



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding GALATIA REALTY INC. DBA VILLA EVE
TOWNHOUSES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord July 12, 2022 (the "Application"). The Landlord states that they have eligible capital expenditures and are seeking an additional rent increase.

This matter came before me December 08, 2022, and was adjourned. An Interim Decision was issued December 12, 2022. The Interim Decision should be read with this Decision.

In the Interim Decision, the Landlord was ordered to serve nine units with either the hearing package, first set of evidence or second set of evidence as necessary in accordance with section 88 of the *Residential Tenancy Act* (the "Act"). T.P. provided a signed statement confirming service of the necessary documents to the nine units in accordance with sections 88(a), (c) and (g) of the *Act*. Based on the signed statement of T.P. and documentary evidence of service provided by the Landlord, I am satisfied the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88 and 89 of the *Act*.

In the Interim Decision, I note that I found this matter could be conducted by written submissions and that, if I found fairness required an oral hearing, I would reconvene the hearing as an oral hearing. I have reviewed the materials provided by all parties and do not find there is any unfairness in conducting this matter by written submissions or any need for an oral hearing.

I have reviewed all evidence and submissions provided. I will only refer to the evidence and submissions I find relevant in this Decision.

Issue to be Decided

1. Is the Landlord entitled to impose an additional rent increase due to eligible capital expenditures?

Background and Evidence

The Application sets out two capital expenditures the Landlord is applying for an additional rent increase in relation to:

1. Replacement of roof on building [see cover page] by Erickson Roofing \$79,761.15
2. Replacement of boilers in buildings [see cover page] by Apex Steel & Gas to high efficiency gas boilers \$93,765.74

The Agent for the Landlord confirmed the Application relates to five separate buildings. The Agent advised that all units are listed on the Application, other than a unit in Building B (see cover page). I have added the unit in Building B in my calculations below. The Agent said the Landlord took ownership of the buildings in 2009.

The parties provided the following evidence and submissions in relation to the above expenses.

1. ***Replacement of roof on building [see cover page] by Erickson Roofing \$79,761.15***

The Landlord is seeking this cost for replacement of the roof on one of the buildings and is only asking that the additional rent increase apply to the units in that one building.

The Landlord's written submissions state:

The roof was leaking and at the end of its life. The previous owner...indicated that the roof dated from approximately 1995. See statement dated January 10, 2023.

In January 2020, Erickson Roofing was called for a leak over suite...A temporary repair was made as per invoice dated January 31, 2020.

In March 2020, another leak occurred over building...Erickson performed another repair as per invoice dated March 2, 2020.

In December 2020, a leak occurred over unit...Erickson was called again for a repair in the amount of \$233.10.

A contract was signed with Erickson Roofing in May 2021 indicating that *'the roof is estimated to be over 20 years old'*. The roof had to be replaced for the safety of the property and its occupants.

...The roof was replaced in June 2021 in the amount of \$79,761 as per the invoice and photo submitted.

This expense is not expected to occur again within 5 years.

The Landlord provided documentary evidence to support their position.

Some of the Tenants provided written submissions stating the following. The roof replacement is not an eligible capital expenditure because the replacement was necessary due to the Landlord's inaction. Water damage previously occurred in three units due to the roof leaking. The roof was replaced in 1995. The roof was at the end of its useful life in 2015. Roof leaks caused damage to units in 2017 and 2020. The roof replacement is not an eligible capital expenditure because of the Landlord's inaction regarding the roof. The Landlord knew the roof was at the end of its useful life in 2015. The leaks show the Landlord's pattern of inaction to replace the aging roof which was well beyond its useful life. It is the delay in the Landlord replacing the roof that results in the roof replacement not being an eligible capital expenditure.

A Tenant submitted a statement about water damage to their unit in 2017. The Tenants submitted an invoice from 2020 in relation to work done due to roof leaks.

In reply, the Landlord states that the leak and water damage which occurred in 2017 was due to the heating system and not a rook leak. The Landlord states that there were no known leaks in the roof prior to 2020 and no reason to believe the roof should have been replaced earlier than it was.

2. Replacement of boilers in buildings [see cover page] by Apex Steel & Gas to high efficiency gas boilers \$93,765.74

The Landlord is seeking this cost for replacing boilers in all five buildings and is asking that the additional rent increase apply to all units on the Application. The Landlord states that the boilers were at the end of their useful life.

The Landlord's written submissions state:

Starting in the winter of 2017, the boilers began breaking down frequently and often leaving tenants without heat.

In November and December 2017, relays and contactors were replaced on the boiler to buildings...by Mazzei Electric as per invoices dated November 30, 2017 and December 29, 2017 totaling \$2,930.84.

In March 2020, the boiler in building...was not functioning. Mazzei Electric replaced the control system on March 31, 2020 for the amount of \$4,888.60. Mazzei Electric recommended that the landlord order spare parts for any future problems and replace the boilers because the parts were getting harder to find.

In February 2021, the boiler system was down again. The contactors on the boilers were replaced at the cost of \$3,802.33.

The Landlord was doing regular yearly maintenance on the boilers. The last regular maintenance was in November 2020 by Apex Gas as per the invoice dated November 16, 2020.

The electric boilers in each building were at the end of their life. In February 2021, Apex Steel & Gas submitted a quote for replacing the electric boilers with gas boilers as this was the least expensive option. Apex Steel & Gas indicated that *'the 5 boilers date from 1996'*.

The boilers had to be replaced for the safety of the property and its occupants so that tenants were not left without heat during the winter.

The boilers in buildings...were replaced by Apex Steel & Gas in September 2021 with high efficiency boilers. Please see Apex Steel & Gas invoices dated September 7, 2021 totaling \$93,765 and photo of a replaced boiler.

To offset the cost of the boiler, the Landlord applied to Fortis BC for a grant in the amount of \$11,940. A grant was received dated November 23, 2021.

This expense is not expected to occur again within 5 years.

The Landlord provided documentary evidence to support their position.

Some of the Tenants provided written submissions stating the following. The Landlord failed to reduce greenhouse gas emissions and does not meet the criteria for an additional rent increase pursuant to the RTB Policy Guideline which states:

“Any reduction in energy or greenhouse gases would qualify the installation, repair or replacement for the additional rent increase.”

The Tenants state that the Landlord failed to reduce greenhouse gas emissions when replacing the electric boilers with a gas boiler. The Landlord did not meet the criteria of reducing greenhouse gas emissions but instead increased the carbon footprint of the property. The Landlord chose gas boilers because they were the “least expensive”.

In reply, the Landlord states:

A capital expenditure does not have to reduce greenhouse gas emissions to be eligible. Further, Landlord installed a high efficiency furnace to reduce greenhouse gas emissions as opposed to a regular efficiency furnace.

Analysis

Section 43(3) of the *Act* allows for additional rent increases.

Sections 23.1 and 23.2 of the *Residential Tenancy Regulation* (the “*Regulation*”) address additional rent increases for eligible capital expenditures and state:

23.1 (1) Subject to subsection (2), a landlord may apply under section 43 (3) [additional rent increase] of the *Act* for an additional rent increase in respect of a

rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application...

(4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:

(a) the capital expenditures were incurred for one of the following:

- (i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [landlord and tenant obligations to repair and maintain] of the Act;
- (ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
- (iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:
 - (A) a reduction in energy use or greenhouse gas emissions;
 - (B) an improvement in the security of the residential property;

(b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;

(c) the capital expenditures are not expected to be incurred again for at least 5 years.

(5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred

(a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or

(b) for which the landlord has been paid, or is entitled to be paid, from another source.

23.2 (1) If the director grants an application under section 23.1, the amount of the additional rent increase that the landlord may impose for the eligible capital expenditures is determined in accordance with this section.

(2) The director must

(a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and

(b) divide the amount calculated under paragraph (a) by 120.

(3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43 (1) (a) of the Act in that year by 3%.

(4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

Section 23.3 of the *Regulation* addresses the implementation of additional rent increases for eligible capital expenditures.

RTB Policy Guideline 37C ("PG 37C") addresses additional rent increases for eligible capital expenditures and provides further details about the requirements outlined above. I have not reproduced the guideline here; however, it is available on the RTB website.

**1. Replacement of roof on building [see cover page] by Erickson Roofing
\$79,761.15**

The roof is a “major component” of the building (see PG 37C page 2). There is no issue that the roof was replaced. The roof was last replaced in 1995 as agreed to by the parties. The roof was past its useful life, which was 20 years (see RTB Policy Guideline 40 page 3). The roof was leaking as agreed to by the parties. I find the Landlord has proven that the roof was replaced because it had failed or was malfunctioning or close to the end of its useful life, as required by section 23.1(4)(a)(ii) of the *Regulation*.

The invoice for replacement of the roof is dated June 28, 2021. The cheques show the Landlord paid the amount sought in May and July of 2021. I accept the statement of the Landlord that the roof was replaced in June 2021 because this accords with the invoice and cheques. The Application was filed July 12, 2022. The roof replacement costs were incurred in the 18-month period preceding the Application date as required by section 23.1(4)(b) of the *Regulation*.

I accept that the roof replacement is not expected to be incurred again for at least five years because this is not routine maintenance, it is a major project on a flat roof that has a useful life of 20 years (see RTB Policy Guideline 40 page 3). I find the Landlord has proven that section 23.1(4)(c) of the *Regulation* is met.

The Tenants submit that the roof replacement is not an eligible capital expenditure pursuant to section 23.1(5)(a) of the *Regulation* which states:

(5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred

(a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord...

I do not agree that the evidence shows the Landlord did not adequately repair or maintain the roof. I find the invoices in evidence show the Landlord had a roofing company attend and fix issues with the roof when they arose. I note that none of the invoices from prior to the roof replacement state that the whole roof needs replacement. The Landlord was not required to replace the whole roof at the first sign of leaking or issues. When leaks or issues arose, the Landlord was required to have them fixed,

which the Landlord did as shown in the invoices provided. The purpose of section 23.1(5)(a) of the *Regulation* is to limit the Tenants' responsibility for paying towards capital expenditures when the costs were only incurred because the Landlord did not maintain the major system or component or the costs were higher because the Landlord did not maintain the major system or component. An example is provided in PG 37C:

An example of an ineligible capital expenditure due to the inadequate repair or maintenance of a landlord would be if a landlord knew or ought to have known that the **roof was leaking but did not act promptly to fix the leak adequately and, as a result, had to repair structural damage, remediate mould, and replace drywall. The roof expenditures would be eligible because the roof was at the end of its service life.** However, if the extent of the repairs or replacement necessary is due to a landlord's inaction, the full amount may not be eligible. For example, if the leaking roof was not at the end of its useful life and could have been repaired instead of being fully replaced had a landlord acted sooner, then only the amount that reflects what the repairs would have cost would be eligible.

Here, the Landlord did repair roof leaks as they were required to do. The Landlord is not seeking costs for further damage caused by the roof leaks. The Landlord was not required to replace the roof at year 20 on the sole basis that it was at the end of its useful life. There is no compelling evidence before me showing that the roof needed to be replaced earlier and, by not replacing it earlier, the cost of doing so increased. I do not find that section 23.1(5)(a) of the *Regulation* applies because the evidence shows that the Landlord did repair and maintain the roof as required.

Given the above, I find the costs associated with replacing the roof are eligible capital expenditures. This capital expenditure applies to units in one of the buildings only, therefore 12 units. The relevant calculation pursuant to section 23.2 of the *Regulation* is:

$$\text{Total ARI} = \frac{\$79,761.15 \div 12}{120} = \$55.38$$

The Landlord must do the remainder of the calculations and must impose the additional rent increase in accordance with the *Act*, *Regulation* and PG 37C.

2. Replacement of boilers in buildings [see cover page] by Apex Steel & Gas to high efficiency gas boilers \$93,765.74

Boilers are “major systems” and “major components” (see PG 37C). I accept based on the invoices submitted that the boilers were failing. I accept based on the Apex Steel & Gas Ltd. quote that the boilers were from 1996, around 25 years old when they were replaced. I accept that the boilers were at the end of their useful life (see RTB Policy Guideline 40 page 6). I accept based on the invoices that the boilers were replaced. I find the Landlord has proven that section 23.1(4)(a)(ii) of the *Regulation* applies.

I find the boilers were replaced in August 2021 based on the invoices. The invoices were issued September 07, 2021. The Landlord paid the invoices September 24, 2021, according to the bank record and cheque. The Application was filed July 12, 2022. The boiler replacement costs were incurred in the 18-month period preceding the Application date as required by section 23.1(4)(b) of the *Regulation*.

I accept that replacing the boilers is not expected to reoccur for at least five years given the nature of the work and useful life of boilers (see RTB Policy Guideline 40 page 6). I find the Landlord has proven that section 23.1(4)(c) of the *Regulation* is met.

The Tenants’ argument that the costs associated with replacing the boilers is not an eligible capital expenditure because the Landlord failed to reduce greenhouse gas emissions is a misunderstanding of the requirements. The relevant reference is in section 23.1(4)(a)(iii)(A) of the *Regulation*. The Landlord does not need to prove that section 23.1(4)(a)(iii)(A) of the *Regulation* has been met to prove costs are an eligible capital expenditure. The Landlord only has to prove that one of the following three things apply:

(a) the capital expenditures were incurred **for one of the following:**

- (i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [landlord and tenant obligations to repair and maintain] of the Act;

- (ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
- (iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:
 - (A) a reduction in energy use or greenhouse gas emissions;
 - (B) an improvement in the security of the residential property;

The Landlord does not have to prove that all three purposes apply, only that one applies as stated in section 23.1(4)(a) of the *Regulation* and highlighted above. Here, the Landlord has proven that the boilers were failing and close to the end of their useful life and therefore has proven that one of the purposes set out under section 23.1(4)(a) of the *Regulation* applies.

Given the above, I find the costs associated with replacing the boilers does qualify as an eligible capital expenditure. However, the Landlord received a grant for the replacement of the boilers in the amount of \$11,940.00 as stated by the Landlord and shown in the evidence. Given this, \$11,940.00 of the cost of replacing the boilers is not an eligible capital expenditure under section 23.1(5)(b) of the *Act*.

Given the above, \$81,825.74 of the cost for replacing the boilers is an eligible capital expenditure. I find this capital expenditure applies to all five buildings. I have added the unit that was not included on the Application in the following calculation and find there is a total of 60 units in the five buildings. The relevant calculation pursuant to section 23.2 of the *Regulation* is:

$$\text{Total ARI} = \frac{\$81,825.74 \div 60}{120} = \$11.36$$

The Landlord must do the remainder of the calculations and must impose the additional rent increase in accordance with the *Act*, *Regulation* and PG 37C.

Summary

I find both capital expenditures claimed are eligible capital expenditures under section 23.1(4) of the *Regulation*. None of the costs claimed are for routine maintenance. All of the costs claimed are for the very type of costs contemplated by section 23.1 of the *Regulation* and PG 37C.

Conclusion

The Landlord is entitled to impose an additional rent increase. The amounts calculated pursuant to section 23.2(2) of the *Regulation* are set out above. The Landlord must do the remainder of the calculations and must impose this additional rent increase in accordance with the *Act*, *Regulation* and PG 37C.

A copy of this Decision must be served by the Landlord on the Tenants within two weeks of the Landlord receiving this Decision from the RTB.

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: March 17, 2023

Residential Tenancy Branch