



Dispute Resolution Services

Page: 1

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 s. 23 of the *Regulation*.

The Landlord and one of the Tenants involved (*i.e.*, the "Tenant") attended the hearing. The Landlord testified, and the Tenant confirmed, that they served the Tenant with copies of the Notice of Dispute Resolution Proceeding package, and their supporting evidence. The Tenant did not prepare documentary evidence for this hearing; however, I consider their testimony in the hearing as evidence they presented in this matter.

Issues to be Decided

Is the Landlord allowed to impose an additional rent increase for capital expenditures?

Background and Evidence

I have considered the documentary evidence and the testimony of both parties. I reproduce herein the details that are only relevant and important to the Landlord's Application.

The rental unit is a single detached home. The Tenant occupies one side of the rental unit house. The heating system is a shared system between the rental unit, occupied by the Tenant, and the other half of the home where the Landlord lives. The parties

agreed that this landlord-tenant relationship started when the Landlord here came on as owner after their purchase, in February 2021.

The Landlord did not apply to the Residential Tenancy Branch for any rent increase for a capital expenditure in this tenancy prior to this Application.

The Landlord presented that they are seeking to impose an additional rent increase for a capital expenditure they incurred to pay for work done to the residential property's windows and heating system.

The Landlord presented a "Renovation Upgrade Report" stemming from an assessment undertaken on May 5, 2021. Based on the age of the rental property home, the recommended upgrades consisted of: performing air sealing; insulating the attic; upgrading the windows, and upgrading the heating system. Based on the assessment and their entitlement to a green energy grant, the Landlord completed this work at the rental unit in the interests of saving energy costs.

The Landlord presented evidence of the following work:

- The windows were replaced. The Renovation Upgrade Report identified 25 windows to be upgraded, from "double glazed windows to newer double glazes windows". The Landlord presented an invoice dated September 23, 2021 for the replacement of 24 windows, at a cost of \$23,476.13 total.

The Landlord received a federal grant for this work in the amount of \$4,000, and a provincial grant amount of \$2,000, thereby reducing their expenditure to \$17,476.13.

- The Landlord replaced the furnace with a heat pump. The invoice dated September 12, 2022 shows the completion of this work for the amount of \$18,656.40.

The Landlord received a federal grant of \$1,000, a provincial grant of \$3,000, and a municipal grant of \$6,000 for this work, reducing the expenditure to \$8,656.40.

The Tenant stated they had no objections to the work completed, and raised no other issues with the efficacy of the completed project.

In total, the amount for which the Landlord seeks capital expenditure reimbursement via rent increase is \$26,132.53. The Tenant did not dispute the cost of this work.

Analysis

1. Statutory Framework

The *Regulation*, s. 21.1, s. 23.1 and s. 23.2, set out the framework for the determination of whether a landlord is entitled to impose an additional rent increase for capital expenditures. A landlord must prove, on a balance of probabilities:

- they have not made an application for an additional rent increase for this tenancy within the last 18 months
- the number of specified dwelling units on the residential property;
- the work was an *eligible* capital expenditure:
 - to repair, replace, or install a major system or component of a major system
 - 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 tenant may prove the need for a cancellation of a landlord's application 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 a 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), a landlord may impose an additional rent increase pursuant to s. 23.2 and/or s. 23.3 of the *Regulation*.

2. Prior Application for Additional Rent Increase

Based on the Landlord's testimony, and the Tenant's confirmation here, I find the Landlord did not impose an additional rent increase of this nature in the past 18 months.

3. Number of Specified Dwelling Units

The *Regulation* s. 21.1(1) 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 Tenant occupies a significant portion of the rental unit property. As such, I find that the residential property has one specified dwelling unit in terms of the definitions set in the *Regulation*.

4. Amount of Capital Expenditure

Based on the invoices that the Landlord submitted into evidence, I find the cost the Landlord incurred to replace the heating system and windows was \$26,132.53.

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:

- a. the Work was to repair, replace, or install a major system or a component of a major system
- b. 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;
- c. the capital expenditure was incurred less than 18 months prior to the making of the application;
- d. 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

The *Regulation* s. 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;

The *Residential Tenancy Branch Policy Guidelines* provide a statement of the policy intent of the legislation. Specific to rent increases for capital expenditures, *Residential Tenancy Policy Guideline 37C* provides examples of major systems and major components, a description of compliance with s. 32(1)(a) of the *Act* (*i.e.*, compliance with health, safety and housing standards required by law), and useful life of building elements.

The work presented by the Landlord here involved a replacement of the rental unit's heating system and windows. The *Regulation* refers to “a system that is integral . . . to providing services to the tenants . . .” and that includes the heating system, as well as

windows. The Landlord replaced the heating system, completed work for that installation, and replaced windows. These are "major components" as defined by the *Regulation*.

As such, I find that the Landlord's work was undertaken to replace a "major component" and a "major system" of the residential property.

b. reason for capital expenditure

The Landlord presented the reason for replacement of the septic system as essentially necessitated by the age of the rental unit building. The evaluation report noted the structure was built in 1912. It was difficult for the Landlord to give an exact age of the furnace already in place, as well as the windows. I find the Landlord undertook this work to reduce energy use. Evidence on this point is the reports analyzing this, both pre- and post-, in the Landlord's evidence.

Also, I find it more likely than not that the windows in place were beyond 15 years old, and the furnace in place was beyond 20 or 25 years, the useful life cycles of these systems as set out in the *Residential Tenancy Policy Guideline 40*.

c. timing of capital expenditure

The *Residential Tenancy Policy Guideline 37* states that "A capital expenditure is considered "incurred" when payment for it is made."

I accept the Landlord's unchallenged evidence that the first payment for the Work was incurred in September 2021 and the final payment was incurred in September 2022. Both of these dates are within 18 months of the Landlord making this application on November 15, 2022.

d. life expectancy of the capital expenditure

As stated above, the useful life of the components replaced here all exceeded five years. There is nothing in the evidence that suggests the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out in the *Residential Tenancy Branch Policy Guideline 40*. For this reason, I find that the life expectancy of the components replaced *will* exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

In sum, for all the above-stated reasons, I find that the capital expenditure incurred to undertake the completed work is an eligible capital expenditure, as defined in the *Regulation*.

6. Tenant's Response

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 a 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.

From the testimony of the Tenant in the hearing, I find they did not present arguments that form a basis for dispute of the Landlord's Application.

7. Outcome

I conclude the Landlord is successful in this Application. They have proved, on a balance of probabilities, each of the elements required, in order to be able to impose an additional rent increase for capital expenditure.

The *Regulation* s.23.2 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 is 1 specified dwelling unit and that the amount of the eligible capital expenditure is \$26,132.53.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$217.77 ($\$26,132.53 \div 1 \text{ unit} \div 120$). This amount is an increase of more than 3% per year. As such, the Landlord must impose successive rent increases in accordance with the *Regulation* s.23.3.

The parties may refer to the *Residential Tenancy Policy Guideline 37*, the *Regulation* s. 23.3, the *Act* s. 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 Residential Tenancy Branch's website for further guidance regarding how the Landlord must impose this rent increase.

Conclusion

The Landlord was successful on this Application. I grant their Application for an additional rent increase for capital expenditure of \$217.77. 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 s. 9.1(1) of the *Act*.

Dated: April 5, 2023

Residential Tenancy Branch