



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OAKWOOD HOLDINGS INC.
and [tenant name suppressed to protect privacy]

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's agent attended the hearing. Three tenants named as respondents were present at the hearing, R.C., D.M., and J.L..

At the start of the hearing, the Landlord's Agent stated that she served the Notice of Hearing and evidence to each of the Tenants by Canada Post Registered Mail on April 19, 2023. The Tenants who attended the hearing confirmed receipt. I find the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

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 landlord's agent testified that the rental property is comprised of one rental building with six rental units. The landlord stated that one of the six units vacated, therefore, the application is applicable to the remaining five tenants.

The landlord's agent testified that she has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord's agent testified that she 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. She testified that she had the roof of the rental property inspected and it was determined that the roof was about 20 years old and had surpassed its useful life.

The inspection revealed several rotten areas in the roof, and it was determined the entire roof would need replacement, (collectively, the "**Work**"). The landlord provided an email from the roof inspector in support.

The landlord's agent testified that the work started in April 2022 and was completed in June 2022. The landlord provided a copy of the invoice in the amount of \$71,699.25 which the landlord's Agent stated was paid on June 7, 2022. The landlord submitted pictures of the aging roof, as well as the new one in support.

The tenants states that they do not agree with the Landlord's application for an additional rent increase based on the following reasons;

- the property value of the rental property has increased significantly, which would offset the cost of the new roof;
- the condition of the roof would have been factored into the price of the sale;
- tenants were not consulted to see if they were in agreement with a new roof;
- the building would not be habitable without a roof, therefore, it is essential and the landlord would be obligated to replace it; and
- tenants should not be required to pay for landlord's responsibilities.

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Analysis

The parties all agreed that the landlord replaced the pre-existing roof at the rental property, which consists of one structure, containing six rental units.

1. 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:

- 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 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.

2. Prior Application for Additional Rent Increase

The parties agreed that the landlord has not submitted a previous application for additional rent increase.

3. 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 parties testified and agreed that there are six rental unit in the rental units at the rental property.

4. Amount of Capital Expenditure

The landlord submitted an invoice in the amount of \$71,699.25 to replace the roof of the rental property.

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.

I will address each of these in turn.

a. Type of Capital Expenditure

The Work amounted to replacing the roof of the rental property. I find this to constitute a “major system”.

b. Reason for Capital Expenditure

I find that the landlord provided sufficient evidence to demonstrate that the roof at the rental property had surpassed its useful life and was in need of replacement.

c. Timing of Capital Expenditure

I accept the landlord's evidence that the payment for the work was incurred on June 7, 2022. I find this date is within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

According to the RTB Policy Guideline 40 the life expectancy of the asphalt roof is 15 years. I find that the landlord provided sufficient evidence to demonstrate that the roof was 20 years old and had been leaking, causing rot below.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

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 who attended the hearing disagreed with the landlord's application, however, I find their arguments do not form basis to dispute the application, as they do not relate to the inadequate repair or maintenance of the roof, nor did the tenants demonstrate that the landlord has been paid from another source.

7. Outcome

The landlord has been successful. She has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure. Section 23.2 of the Regulate 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 six specified dwelling unit and that the amount of the eligible capital expenditure is \$71,699.25.,

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$99.58 ($\$71,699.25 \div 6 \text{ units} \div 120$).

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 \$99.58. 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: July 17, 2023

Residential Tenancy Branch