



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 pursuant to the *Residential Tenancy Act* ("Act") and the *Residential Tenancy Act Regulation* ("Regulation") for an additional rent increase for a capital expenditure pursuant to section 23.1 of the Regulation ("Application").

An agent for the Landlord, C.A. ("Agent") attended both hearings. One tenant was present at both hearings, R.C. ("Tenant"); however, he said he is not the formal representative for all of the building's tenants. None of the other tenants attended either hearing, nor did any tenant submit any evidentiary materials to the RTB or the Landlord.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing documents and the Landlord's evidence to the tenants. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served all of the tenants with the Application and Notice of Hearing documents and the Landlord's evidence by Canada Post registered mail, sent on April 6, 2022. The Landlord provided Canada Post tracking numbers as evidence of service. Based on this and the Tenant's confirmation of having been served as per the Agent's evidence, I find that the tenants were deemed served with the Landlord's relevant documents and evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent and the Tenant who were present at the hearings. The Tenant confirmed that the tenants did not submit any documentary evidence to this proceeding.

Issue(s) 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

The Parties agreed that the residential property is over 100 years old, is a three-story apartment building, and has five rental units – specified dwelling units - numbers 1 through 5. The Parties confirmed that all units in the building are occupied by tenants and none by the Landlord's employees – i.e., a caretaker or building manager or for storage. They agreed that the roof was approximately 22 years old when it was replaced in 2020.

Prior and Present Application for Additional Rent Increase

The Agent testified that the Landlord has not applied for an additional rent increase for capital expenditures against any of the tenants prior to this Application. The Agent testified, and the Tenant agreed that the Landlord has not levied any rent increase and certainly not an additional rent increase for capital expenditure for the rental units in approximately ten years.

The Capital Expenditure

The Agent testified that the Landlord seeks to impose an additional rent increase for a capital expenditure incurred to pay for work done to the roof of the residential property. He testified in the hearing that the roof needed to be replaced, because:

The roof has been experiencing a few leaks; a couple of contractors had advised that it needed to be replaced. The people who tried to repair it thought at the time that it was time to replace it.

The Tenant agreed, saying:

I think the need was definitely there. I moved in as a roommate about a month or two after the work was complete, and being in the attic, [my roommate] told me there were a lot of leaks for over a year prior to the work being completed.

The Invoice for the roof replacement dated September 13, 2020, was billed to the Landlord for **\$29,694.00** ("Invoice"). I inserted the description of the work from the Invoice, as follows:

- carefully **protect** gardens and surrounding property as required during entire job.
- remove all existing roofing; dispose of all debris.
- sheet entire roof with **3/8" plywood** sheathing over existing shiplap board deck.
- apply 30 pound 36" roofing felt eave and valley protection.
- apply [REDACTED] synthetic underlay to balance of roof surface.
- install 26 gauge pre-finished 24" metal valleys, skylight and gable edge flashings.
- replace all plumbing stack flashings and chimney flashing; seal in counter flashings.
- install 16 roof vents and 1-4" fan vent at 1 per 300 square feet of attic area.
- install [REDACTED] algae resistant laminated fiberglass shingles and hip & ridge capping.
- fasten loose soffit board as required.
- clean up site daily, clean up thoroughly upon completion; clean gutters and use magnetic sweep to retrieve loose nails from yard.

The ("Work"). .

[emphasis in original]

The tenants did not dispute the cost of the Work or that it was needed. The Tenant agreed, and said that the other tenants he spoke with agree that the roof needed to be replaced.

Timing of Application per Capital Expenditure

When asked for the tenants' position on the Work, the Tenant mentioned a concern of one other tenant who is on a fixed income. The Tenant said that this other tenant questioned whether the Application for an additional rent increase was made on time, pursuant to the requirements of the legislation. The Tenant said the other tenant asserts that the Application, which the Landlord made on March 14, 2022, was a day late, since the Invoice is dated September 13, 2020; as such, they argue that the Application should not be granted, because it is beyond the 18 month time limit required by the legislation.

The Agent's evidence is that the work was started on September 1, 2020, and was finished, "probably somewhere in the first week of September [2020]." The Invoice is dated September 13, 2020, and the Agent said that this was paid by the Landlord: "Paid close to the last days of September by the owners directly." Our records indicate, and the Parties agreed that the Landlord applied for an additional rent increase for a capital expenditure on March 14, 2022.

In answer to my question as to when this work will have to be completed again, the Agent said: "The typical lifespan of a roof is 25 to 35 years, so it depends on how good the installation was and how it's treated. If moss grows, it can accelerate it." The Agent was certain that the roof would not need to be replaced within the next five years.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Parties agree that the roof of the residential property was completed in the first week of September 2020. They agree that the contractor invoiced the Landlord for the cost of this work on September 13, 2020, for a total of \$29,694.00. The undisputed evidence before me is that the Landlord paid this Invoice in the last week of September 2020, which I find to be between September 25 and 30, 2020.

Statutory Framework

Subsection 43 (1) (b) of the Act states that a landlord may impose a rent increase only up to the amount ordered by the Director on an application under subsection (3) of the Act. Subsection 43 (3) of the Act states:

In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

Sections 21.1 and 23.1 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, a landlord must prove the following, on a balance of probabilities:

- ▶ that the landlord has not applied for an additional rent increase against 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 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,
 - ❖ **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.

[emphasis added]

Policy Guidelines #37 (“PG #37”) states:

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.

[emphasis added]

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.

If a landlord discharges their evidentiary burden and the 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.

Prior Application for Additional Rent Increase

The Parties agreed that the Landlord has not imposed an additional rent increase for this property prior to the one before me. In fact, they agreed that the Landlord has not imposed any rent increase for approximately ten years.

Number of Specified Dwelling Units

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;

[...]

"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.

The Parties agreed that there are five specified dwelling units in the residential property and no mere dwelling units. Further, they agreed that the capital expenditure was dedicated to this one building owned by the Landlord. The roof was replaced for the building containing the five specified dwelling units.

Amount of Capital Expenditure

The Parties agreed that the Invoice set out the cost of this capital expenditure as \$29,694.00.

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
 - 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.

PG #37 states that the roof of a residential property is a “major system” for this type of application. Based on the evidence before me, and PG #37, I find that the capital expenditure – the new roof – is an eligible capital expenditure. I find that the Work was needed, because the roof had failed, was malfunctioning, or was inoperative, given the leaks noted by at least the attic Tenant(s).

I find that September 15, 2020 was 18 months prior to the March 14, 2022 Application. **The Regulation states that a capital expenditure is “incurred” when it is paid.** The evidence before me is that the earliest date on which the Invoice was paid was September 25, 2020. As such, I find that the Application was made within 18 months of

the date the expenditure was incurred. I, therefore, find that this expenditure was eligible for compensation pursuant to the legislation.

Life expectancy of the Capital Expenditure

I find that the useful life for the replaced roof exceeds five years. There is nothing in evidence which suggests that the life expectancy of the roof would deviate from the standard useful life expectancy of a roof set out at RTB Policy Guideline 40 as 15 years. For this reason, I find that the life expectancy of the component replaced will exceed five years and that the capital expenditure to replace it 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.

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 that the landlord must prove (set out above), a 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.

The tenants did not submit any evidence to counter the Landlord's claims in this regard, other than to question the timing of the Application, which has been addressed above.

Outcome

The Landlord is successful. They have proven on a balance of probabilities, all of the elements required to impose an additional rent increase for a capital expenditure.

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the addition rent increase as: the eligible capital expenditure amount divided by the number of specific dwelling units, divided by 120. In this case, I have found that there are five specified dwelling unit and that the amount of the eligible capital expenditure is \$29,694.00.

Accordingly, the Landlord has established an additional rent increase for the capital expenditures of $(\$29,694.00 \div 5 \text{ units} \div 120) = \49.49 per unit, per month.

The Parties may refer to RTB Policy Guideline 40, section 23.3 of the Regulation, section 42 of the Act (which requires that a landlord provide tenants with **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 is successful. I grant the Application for an additional rent increase for a capital expenditure of **\$49.49**. 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 Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 14, 2023

Residential Tenancy Branch