



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 for an additional rent increase for capital expenditure pursuant to the *Residential Tenancy Act* ("Act") and the *Residential Tenancy Regulation* ("Regulation").

The Landlord stated that on October 06, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on September 01, 2022 were personally served to all of the Tenants/Respondents, with the exceptions of the Tenants/Respondents with the initials "SG" and "DM". The Landlord submitted a document which is signed by those Tenants/Respondents that were personally served.

The Landlord stated that on October 06, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on September 01, 2022 were sent to the Tenants/Respondents with the initials "SG" and "DM", by registered mail. The Landlord submitted Canada Post documentation that corroborates this testimony.

As the documents were properly served to the Tenants, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenants.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Landlord affirmed that he would not record any portion of these proceedings.

Issues to be Decided

Is the Landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

The Landlord stated that this is a residential complex with four rental units.

The Landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the Tenants prior to this application and there has been no additional rent increase in the last 18 months.

The Landlord testified that he was seeking to impose an additional rent increase, in part, for a capital expenditure incurred to pay for replacing a portion of the roof on the residential complex. He stated that this portion of the roof was replaced in 2022 because the roof was leaking.

The Landlord submitted receipts to show that in the summer of 2022 he paid \$17,624.25 to replace this portion of the roof.

The Landlord testified that he was seeking to impose an additional rent increase, in part, for a capital expenditure incurred to pay for repairing/painting the exterior of the residential complex. He stated that the one side of the residential complex was painted in August of 2021 and the remainder was repaired/ painted in August of 2022. He stated that some of the plywood siding had been damaged and needed repair prior to being painted. He stated that the exterior of the complex had not been painted for approximately 10 years.

The Landlord submitted a summary that declares he paid \$321.65 for materials in in 2021 which were used to repair/painting the exterior in 2021. The Landlord submitted receipts that establish he paid at least this amount in 2021.

The Landlord submitted a summary that declares he paid \$848.33 for materials in in 2022 which were used to repair/painting the exterior in 2022. The Landlord submitted receipts that corroborate this submission.

The Landlord submitted an estimate and proof of payment for the \$6,536.25 he paid to paint three sides of the complex in 2022.

Analysis

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. Those

sections establish that before imposing an additional rent increase for capital expenditures, a landlord must prove the following, on a balance of probabilities:

- The landlord has not made an application for an additional rent increase naming 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 expenditure was an eligible capital expenditure, specifically that:
 - the expenditure was to repair, replace, or install a major system or a major component;
 - the expenditure was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards;
 - because the system was close to the end of its useful life;
 - because it has 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.

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.

On the basis of the undisputed evidence, I find that prior to this application, the Landlord has not applied for an additional rent increase for capital expenditure naming any of these Tenants and there has been no additional rent increase in the last 18 months.

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;

...

"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;

...

"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.

On the basis of the undisputed evidence, I find the cost of repairing the roof and painting/repairing the exterior applies to 4 dwelling units in this residential complex.

As previously stated, to be considered an eligible capital expenditure, the Landlord must prove:

- the work done was to repair, replace, or install a major system or a major component;
- 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.

Capital Expenditure – Roof

On the basis of the undisputed evidence, I find that the Landlord spent \$17,624.25 replacing a portion of the roof.

I find that a roof meets the definition of a “major component”, as it is an integral part of the building.

On the basis of the undisputed evidence, I find that the capital expenditure was incurred because the roof was leaking.

On the basis of the undisputed evidence, I find the capital expenditure occurred less than 18 months prior to the Landlord applying for the additional rent increase.

Residential Tenancy Branch Policy Guideline #40 suggests that the useful life of a flat roof is 20 years and the useful life of a shingled roof is 15 years. On the basis of this guideline, I find it reasonable to conclude that this section of the roof will not need to be replaced within the next five years.

For all of the above reasons, I find that the roof replacement is an eligible capital expenditure, as defined by the *Regulation*.

I find that the Tenants have submitted no evidence to establish that this capital expenditure was incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or that the landlord has been paid, or is entitled to be paid, from another source.

I therefore find that the Landlord has proven, on a balance of probabilities, all of the elements required to impose an additional rent increase for the capital expenditure for the roof replacement. 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 four specified dwelling unit and that the amount of the eligible capital expenditure for the roof is \$17,624.25.

The Landlord has established the basis for an additional rent increase for capital expenditures of \$36.72 ($\$17,624.25 \div 4 \text{ units} \div 120$).

The parties may refer to 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), Residential Tenancy Branch Policy Guideline #37, and the additional rent increase calculator on the Residential Tenancy Branch website for further guidance regarding how this rent increase may be imposed.

Capital Expenditure – Exterior Painting

On the basis of the evidence submitted, I find that the Landlord spent \$7,710.13 to repair and paint the exterior of the building.

I find that exterior siding and decking meets the definition of a “major component”, as it is an integral part of the building.

Residential Tenancy Branch Policy Guideline #40 suggests that the useful life of exterior paint is 8. On the basis of this guideline, I find it reasonable to conclude that the exterior paint had exceeded its life expectancy.

On the basis of the undisputed evidence, I find the capital expenditure occurred less than 18 months prior to the Landlord applying for the additional rent increase.

As the life expectancy of exterior paint is 8 years, I find it reasonable to conclude that the exterior will not need to be repainted or repaired within the next five years.

For all of the above reasons, I find that the exterior repairs/paint is an eligible capital expenditure, as defined by the *Regulation*.

I find that the Tenants have submitted no evidence to establish that this capital expenditure was incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or that the landlord has been paid, or is entitled to be paid, from another source.

I therefore find that the Landlord has proven, on a balance of probabilities, all of the elements required to impose an additional rent increase for the capital expenditure for the exterior painting/repairs. 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 four specified dwelling unit and that the amount of the eligible capital expenditure for the exterior repair roof is at least \$7,706.23.

The Landlord has established the basis for an additional rent increase for capital expenditures of \$16.05 ($\$7,706.23 \div 4 \text{ units} \div 120$).

The parties may refer to 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), Residential Tenancy Branch Policy Guideline #37, and the additional rent increase calculator on the Residential Tenancy Branch website for further guidance regarding how this rent increase may be imposed.

Conclusion

The Landlord's application for an additional rent increase for a capital expenditure of \$17,624.25 on the basis of the roof replacement is granted. The Landlord may impose this increase in accordance with the *Act* and the *Regulation*.

The Landlord's application for an additional rent increase for a capital expenditure of \$7,706.23 on the basis of the exterior paint/repair is granted. The Landlord may 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 *Act*.

Dated: February 08, 2023

Residential Tenancy Branch