1,342.00:** BC Hydro's charge for service upgrade. Required for new HVAC install.

The Landlord provided the following further information and evidence in relation to these expenditures.

1. \$21,546.00: Cedar roof

The cedar roof was 27 years old and leaking. The roof was past its useful life and had to be replaced. The cedar roof was replaced with an asphalt roof which was a less expensive option. The invoice for the roof replacement is in evidence and was paid in August of 2022. The roof replacement has a 10-year warranty.

2. \$6,405.00: upgrade of electrical panel

This item relates to item #3. The electrical panel in the house had to be upgraded in order to install the heat pump. The invoice for this is in evidence and is higher than the cost claimed because the Landlords are only seeking the amount related to work that affected the lower basement suite. The invoice was paid in installments with the last installment paid in September of 2022. The electrical panel upgrade will last more than five years.

3. \$21,659.25: new high efficiency gas furnace and high efficiency heat pump

The furnace in the house was past its useful life and had started to fail. The Landlords had a heat pump and backup gas furnace installed which now provides both hot and cold air for the upper main residence and lower basement suite. The installation of the heat pump and gas furnace has resulted in a reduction in energy use. The invoice for the installation of the heat pump and gas furnace is in evidence and was paid in July of 2022. The Landlords have reduced the amount sought for this by \$3,000.00 because they will receive a rebate. The heat pump and gas furnace are expected to last more than five years.

4. \$1,342.00: BC Hydro's charge for service upgrade

This item relates to item #3. BC Hydro had to attend the address to disconnect electrical services so that the electrician could upgrade the electrical panel. BC Hydro also had to attend to reconnect the electrical services from the street after the electrician completed their work. BC Hydro charges a one-time fee for this. The fee was due and paid with the Landlords' monthly BC Hydro bill in August of 2022.

The Landlords submitted documentary evidence to support their claim.

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*") address additional rent increases for eligible capital expenditures and state:

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, I have considered it and it is available on the RTB website.

I accept the undisputed evidence provided by the Landlords and find the following based on it.

1. \$21,546.00: Cedar roof

The Landlords replaced the cedar roof on the house with an asphalt roof. A roof is a major system or major component (see RTB Policy Guideline 37 page 6). The cedar roof was 27 years old and past its useful life (see RTB Policy Guideline 40 page 3). The cedar roof was also leaking and therefore failing. The Landlords have proven section 23.1(4)(a)(ii) of the *Regulation* applies.

The invoice for the new roof is dated September 06, 2022, and shows the Landlords paid \$21,546.00. I accept that this invoice was paid in August of 2022. The Application was filed September 14, 2022. This expenditure was incurred within 18 months prior to the Application being filed. The Landlords have proven section 23.1(4)(b) of the *Regulation* applies.

The invoice for this expenditure shows there is a 10-year warranty for the installation of the roofing system and therefore I accept that the roof replacement is expected to last at least five years. The Landlords have proven section 23.1(4)(c) of the *Regulation* applies.

The Tenant did not appear to dispute the Application and therefore has not proven that section 23.1(5) of the *Regulation* applies.

- 2. \$6,405.00: upgrade of electrical panel**
- 3. \$21,659.25: new high efficiency gas furnace and high efficiency heat pump**
- 4. \$1,342.00: BC Hydro's charge for service upgrade**

Items #2 to #4 are related.

The Landlords replaced their furnace with a heat pump and backup gas furnace. Heat pumps and furnaces are major systems or major components (see RTB Policy Guideline 37 page 6). I accept that the furnace in the house was past its useful life and had started to fail and therefore had to be replaced. The Landlords have proven section 23.1(4)(a)(ii) of the *Regulation* applies.

I accept that the electrical panel in the house had to be upgraded in order for the heat pump to be installed and therefore this work is part of the replacement of the furnace and part of the eligible capital expenditure.

I accept that BC Hydro had to disconnect and reconnect electrical services at the house in order for the electrician to upgrade the electrical panel and therefore this work is part of the replacement of the furnace and part of the eligible capital expenditure.

The invoice for installation of the heat pump and gas furnace is in evidence and is dated July 20, 2022. I accept that the Landlords paid this invoice in July of 2022. The invoice for upgrading the electrical panel is in evidence and is dated June 02, 2022, and I accept this was paid in September of 2022. The BC Hydro Connection Request and associated charges are in evidence and dated July 04, 2022. I accept that the Landlords paid the BC Hydro charge in August of 2022. All of the costs associated with these three expenditures were incurred within 18 months prior to the Application being filed. The Landlords have proven section 23.1(4)(b) of the *Regulation* applies.

I accept that the heat pump and gas furnace are expected to last more than five years (see RTB Policy Guideline 40 page 6). I also accept that upgrading the electrical panel and having BC Hydro attend to disconnect and reconnect electrical services, both of which was done in order to install the heat pump, will not reoccur within five years because of the nature of the work, fact that it was done in order to install the heat pump which is expected to last for more than five years and based on RTB Policy Guideline

40 page 7 in relation to “panel and wiring” and “power lines”. The Landlords have proven section 23.1(4)(c) of the *Regulation* applies.

The Tenant did not appear to dispute the Application and therefore has not proven that section 23.1(5) of the *Regulation* applies.

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:

- \$21,546.00
- + \$6,405.00
- + \$21,659.25
- + \$1,342.00
- = \$50,952.25

I note that the Landlords have already accounted for amounts they will be reimbursed for from other sources.

I accept that the rental unit address is a house with an upper main residence and lower basement suite and therefore has two (2) specified dwelling units. The relevant calculation pursuant to section 23.3 of the *Regulation* is:

$$\text{Total ARI} = \frac{\$50,952.25 \div 2}{120} = \$212.30$$

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 \$212.30. 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.

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: February 08, 2023

Residential Tenancy Branch