



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ARI-C**

Introduction

This hearing dealt with the Landlord's application for dispute resolution ("Application") pursuant to the *Residential Tenancy Act* (the "Act") and the *Residential Tenancy Regulation* (the "Regulation") for an additional rent increase for capital expenditures pursuant to section 23.1 of the Regulation.

At the preliminary hearing was held on November 28, 2022. Two of the Landlord's agents ("ML" and "MK") and four Tenants were present at the preliminary hearing: DR (unit 102), LT (unit 205), SA (unit 402) and LD (unit 404). ML stated the Notice of Preliminary Hearing and the Landlord's evidence ("NDRP Package") was served on each of the Tenants by registered mail by registered mail on July 22, 2022. I find the NDRP Package was served on the Tenants in accordance with the provisions of sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenant's were deemed to have received the NDRP Package on July 27, 2022.

This hearing was reconvened on January 5, 2022 pursuant to an interim decision dated December 2, 2022. ML, MK and LD attended this hearing. MK stated the Notice of Reconvened Hearing and the Interim Decision for this hearing were served on the parties by the Residential Tenancy Branch ("RTB").

Preliminary Issue – Correction of Post Code

LD stated the postal code used by the Landlord for the residential property was incorrect. ML confirmed the incorrect postal code was used and requested that I amend the postal code in the Application.

Residential Tenancy Branch Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Tenants could have reasonably anticipated the Landlord would ask for an amendment to the Application to correct the postal code, I hereby order the Application to be amended to correct the postal code for the residential property.

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 is a four-floor, wood frame apartment (the "building"). ML stated the building has 24 units. The parties agreed, and the records of the RTB confirm, that the Landlord has not applied for an additional rent increase for capital expenditure against any of the Tenants prior to the Application.

ML stated the Landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to replace the roof of the building (the "Work"). ML submitted into evidence a copy of a report ("Roof Assessment") dated September 1, 2022 from a roofing consultant. The Report contained multiple photos showing the dilapidated condition of the roof. The Report stated among other things:

- the condition of the roof had reached the point of failure with water existing between the two roofing systems that were installed
- the drainage for the size of the roof was observed to be insufficient, only one drain was observed in the roof system and was not centrally located

- ponding of water was observed on the westside of the building
- multiple leaks have been reported inside the building
- the penetration points on the building were observed to be missing critical waterproofing and will allow water to enter the building easily

ML submitted into evidence a quotation from the roofing contractor dated August 12, 2020 that detailed the particulars of roofing project and provided a quotation of \$96,450.00 plus 5% GST. The quotation stated there would be an additional charge of \$78.00 per hour plus the cost of material to clean and prepare wood roof deck, inspect for signs of rot or damage and replace with like sized sheathing. The quotation states the replacement roof will be warranted for a period of 15 years on workmanship and 10 year manufacturer guarantee on material.

MK stated the Landlord incurred \$112,613.17 in capital expenditures when completing the Work, as follows:

Description	Date Paid	Total
Payment to roofing contractor (25% down payment):	23-Oct-21	\$25,265.63
Payment to roofing contractor:	30-Oct-21	\$75,954.38
Payment to roofing contractor:	29-Mar-21	\$11,393.16
		\$112,613.17

I noted that it appeared that the replacement of the roof appeared to have been completed sometime in October 2020. When I asked, MK stated he did not have the certificate of completion available to him and was unable to state the date the roofing project was completed. I also noted that it appeared that the work performed in March was to address a deficiency which involved addressing pooling on the roof and the installation of another drain to address this deficiency. MK stated the last payment made by the Landlord was on March 29, 2021 for \$11,393.16 represented the Landlord's holdback.

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 a 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 ML and MK, and the records of the RTB, I am satisfied that the Landlord has not previously imposed an additional rent increase on any of the Tenants within 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.

Residential Tenancy Branch (the "RTB") Policy Guideline 37 states:

A specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred or, if not located in the building, is affected by the capital expenditure at the residential property. For example:

- If the roof of a building has been replaced, all dwelling units located in the building re specified dwelling units.

[...]

Unless they are located in the building where the capital expenditure was incurred, dwelling units that are not affected by the capital expenditure must not be used in the calculation.

For example, if there are two rental buildings on the residential property and the landlord performs \$1,000,000 in eligible capital expenditures on the first building, the dwelling units in the second building are not specified dwelling units and must not be used in the calculation.

[emphasis added]

As such, I find that the number of specified dwelling units for the purposes of the Work is equal to the number of units in the building (24 total). The Regulation requires that all units in the building where the repairs or replacement was carried out be considered specified dwelling units.

Policy Guideline 37 exempts dwelling units not located in the building where the capital expenditure was incurred, not those which are located in the building, but not affected. I find that all units are located in the building and, therefore, no units are exempted.

4. Amount of Capital Expenditure

Based on FD's testimony, supported by the invoices and ledgers submitted into evidence, I find that the Landlord incurred a total of \$112,613.17 in capital expenditures associated with the Work. Accordingly, I find that these costs, along with the cost of the contractor, are properly considered a capital expenditure.

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 involved the replacement of the building's roof. This is part of the building's structural system. The Regulation explicitly identifies a residential property's structural system as a “major system”. As such, the roof amounts to a significant component of the structural 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

Based on the Report, I accept the roof required replacement as it was past its useful life and because they were failing.

c. Timing of Capital Expenditure

The Landlord made the Application on June 28, 2022. RTB Policy Guideline 37 states:

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

Based on the testimony of MK, I find that only the capital expenditure paid on March 29, 2021 for \$11,393.16, being the payment of the holdback, was incurred within 18 months of the Landlord making the Application. As such, I find the payment made on March 29, 2021 was a capital expenditure that was made within 18 months of the Application.

However, I find the payments made on October 23, 2020 for \$25,265.63 and on October 30, 2020 for \$75,954.38 were capital expenditures made more than 18 months before the Application. As such, I find the payments made on October 23 and October 30, 2020 were not capital expenditures that were made within 18 months of the Application. As such, I find the Landlord is not entitled to seek an additional rent increase based on the expenditures made on October 23 and 30, 2020.

d. Life expectancy of the Capital Expenditure

The Contract provides a fifteen-year warranty on workmanship and a 10 year manufacturer guarantee on material. As such, I find that the life expectancy of the roof 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.

At the preliminary hearing, none of the tenants made submissions which relate to either of these two points. While I understand the concerns of the tenants, the Regulation restricts the grounds on which I made deny Application for an additional rent increase to the two points set out above.

At this hearing, LD stated the Landlord had an inspection performed on the building before it purchased the building. LD stated the Landlord would have negotiated a lower purchase price for the building with the former owner on the basis the roof required replacement. LD argued the Landlord should have planned for the financial expenditures required for replacing the roof and that the Landlord should not be entitled to pass the cost of replacing the roof onto the Tenants.

There is nothing in the Regulation which prevents a landlord from claiming an additional rent increase against a tenant when a landlord has recently purchased a residential property at a discount because the property requires capital expenditures to replace or renovate. The Regulation specifically permits a landlord to make an application to cover the cost of repairs. I accept that the Act requires the landlord to repair and maintain the building. However, such a requirement does not mean that the landlord is required to bear the cost of the repairs. The additional rent increase for capital expenditure process is specifically designed as a method for landlords to recover the cost of such repairs.

7. Outcome

The Landlord has been partially 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 24 specified dwelling units and that the amount of the eligible capital expenditure is \$11,393.16.

Based on the foregoing, Landlord has established the basis for an additional rent increase for capital expenditures of \$3,96 ($\$11,393.16 \div 24 \text{ units} \div 120$). 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 partially successful in the Application. I grant the Application for an additional rent increase for capital expenditure of \$3.96. 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 Interim 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: February 1, 2022

Residential Tenancy Branch