



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ARI-C

Introduction

The landlord's application filed on May 25, 2022, is seeking a rent increase pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act ("Act") and section 23.1 of the Residential Tenancy Regulation, B.C. Reg. 477/2003. Residential Tenancy Policy Guideline 37: Rent Increases.

This matter commenced on October 2022. The matter was adjourned to February 27, 2023, which I had adjourned because I was not satisfied that the Residential Tenancy Branch sent notices of hearing to the tenants. The previous interim decisions should be read in conjunction with this Decision.

The landlord appeared and the three (3) tenants identified on the covering page of this decision attended on April 18, 2023. The tenants indicated that they appreciated that the hearing of February 27, 2023, was adjourned as they had not been served with the notice of hearing for that date.

I have reviewed the file and I am satisfied that each of the tenants identified in the landlord's application were sent a copy of the notice of hearing for April 18, 2023 at 9:30am.

The tenants did not provide any written response to the landlord's application.

Issue to be Decided

- Is the landlord entitled to impose an additional rent increase for capital expenditures ?

Background and Evidence



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Office of Housing and Construction Standards

While I have considered the written submission and documentary evidence of the landlord not all details of their submissions are reproduced here. The relevant and important evidence related to this application before me have been reviewed, and my findings are set out below in the analysis portion of this Decision.

The rental property was constructed in 1959 and consist of 11 rental units.

The landlord is seeking to impose an additional rent increase for a capital expenditure (ARI) incurred to pay for a work done to the residential property.

The capital expenditure (the "Work") incurred as follows:

Item	Description	Amount
a.	Energy efficient windows	\$59,886.75
b.	Installation of condensing boiler/115-GAL indirect hot water tank	\$25,050.55
		Total
		\$84,937.30

(a) Energy efficient windows

The landlord testified that the windows were the original windows and they were old and drafty and the opening fixtures were breaking. The landlord stated that the windows were past there useful life and were replaced with double glazed energy efficient windows. The landlord stated that this also made the unit quieter.

(b) Installation of condensing boiler/115-GAL indirect hot water tank

The landlord testified that they had to replace the atmospheric boiler and commercial hot water tank due to there age and inefficiency and they were breaking down. The landlord stated that they installed a condensing boiler and an indirect hot water tank.

The tenant FW stated that they believe the boiler was 15 years old and it was not functioning properly and always breaking down.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Office of Housing and Construction Standards

The tenant CG asked the landlord did they not receive or were able to claim any rebates for the above Work. The landlord stated that they were able to recover the amount of \$2,700.00 from the gas company as a rebate; however, they were not able to recover any rebates for the windows.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application.

Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution

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;



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Office of Housing and Construction 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.

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.

In this matter, there have been no prior application for an additional rent increase within the last 18 months before the application was filed. There are 11 specified dwelling units to be used for calculation of the additional rent increase. The landlord is claiming the total amount of **\$84,937.30**, as outlined in the above table for capital expenditures.

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



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Office of Housing and Construction Standards

- 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.

(a) Energy efficient windows

In 2022 the landlord had the windows replaced as they were past their useful life span and failing. The had double glaze energy efficient windows installed.

I find this is a major component of the building. I find that the Work was done as they were past their useful life and to be more energy efficient. I find this is sufficient to satisfy the requirement of the Regulation.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years based on the Residential Tenancy Branch Policy Guideline 40 – Useful Life of a Building Element (the “RTB Policy Guideline 40”). Therefore, I find the landlord is entitled to recover the amount of **\$59,886.75**.

(b) Installation of condensing boiler/115-GAL indirect hot water tank

In October 2021 the Work was completed to replace the atmospheric boiler and the commercial hot water tank as they were nearly the end of their useful life and were failing. The landlord had the boiler replaced with a condensing boiler and indirect hot water tank.



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Office of Housing and Construction Standards

I find this is a major component of the building. I find that the Work was done as they were past their useful life and to be more energy efficient. I find this is sufficient to satisfy the requirement of the Regulation.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years based on RTB Policy Guideline 40 – Useful Life of a Building Element. However, the landlord did not reduce the amount claimed by the rebate of \$2,700.00. Therefore, I find the landlord is entitled to recover the amount of **\$25,050.55 - \$2,700.00=\$22,350.55**.

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 only issue raised by the tenants, was from the tenant CG asking if the landlord they received any rebates. The landlord agreed that one was received for the boiler and none for the windows.

As the landlord agreed that they had received \$2,700.00 from another source, I have reduced the amount claimed by the landlord as set out above (b) above. The tenants did not prove any other entitlements from another source that the landlord was entitled to receive.

Outcome

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



Dispute Resolution Services

Page: 7

Residential Tenancy Branch
Office of Housing and Construction Standards

the amount of the eligible capital expenditure divided by 120. In this case, I have found that there are 11 specified dwelling unit and that the amount of the eligible capital expenditures total the amount of **\$82,237.30**.

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$62.30** ($\$82,237.30 \div 11 \div 120 = 62.30$).

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 **\$82,237.30**. The landlord must impose this increase in accordance with the Act and the Regulation.



Dispute Resolution Services

Page: 8

Residential Tenancy Branch
Office of Housing and Construction Standards

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: April 19, 2023

Residential Tenancy Branch