



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

A preliminary hearing was originally held on July 18, 2022, and adjourned to December 8, 2022 to deal with the Landlord's application pursuant to the Residential Tenancy Act (the "Act") section 43 and the Residential Tenancy Regulation (the "Regulation") section 23.1 for an additional rent increase for capital expenditures.

On December 8, 2022, the hearing was adjourned again to ensure that all tenants were properly served with the hearing documents. The landlord submitted evidence to support that all the tenants were served by way of registered mail on December 12, 2022. In accordance with sections 88 and 90 of the Act, I find all tenants deemed served with the hearing documents on December 17, 2022, 5 days after mailing.

The landlord attended this hearing, as well as one tenant, GD, and a legal advocate, TB. The remaining Tenants listed on the Landlord's application did not attend this hearing, although I left the teleconference hearing connection open until 11:41 a.m. in order to enable these Tenants to call into this teleconference hearing scheduled for 11:00 a.m.

All in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties confirmed that they understood.

Issues to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

A landlord may apply for an additional rent increase if they have incurred eligible capital expenditures or expenses to the residential property in which the rental unit is located. To raise the rent above the standard (annual) amount, the landlord must have either the tenant's written agreement, or apply to the RTB for either an Additional Rent Increase for Expenses (ARI-E) or an Additional Rent Increase for Capital Expenditures (ARI-C).

The landlord is seeking to impose an additional rent increase for a total capital expenditure of \$362,036.00 incurred for various repairs in the building.

This application pertains to an apartment building that contains 35 rental units.

The capital expenditures listed in this application are as follows:

Work Done	Cost	Date of final payment
New Balconies & Handrails (invoice provided—not dated)	\$224,700.00	June 2020
Painting of stucco and replacing balcony siding with vinyl (invoice provided, not dated)	\$29,763.50	July 6 (no year provided)
New roof-invoice dated January 4, 2021	\$88,672.50	\$17,314.50 paid September 1, 2020, \$34,629.00 paid October 7, 2020, balance owing \$36,729.00 (no date of final payment provided)
New mansard-invoice dated August 20, 20--	\$18,900.00	February 3, 2021

The landlord submitted invoices for the above capital expenditures, with handwritten notations of payments that have been made. The landlord's application noted the following: "There are four main Capital Expenditures and completion dates vary, but all in 2021. Also, this is a 35 unit apartment building. New Balcanies and hand rails, \$224,700.00 Painting the stucco siding and replacing balcony siding with vinyl, \$29,763.50 New Roof, \$88,672.50 New Mansard, \$18,900". The date of completion was noted as "August 20, 2021".

The landlord testified in the hearing that with the exception of the balconies, the repairs applied to all units. The landlord confirmed that some units along the front of the building do not have balconies.

The landlord testified that the building was owned by a family business since it was built, and the maintenance records are no longer available. The landlord testified that the previous property manager was fired after they were caught stealing. GD has been the building manager since 2013, and is also a tenant in the building.

The landlord testified that the capital expenditures were necessary to bring the building up to a higher standard, and is much appreciated by the current tenants.

TB represented the tenants in this hearing. TB argued that the invoices submitted by the landlord are not clearly dated, and some show dates prior to the 18 month period before this application was filed on March 8, 2022. TB argued that they believe that the work was completed before September 8, 2020, making the capital expenditures ineligible.

Furthermore, TB argued that these expenditures are the result of inadequate maintenance. TB argued that the landlord should not be rewarded for failing to maintain the property as required by section 32 of the Act.

TB submitted photos of the building where the wood was unpainted and rotting. TB also called GD as a witness in the hearing. GD testified that they have been a resident in the building since July 15, 2009, and the onsite building manager since the fall of 2013.

TB testified that they recall problems with the roof before it was replaced. TB testified that there were a number of leaks caused by trees in the vicinity, with some leaks affecting some rental units. TB testified that the leaves would block the drains, causing a foot and a half of water to pool and enter the front entryway of some units. TB testified that this all took place about a month or two before TB took over as the manager.

TB testified that there were problems with the vaulted roof, and that the landlord was shown pictures of the damage over the years. TB testified that the landlord responded by only doing patchwork repairs during the last five years. TB testified that the soft spots were so bad that they had marked them off in order to avoid standing in those areas due to safety concerns. TB testified that one of the bidders for the roof replacement believed that the roof was original from when the building was built in 1977. TB testified that no preventative maintenance was done by the landlord, and that they would deal with problems when they had arisen.

Analysis

1. Statutory Framework

Sections 21.1 and 23.1 of the Regulations and Residential Tenancy Policy Guideline #37C 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:

- 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.

The tenant 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 am satisfied that the landlord has not previously imposed an additional rent increase on any of the tenants within the last 18 months.

3. Timing of Capital Expenditures

As noted in Policy Guideline 37c, “A capital expenditure is considered “incurred” when payment for it is made. If a landlord pays for a capital expenditure by cheque, the date the payment is considered to be “incurred” is the date the cheque was issued by the landlord.” It is further noted that the landlord has the onus of establishing on a balance of probabilities that the capital expenditure(s) meet the requirements to be eligible for an additional rent increase.

As this application was filed on March 8, 2022, the latest date of payment for the capital expenditure would be September 8, 2020. As noted above, the onus is on the landlord to support that the requirements are met.

In review of the evidence and testimony before me, I find that the landlord has failed to establish that the landlord has met the timing requirement for the incurred expenses related to the balconies, and balcony siding.

The invoice in the amount of \$224,700.00 for the balcony project is undated, and has a handwritten note that the final payment was made in June of 2020. I find that June 2020 is outside of the 18 month requirement, and therefore the capital expenditure related to the balconies is ineligible.

The invoice in the amount of \$29,763.50 is also undated, and references two payment dates of June 28 and July 6. No year is provided for these payments. I am not satisfied that the landlord has met the evidentiary burden of proof to show that this capital expenditure was incurred within the required 18 month period, and therefore I find that this expenditure is ineligible.

The roof invoice is dated January 4, 2021, and shows two payments made: \$17,314.50 paid on September 1, 2020, and \$34,629.00 paid on October 7, 2020. The invoice shows a balance of \$36,729.00 "which is due upon receipt". I am satisfied that this capital expenditure was incurred during the 18 month period, and will be considered for the purposes of this application.

The invoice for the mansard contains a date where the year is not visible. There is a handwritten notation that the final payment of \$13,900.00 was paid on February 3, 2021. I am satisfied that this capital expenditure was incurred during the 18 month period, and will be considered for the purposes of this application.

4. 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.

The *Act* requires that all units in the building where the repairs or replacement was carried out be considered specified dwelling units, whether vacant or not. In this case, the landlord has specified that there are 35 total units in the building where the roof and mansard were replaced.

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.

a. Type of Capital Expenditure and Reason for Expenditure

I find that the roof and mansard qualify as major components for the purposes of this application. The landlord testified that the replacement of these major components were necessary due to the condition of the roof. It is undisputed that the roof had many leaks over the years.

b. Life expectancy of the Capital Expenditure

I am satisfied 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.

6. Tenant's Rebuttals

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.

The tenants' advocate argued that the landlord has failed to perform any preventative maintenance over the years, even though it had been observed by tenants and the building manager, GD, that the roof was in dire need of repairs. GD described many deficiencies, including soft spots, and leaks that affected rental units. The tenants' advocate argued that the tenants should not bear the burden of the landlord's failure to perform proper maintenance, and that the capital expenditures were the result of the landlords' negligent actions.

I note that RTB Policy Guideline 37C does contemplate the scenario where the component has reached its useful life, but the amount of the capital expenditure includes amounts that were incurred due to inadequate repair or maintenance. I have included an excerpt of the relevant portion below (bold formatting added for emphasis).

*"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."*

In this case, although there is evidence to suggest that there was inadequate repair or maintenance on part of the landlord, I am satisfied that the evidence also shows that the roof had reached the end of its useful life. As per RTB Policy Guideline #40, the useful life of a roof is between 15 and 20 years. In this case, the building was built in 1977, and as GD had stated in the hearing, one of the contractors bidding on the project believed that the roof was original. There is no prior record of the roof being replaced.

I am satisfied that the capital expenditures incurred were because the roof and mansard had reached the end of its useful life, and this was the reason why a replacement was necessary. Although the landlord may not have performed proper or regular maintenance over the years, I am not satisfied that the amount of the capital expenditures claimed was due to the landlord's inaction. Although there was reference to leaks and damage caused by the roof, I find that repairs for any

resulting damage were not included in the amount of this capital expenditure. I am satisfied that the entire amount claimed for the roof and mansard is the result of the fact that the components had reached the end of its useful life, and are therefore eligible capital expenditures.

7. Outcome

Summary

I find the landlord has met the burden of proof on a balance of probabilities that they have incurred eligible capital expenditures in the total amount of **\$107,572.50**. I find the landlord had established all elements necessary for an additional rent increase for this amount.

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 find that there are 35 specified dwelling units, and that the amount of the eligible capital expenditures is \$107,572.50.

Accordingly, I find the landlord has established the basis for an additional rent increase for capital expenditures of eligible capital expenditure as noted above $(\$107,572.50.) \div \text{number of units for that specific building } (35) \div 120$.

If this amount exceeds 3% of a tenant's 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 37c*, 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

I grant the application for an additional rent increase for capital expenditures as specified above. 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: April 26, 2023