



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0754148 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

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

The landlords attended the hearing. No one attended the hearing for the tenants.

The landlords stated that they served the Notice of Hearing and documentary evidence to each tenant in person on October 6, 2022. The Landlords submitted a signed proof of service demonstrating that each Tenant was served with the Notice of Hearing in person on October 6, 2022. I find these documents were sufficiently served to the tenants pursuant to Section 89 and 90 of the Act, the tenants are deemed to have received the documents on October 6, 2022. The tenants did not submit any evidence in response to the application.

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 landlords described the rental property as one apartment building that has three levels. The landlords stated that there are 6 rental units per level for a total of 18 rental units at the rental property. The landlords stated that the work completed only benefited the units on the second and third floor as the first floor units do not have a balcony.

The landlords further indicated that unit 306 has two balconies and is rented under two separate tenancy agreements. The landlords stated that they collect two rent amounts, therefore, each tenant in unit 306 would receive a notice of rent increase. As such, the landlords stated that technically there are 13 units that have received the benefit of the work being completed and would be eligible for the additional rent increase for capital expenditures.

The landlords testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlords testified that they are seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's balconies. The landlords testified that they replaced the aging vinyl decking, railings, rotten plywood, and fascia boards to 13 balconies (collectively, the "**Work**").

The landlord testified the Work was done because the balconies at the rental property had surpassed their useful life, were causing leaks and rot, and were no longer up to building code. The landlords stated that the balconies and railings had not been replaced since being installed in the late 1960's.

I note that none of the tenants attended the hearing to dispute the landlord's application.

The landlords provided a detailed breakdown of the costs associated with completing the work as follows;

Item	Receipt #	Amount
railing	2	35823.20
panels	3	3360.00
scaffold rental	3A	16829.01
Vinyl install	4	3081.20
Vinyl install	4	1612.80
Vinyl install	4	2797.20
Vinyl install	4	2537.27
Vinyl install	4	1260.00
Vinyl Deck Flooring	5	20435.54
Other Material (wood/Fascia/Cement Board, Screws Paint etc.)	6	1968.08
Other Material (wood/Fascia/Cement Board, Screws Paint etc.)	7	1049.88
Other Material (wood/Fascia/Cement Board, Screws Paint etc.)	8	259.42
Other Material (wood/Fascia/Cement Board, Screws Paint etc.)	9	3144.92
Other Material (wood/Fascia/Cement Board, Screws Paint etc.)	10	738.12
Labor	11	3500.00
Labor	12	6985.00
Labor	13	400.00
Labor	13	450.00
Labor	14	560.00
Labor	14	1050.00
Labor	14	153.95
Labor	15	137.50
Total		\$108,133.09

The landlord submitted copies of invoices supporting these amounts which total \$108,133.09.

The landlords stated that they have not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Analysis

1. Statutory Framework

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. 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 made an application 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:
 - o the Work was to repair, replace, or install a major system or a component of a major system
 - o 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;
 - o the capital expenditure was incurred less than 18 months prior to the making of the application
 - o the capital expenditure is not expected to be incurred again within five years.

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, 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.

2. Prior Application for Additional Rent Increase

I accept that the landlords have not submitted a previous application for additional rent increase for capital expenditures.

3. Number of Specified Dwelling Units

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.

While the landlords indicated that there are 12 dwelling units with balconies, it was determined that one of the units has two balconies and is rented under two separate agreements which would each be eligible for a rent increase. As such, I find that there are 13 dwelling units that have been affected by the work for which the capital expenditure was carried out.

4. Amount of Capital Expenditure

I accept that the landlords incurred a cost of \$108,133.09 to complete the work.

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
 - 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.

I will address each of these in turn.

a. Type of Capital Expenditure

I find that the balconies and railings which were replaced represent a major component of the rental property.

b. Reason for Capital Expenditure

I find that the landlords have provided sufficient evidence that the balconies and railings had surpassed their useful life and were in need of replacement due to leaks and rot.

c. Timing of Capital Expenditure

I accept the landlords evidence that the first payment for the work was incurred in May 17, 2022 and the final payment was incurred in August 2022. Both of these dates are within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components replaced all exceed five years. There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40. For this reason, I find that the life expectancy of the components replaced will exceed 5 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.

No one attended the hearing for the tenants to oppose the landlords' application.

7. Outcome

The landlord has been successful. He 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 13 specified dwelling unit and that the amount of the eligible capital expenditure is \$108,133.09.

So, the landlords have established the basis for an additional rent increase for capital expenditures of \$69.31 ($\$108,133.09 \div 13 \text{ units} \div 120$).

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 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 successful. I grant the application for an additional rent increase for capital expenditure of \$69.31. 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 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 07, 2023