



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

The Landlord in this matter seeks an additional rent increase for capital expenditure pursuant to s. 43 of the *Residential Tenancy Act* (the “*Act*”) and s. 23.1 of the *Residential Tenancy Regulation* (the “*Regulation*”).

C.P. appeared as the Landlord’s agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

This matter had been scheduled for a preliminary hearing, which was held on October 11, 2022. In my interim reasons, I accepted that the Landlord had served its evidence by way of registered mail, which I found was done in accordance with s. 89 of the *Act*.

At the outset of the adjudicative hearing, I enquired with the Agent whether the Landlord had served the Notice of Dispute Resolution for the adjudicative hearing and whether any additional evidence had been served. The Agent advises that he personally served the Tenants with the notice for adjudicative hearing, except for one who had moved out of the residential property since the application was filed. I accept the Tenants were served with the notice for the adjudicative hearing. I find that this was done in accordance with s. 89 of the *Act*.

None of the respondent Tenants attended the hearing nor did they provide written submissions in response to the Landlord’s application. The hearing concluded without participation of the Tenants.

Issue to be Decided

- 1) Is the Landlord entitled to an additional rent increase for a capital expenditure?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agent advises that the subject residential property contains 32 units, inclusive of any manager suites.

I am directed to an email dated February 25, 2021 and a roof inspection report of the same date in the Landlord's evidence. The email notes the expected life of the roof is approximately 15 to 17 years. The report estimates the roof to have been last replaced approximately 25 years prior, which the Landlord's agent could not confirm as the Landlord took over management of the property somewhat recently. The roof inspection report notes the roof for the residential property had failed and recommended it needed replaced. I am told by the agent that the roof had been leaking into the rental units on the third floor.

The Landlord's agent advises that the roof to the residential property was replaced in the summer of 2021 and that the total cost of the replacement was \$119,800. The Landlord's evidence includes a payment summary showing invoice dates between July 2021 and September 2021. The Landlord's evidence also includes a handwritten invoice showing the roof replacement cost at \$114,000 plus GST and additional charges for cap and stack repairs. At the hearing, the Landlord's agent confirmed that the Landlord was only seeking the cost for the roof replacement, not the cap and stack repairs. The Landlord's evidence also includes quotes for the roof's replacement that were higher than what was paid by the Landlord.

The Landlord's agent confirms that the Landlord has not previously applied for an additional rent increase for capital expenditure with respect to the present residential property.

Analysis

The Landlord seeks an additional rent increase for capital expenditures.

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. Landlords seeking an additional rent increase under s. 23.1 of the Regulations must prove, on a balance of probabilities, the following:

- The landlord has not successfully applied for an additional rent increase against the tenants within 18 months of their application.
- The capital expenditure was incurred for the repair, replacement, or installation of a major component or major system for the property.
- The capital expenditure was incurred for one of the following reasons:
 - to comply with health, safety, and housing standards required by law in accordance with the landlord's obligation to repair the property under s. 32(1) of the *Act*;
 - the major component or system has failed, is malfunctioning or inoperative, or is close to the end of its useful life; or
 - the major component or system achieves one or more of either reducing greenhouse gas emissions and/or improves security at the residential property.
- The capital expenditures were incurred in the 18-month period preceding the date on which the landlord applies.
- The capital expenditures are not expected to be incurred again for at least 5 years.

Tenants may defeat a landlord's application for additional rent increases for capital expenditures if they can prove on a balance of probabilities that:

- the repairs or replacements were required because of 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.

Once the threshold question has been met, the Landlord must also demonstrate how many dwelling units are present in the residential property and the total cost of the capital expenditures are incurred.

Section 21.1(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;

[...]

"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;

"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.

In this instance, I have little difficulty finding that the roofing is a major component of the residential property and that it was past its useful life and had begun to fail. This is supported by the roof inspection report dated February 25, 2021 and by the Landlord's agent, who informed the roof had begun to leak. I accept that the Landlord has not previously applied for an additional rent increase under s. 23.1 of the Regulation and that the costs were incurred within 18-months of the Landlord filing its application, which in this case was done on May 25, 2022. I further accept, as demonstrated in the email of February 25, 2021, that the roof is expected to have a lifespan that exceeds 5 years.

I find that the Landlord has demonstrated that the roof replacement is an eligible capital expenditure.

I accept the Landlord's undisputed evidence that there are 32 dwelling units in the residential property. I further accept that the cost of the roof replacement, as demonstrated in the Landlord's evidence, was \$114,000.00 plus GST, which in this case is \$119,700.00 (\$114,000.00 x 1.05). I find that the Landlord has demonstrated an

eligible capital expenditure totalling \$31.17 ($\$119,700.00 \div 32$ dwelling 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 Policy Guideline 40, section 23.3 of the Regulation, s. 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 Residential Tenancy Branch's website for further guidance regarding how this rent increase made be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$31.17. The Landlord must impose this increase in accordance with the *Act* and 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 *Residential Tenancy Act*.

Dated: February 27, 2023

Residential Tenancy Branch