



Dispute Resolution Services

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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* ("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 stated that in January or February of 2023 he personally served the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on December 23, 2022 to the Tenant with the initials "NR" (NR). NR acknowledged receipt of these documents. On the basis of this testimony, I find that these documents were served to NR in accordance with section 89 of the *Act*.

NR stated that she showed the Tenant with the initials "RM" (RM), whom she lives with, the aforementioned documents. I therefore find that RM was sufficiently served with the aforementioned documents, pursuant to section 71(2)(c) of the *Act*. As these documents were sufficiently served to RM, I find it reasonable to proceed in the absence of RM.

The Landlord stated that in January of 2023 he personally served the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on December 23, 2022 to the Tenant with the initials "DB" (DB). On the basis of this testimony, I find that these documents were served to DB in accordance with section 89 of the *Act*. As these documents were properly served to DB, I find it reasonable to proceed in the absence of DB.

The Landlord stated that in January of 2023 he served the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on December 23, 2022 to the Tenant with the initials "RH" (RH), via email. He stated that RH agreed to accept these documents by email. On the basis of this testimony, I find that these documents

were served to RH in accordance with section 89 of the *Act*. As these documents were properly served to RH, I find it reasonable to proceed in the absence of RH.

The Landlord stated that the hearing documents were not served to the Tenant with the initials "TS" (TS), as she has moved out of unit #2. The Landlord stated that unit #2 has been re-rented to a third party and he is not seeking an additional rent increase for this unit. I therefore find that any additional rent increase granted as a result of these proceedings will not apply to unit #2.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

With the consent of both parties, the application for an additional rent increase was amended at the hearing to reflect the correct spelling of NA' surname.

Issues to be Decided

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

Background and Evidence

The Landlord and the Tenant agree that this is a residential complex with four rental units and one separate carriage house, which did not benefit from any of the capital expenditures referred to in this decision.

The Landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application and there has been no additional rent increase in the last 18 months. The Tenant did not dispute this testimony.

The landlord testified that he was seeking to impose an additional rent increase, in part, for a capital expenditure incurred to pay for replacing the roof on the residential property. He stated that the roof was replaced in September of 2022 because the roof

was over 20 years old and was due to be replaced. The Tenant did not dispute this submission.

The Landlord submitted an invoice, dated September 22, 2022, to show that he paid \$22,564.00 to replace the roof.

The Landlord testified that he was seeking to impose an additional rent increase, in part, for a capital expenditure incurred to replace the furnace in the residential property. He stated that the furnace was replaced on January 28, 2021 because it malfunctioned and could not be repaired. The Tenant did not dispute this testimony.

The Landlord submitted an invoice, dated January 28, 2021, to show that the Landlord paid \$4,409.00 to replace the furnace. The Tenant did not dispute this testimony.

The Landlord testified that he was seeking to impose an additional rent increase, in part, for a capital expenditure incurred to pay for replacing carpet in the residential property. He stated that the carpet was replaced in 2021 because it was over 40 years old and was in poor condition.

The Landlord submitted an invoice to show that he was quoted \$1635.53 to replace the carpet. He stated that there was an error in the quote and he paid \$2,284.00 to replace the carpet. An invoice or receipt from the more expensive cost was not submitted.

The Tenants did not dispute any of the evidence submitted by the Landlord.

Analysis

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. Those sections establish that before imposing an additional rent increase for capital expenditures, a landlord must prove the following, on a balance of probabilities:

- The landlord has not made an application for an additional rent increase naming 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 expenditure was an eligible capital expenditure, specifically that:
 - the expenditure was to repair, replace, or install a major system or a major component;
 - the expenditure was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards;
 - because the system was close to the end of its useful life;
 - because it has 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.

On the basis of the undisputed evidence, I find that prior to this application, the Landlord has not applied for an additional rent increase for capital expenditure naming any of these Tenants and there has been no additional rent increase in the last 18 months. An additional rent increase does not include annual rent increases that are permitted by the legislation.

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;

...

"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;

...

"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.

On the basis of the undisputed evidence, I find the capital expenditures made apply to 4 dwelling units in this residential complex.

On the basis of the undisputed evidence, I find that the Landlord spent \$22,564.00 to replace the roof.

As previously stated, to be considered an eligible capital expenditure, the Landlord must prove:

- the work done was to repair, replace, or install a major system or a major component;
- 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.

I find that a roof meets the definition of a "major component", as it is an integral part of the building.

Residential Tenancy Branch Policy Guideline #40 suggests that the useful life of a flat roof is 20 years and the useful life of a shingled roof is 15 years. On the basis of the undisputed testimony, I find that the roof was approximately 20 years old. On the basis of this guideline, I find it reasonable to conclude that the roof was close to the end of its useful life when it was replaced and that it will not need to be replaced within the next five years.

On the basis of the undisputed evidence, I find that the capital expenditure was incurred to replace a roof that was close to exceeding its life expectancy.

On the basis of the undisputed evidence, I find the roof expenditure occurred less than 18 months prior to the Landlord applying for the additional rent increase.

For all of the above reasons, I find that the roof replacement is an eligible capital expenditure, as defined by the *Regulation*.

On the basis of the undisputed evidence, I find that the Landlord spent \$4,409.00 to replace the furnace.

I find that a furnace meets the definition of a “major component”, because is integral to the residential property.

On the basis of the undisputed evidence, I find that the furnace was replaced because it had malfunctioned and could not be repaired.

On the basis of the undisputed evidence, I find the furnace expenditure occurred less than 18 months prior to the Landlord applying for the additional rent increase.

Residential Tenancy Branch Policy Guideline #40 suggests that the useful life of a furnace is 20 years, which suggests that the furnace will not need to be replaced within the next five years.

For all of the above reasons, I find that the furnace replacement is an eligible capital expenditure, as defined by the *Regulation*.

I find that carpets do not meet the definition of a “major component”, because they are not a component of the residential property that is integral to the residential property or a significant component of a major system. As carpets do not meet the definition of a “major component”, the Landlord is not entitled to impose an additional rent increase on the basis of the carpet replacement.

I find that the Tenants have submitted no evidence to establish 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 that the landlord has been paid, or is entitled to be paid, from another source.

I find that the Landlord has proved, on a balance of probabilities, all of the elements required to impose an additional rent increase for capital expenditures related to

replacing the roof and replacing the furnace. The eligible capital expenditures for replacing the roof and the furnace are \$26,973.00.

Section 23.2 of the *Regulation* sets out the formula to be applied when calculating the amount of the addition 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 four specified dwelling unit and that the amount of the eligible capital expenditure is \$26,973.00.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$67.43 ($\$26,973.00 \div 4 \text{ units} \div 120$).

The parties may refer to 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), Residential Tenancy Branch Policy Guideline #37, and the additional rent increase calculator on the Residential Tenancy Branch website for further guidance regarding how this rent increase may be imposed.

Conclusion

I grant the Landlord authority to impose an additional monthly rent increase of \$67.43. The landlord may impose this increase in accordance with the *Act* and the *Regulation*.

I order the Landlord to serve the Tenants of unit 1, 3, and 4 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 *Act*.

Dated: May 05, 2023

Residential Tenancy Branch