



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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 landlord attended the hearing. She was assisted by an agent ("HK"). Both tenants attended the hearing.

The parties agreed that the landlord served the tenants with the notice of dispute resolution proceeding package and supporting documentary evidence. The tenants did not submit any documentary evidence.

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 tenants occupy the lower unit of a two unit single detached house. The upper unit is rented to other tenants who are not parties to this application. The tenancy began on September 1, 2021. The tenants pay the landlord monthly rent of \$1,700. The parties disagree as to the amount of the security deposit paid by the tenants to the landlord (the tenants say they paid \$900. The landlord says they paid \$850).

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

The landlord testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's roof, gutters, hot water tank (including electrical), exterior security lights, gas furnace, closet,

exterior parking, and kitchen (electrical only) (collectively, the “**Work**”). I will address each of these categories of work in turn.

1. Roof

The landlord testified that he bought the residential property in August 2021 and that, at that time, the roof was original to the house. The house was built in 1991. He argued that the roof was at the end of its useful life and needed to be replaced. The landlord replaced the roof and paid for the replacement in three installments totaling \$17,535. He testified that the roof came with a 10-year warranty.

2. Gutters

The landlord testified that he replaced the gutters at the same time he replaced the roof. He stated that the gutters were original to the house as well and that they were leaky and not draining water correctly. The new gutters came with a 5-year warranty and cost the landlord \$1,218 to install.

3. Hot Water Tank

The landlord testified that the house has a single hot water tank which supplies both the rental unit and the upper unit. He testified that the hot water tank was original to the house and past the end of its useful life. He testified that it came with a 6-year warranty and cost \$1,669.50 to replace.

The landlord testified that the new hot water tank required a 30 amp electrical circuit and the former hot water tank only required a 15 amp electrical circuit. Accordingly, a new circuit had to be installed at a cost of \$404.25.

4. Exterior Security Lights

The landlord testified that the approach to the rental unit from the front of the building was dark, and that the tenants requested that he install a motion activated exterior light to make it easier for them to walk to the rental unit during the night. He testified that the light that was installed has a 5-year warranty and that he paid \$709.80 for the installation of wiring and motion sensors on the side of the house. He argued that this light was installed for safety reasons.

5. Gas Furnace

The landlord testified that both units in the house are heated by a single furnace. He testified that the tenant complained that the heating was not sufficient in the rental unit. The landlord investigated and discovered that the furnace was an old electrical model which was original to the building. He testified that he had a new gas furnace installed

that came with a 10-year warranty. The installation of a gas furnace also required that a new gas line be run to the furnace room. He testified that he paid \$9,200 for the supply and installation of the new furnace and that he paid a further \$655.31 to install the new gas line.

In support of the cost of the gas line, he submitted an invoice for natural gas from Fortis which indicated "delivery charges" of \$69.70, "commodity charges" of \$60.88, and "other charges and taxes" including a charge for "premise work performed" of \$465 plus \$23.25 of GST which I understand related to the installation of the new gas line.

6. Closet

The landlord testified that he installed drywall, framing, and a door in the rental unit, at the tenants' request, to create an enclosed closet in the rental unit. He submitted an invoice for \$2,956.36 for the completion of this work. However, this invoice includes other work for which the landlord is not seeking to impose a rent increase. The landlord stated that \$200 should be deducted from this amount to account for the other work done.

7. Kitchen Electrical and Bathroom Fan

The landlord testified that in order to allow the microwave and stove to operate safely, he was advised by his electrician that they needed their own dedicated electrical circuit. As such, he paid for its installation.

Additionally, he testified that two of the bathroom fans were not working properly and had to be replaced. He testified that these fans were original to the rental unit and past their useful life. He testified that he paid an electrician \$1,539.60 so the completion of both these tasks (for both labour and materials).

8. Exterior Parking

The landlord testified that the house had a temporary gravel parking lot when he purchased it. He testified that he intends to install a paved parking lot, but as not yet completed that work. He stated that he does not intend to apply for an additional rent increase for the cost of the paving. However, he seeks to impose an additional rent increase for the cost of the preparatory work which is required prior to the new parking lot can be paved. This includes:

- excavating work (\$10,444)
- construction of a retaining wall (\$3,578.56)
- arborist costs (\$2,373)
- stump grinding (\$735)

The landlord testified that the current driveway access to the house was shared with the neighboring property and that he “had to” build a new driveway solely on the residential property. This necessitated removing some trees and building a retaining wall to protect another tree which the local municipality required that the landlord keep.

The landlord submitted invoices supporting all of the expenses set out above and which all confirmed the expenses were incurred prior to March 27, 2021 (that is, within 18 months prior of him making this application).

The tenants testified that they only requested the landlord install a closet door and install exterior security lights. They testified that the rental agreement grants them two parking spots and that the existing parking arrangement at the rental unit was sufficient to provide these. They argued that the landlord intends to rent the carport out, which is what necessitates his building a driveway and that the construction of the additional parking and driveway area is “overkill”. The tenants argued that this cost amounted to an upgrade and they should not be responsible for subsidizing it.

The landlord denied that he intends to rent out the carport and stated that he needed to connect the carport (which is located in the rear of the house) to the driveway and parking area in the front of the house because the property adjacent to the rear of the residential property is being redeveloped and the carport is no longer accessible from that direction.

In total, the landlord testified he incurred \$55,354.37 when completing the work, as follows:

Work	Cost
New Roof	\$ 17,535.00
Gutter replacement	\$ 1,218.00
Hot water tank	\$ 1,669.50
Upgrade electrical wiring in kitchen	\$ 1,539.60
Upgrade wiring for hot water tank	\$ 404.25
Wiring to allow exterior security light	\$ 709.80
Install closet door in basement	\$ 2,756.36
Install new gas furnace	\$ 9,200.00
New gas line for gas furnace	\$ 655.31
Excavation for future paving	\$ 10,444.00
Build retaining wall	\$ 3,578.56
Arborist fees	\$ 2,373.00
Tree cutting for paving	\$ 2,535.75
Stump grinding	\$ 735.00
Total	\$ 55,354.13

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:
 - o the Work was to repair, replace, or install a major system or a component of a major system (s. 23.1(4));
 - o 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));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o 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 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

The parties agree that the landlord has not imposed a previous additional rent increase against the tenants.

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.

The rental unit is located within a single detached house. A second dwelling unit is located in this house. Both units meet the first definition of "specified dwelling unit" set out above. As such, there are two specified dwelling units for the purposes of calculating the amount of the additional rent increase.

I note that the second definition is usually applied when dwelling units are located on the residential property, but in separate structures (e.g., a carriage house and a main house).

4. Amount of Capital Expenditure

The landlord submitted invoices supporting all of the capital expenditures claimed. I accept these documents as genuine. For the most part, the work described on the invoices aligns with the costs for undertaking the Work. The landlord agreed to a \$200 deduction to the closet door receipt for unitemized expenses unrelated to the Work and that one line item on the hot water tank installation invoice was not incurred in the course of the Work. The amounts in the table above take these reductions into account.

However, the landlord claims the full amount of the FortisBC invoice, despite it containing ordinary charges associated with the supply and delivery of natural gas

unrelated to the installation of a new natural gas line. These are not properly the subject of an additional rent increase. I find that, of the \$655.31 on FortisBC invoice submitted into evidence, \$488.25 of it relates to the installation of the new natural gas line and may be the subject of this application.

5. Is the cost of 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; and
- 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 37C provides examples of major systems and major components:

Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. Examples of major systems or major components include, but are not limited to, the foundation; load-bearing elements (e.g., walls, beams, and columns); the roof; siding; entry doors; windows; primary flooring in common areas; subflooring throughout the building or residential property; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including cameras or gates to prevent unauthorized entry; and elevators.

This policy guideline lists both roofs and electrical wiring as major systems or major components. I find that gutters are a major component of the house's roofing system. A hot water tank is a major component of the house's plumbing system. The furnace is a major component of the house's heating system.

Despite it not being listed in the Policy Guideline, I find that a building's ventilation system is a major system, as it is necessary for the proper operation and maintenance of a house. I find that bathroom exhaust fans are a major component of this system.

If the *paving* of a parking facility is a major component, it would follow that the parking facility itself is a major system. As such, the work done to prepare the residential property for the installation of the driveway may be considered work related to a major system.

In addition to safety, I find that exterior motion sensitive lights are used to enhance the security of the residential property and are therefore a major component.

A closet or its enclosing structure is not part of a major system. The structure is not load-bearing. It does not fit into any of the other categories set out in Policy Guideline 37C. As such, I decline to order any rent increase associated with its construction.

b. Reason for Capital Expenditure

Based on the undisputed testimony of the landlord, I accept that the roof, gutters, furnace, fans, and hot water tank were all original to the house (which was built in 1991) and therefore exceeded their useful life. These portions of the Work (and their ancillary costs for electrical upgrades and new hydro lines) were therefore undertaken for a valid purpose.

As stated above, exterior motion sensitive lights enhance the house's security. As such, their installation was undertaken for a valid purpose.

I accept the landlords' undisputed evidence, supported by an invoice from an electrician, that a dedicated electrical circuit was required in the kitchen in order for the

appliances to function properly. I accept that this was necessary in order to comply with industry standard building practices. As such the cost of installing a dedicated circuit and the kitchen was incurred for a valid reason.

I do not find that any of the costs incurred in connection with preparing the residential property for the paving of the driveway and parking area we incurred for a valid reason. There is nothing in evidence which would suggest that the existing parking or driveway arrangement had failed, was malfunctioning, or was inoperative.

I accept that due to the redevelopment of the property located at the rear of the residential property, the landlord may no longer not have vehicle access to the rear of the residential property. Similarly, I accept that relations with his neighbour may have required the landlord to build a new driveway located solely on the residential property.

However, these are not reasons which the Regulation permits a rent increase for the associated capital expenditure to be imposed upon a tenant for. As such, I decline to allow the landlord to impose any such rent increase in connection with any expense incurred relating to the parking or driveway.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

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

As stated above, the landlord provided documentary evidence which shows that all of the capital expenditures were incurred within the 18 months prior of making this application.

d. Life expectancy of the Capital Expenditure

Based on the nature of the Work, and the warranties which the landlord testified he had obtained on much of the Work, I find that these capital expenditures are not reasonably expected to need to be incurred again within the next five years.

For the above-stated reasons, I find that the capital expenditures incurred to undertake the following portions of the Work to be eligible capital expenditures, as defined by the Regulation:

Work	Cost
New Roof	\$ 17,535.00
Gutter replacement	\$ 1,218.00
Hot water tank	\$ 1,669.50
Upgrade electrical wiring in kitchen	\$ 1,539.60

Upgrade wiring for hot water tank	\$ 404.25
Wiring to allow exterior security light	\$ 709.80
Install new gas furnace	\$ 9,200.00
New gas line for gas furnace	\$ 488.25
Total	\$ 32,764.40

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.

The tenants did not make any submissions related to either of these points. As such, I do not find that they have discharged their evidentiary burden to establish that either of these points is accurate.

I understand the tenants' objections to the rent increase. However, I note that just because the tenants did not ask for much of the Work to be done to the rental unit does not mean that the landlord is not entitled to impose an additional rent increase for costs incurred to repair or maintain the rental unit. The Regulation explicitly authorizes a landlord to impose such increases for specific categories of repairs or maintenance.

7. Outcome

The landlord has been mostly 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 many of the capital expenditures incurred associated with the Work. 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 two specified dwelling units and that the amount of the eligible capital expenditure is \$32,764.40.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$136.52 ($\$32,764.40 \div 2 \text{ units} \div 120$). If this amount exceeds 3% of the tenants' 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 successful. I grant the application for an additional rent increase for capital expenditure of \$136.52. The landlord must impose this increase in accordance with the Act and the Regulation.

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: March 13, 2023

Residential Tenancy Branch