



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

The Landlord in this matter seeks an additional rent increase for capital expenditure pursuant to s. 43 of the Residential Tenancy Act (the “Act”) and s. 23.1 of the Residential Tenancy Regulation (the “Regulation”).

J.F. appeared as the Landlord’s agent. L.S., K.F., B.L., and K.L. also attended on behalf of the Landlord, though none of them provided evidence at the hearing.

Two of the respondent tenants attended, A.J. and S.S..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the Notice of Dispute Resolution and the Landlord’s evidence was served on each respondent tenant by way of registered mail sent on April 21, 2023. I am provided with registered mail tracking receipts as proof of service. The tenants who did attend confirm receipt of the Landlord’s application materials, though A.J. indicates it had been sent to her mother rather than her.

I find that the Landlord served its application materials on the respondent tenants in accordance with ss. 88 and 89 of the Act. Pursuant to s. 90 of the Act, I deem that the tenants received the Landlord’s application materials on April 26, 2023.

Issue to be Decided

- 1) Is the Landlord entitled to an additional rent increase for a capital expenditure?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

Legal Framework

Section 43(3) of the *Act* permits landlords to request approval from the Director to impose a rent increase greater than the limit imposed by s. 43(1)(a). Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures.

Landlords seeking an additional rent increase under s. 23.1 of the Regulations must prove, on a balance of probabilities, the following:

- The landlord has not successfully applied for an additional rent increase against the tenants within 18 months of their application.
- The capital expenditure was incurred for the repair, replacement, or installation of a major component or major system for the property.
- The capital expenditure was incurred for one of the following reasons:
 - to comply with health, safety, and housing standards required by law in accordance with the landlord's obligation to repair the property under s. 32(1) of the *Act*;
 - the major component or system has failed, is malfunctioning or inoperative, or is close to the end of its useful life; or
 - the major component or system achieves one or more of either reducing greenhouse gas emissions and/or improves security at the residential property.
- The capital expenditures were incurred in the 18-month period preceding the date on which the landlord applies.
- The capital expenditures are not expected to be incurred again for at least 5 years.

Tenants may defeat a landlord's application for additional rent increases for capital expenditures if they can prove on a balance of probabilities that:

- the repairs or replacements were required because of 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.

Once the threshold question has been met, the Landlord must also demonstrate how many dwelling units are present in the residential property and the total cost of the capital expenditures incurred.

Section 21.1(1) of the Regulation 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;

[...]

"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;

"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.

Evidence Submissions

The Landlord's agent advises that the Landlord replaced the hot water boiler and upgraded the parking lot at the residential property in 2022. The Landlord's agent advises that the residential property comprises 89 units, comprising unoccupied suites and manager suites.

The agent testified that the boiler was replaced in August 2022 at a total cost of \$99,505.18. The agent further testified that the previous boiler was over 20 years old and had exceeded its useful life such that it had to be replaced. I am further told the new boiler is expected to have a useful life exceeding 5 years.

The Landlord's evidence includes two invoices for the boiler replacement. The first date June 22, 2022 for \$805.18 is related to permits for the work and the second dated August 22, 2022 for \$98,700.00 relates to the work itself. The Landlord has also provided photographs of the boiler before and after its replacement.

The Landlord's agent testified that the parking area for the residential property was refurbished, including regrading the area, repaving it, and electrical work for lighting and car plug-ins. The agent testifies that the Landlord retained a consultant on the project in the fall of 2021 and that the work was substantially completed from June to September in 2022. The agent further testifies that the project cost a total of \$415,340.00.

The Landlord provides the following invoices in evidence:

Vendor	Invoice Date	Amount
McElhanney Ltd.	November 29, 2021	\$1,032.31
McElhanney Ltd.	April 28, 2022	\$710.06
McElhanney Ltd.	June 16, 2022	\$6,565.73
McElhanney Ltd.	July 20, 2022	\$7,595.18
Twin Rivers Ltd.	June 30, 2022	\$147,266.28
Twin Rivers Ltd.	July 31, 2022	\$183,305.85
Twin Rivers Ltd.	October 31, 2022	\$65,575.13
Total		\$412,050.54

The agent advises that the Landlord also seeks \$2,000.00 for cost incurred in securing alternate parking for the tenants with an adjacent property owner.

It was explained by the agent that that the parking area had not been paved in over 20 years. Photographs provided by the Landlord show the parking lot before and after the work, with the photographs before showing the pavement degraded and some potholes present.

A.J. argued that the Landlord ought to have planned a contingency for paying for these expenses and that the cost should not be downloaded onto individual tenants. She also

argued that she does not use the parking lot and that it is unfair for all tenants to pay for the repaving. It was also argued that the tenants who do make use of the parking area already pay additional rent such that the Landlord should be recouping the maintenance expense from this additional charge when they enter into tenancy agreements.

Analysis

A.J. raises arguments that are not relevant to determining whether the capital expenditures are eligible under s. 23.1 of the Regulation. They may be valid arguments from a policy perspective. However, the legislation is unambiguous that landlords may impose additional rent increases for eligible capital expenditures against all the dwelling units in the residential property provided they prove their eligibility by filing an application with the Residential Tenancy Branch.

Review of the information on file shows the Landlord filed its application on March 22, 2023.

Looking first at the boiler, I accept that it is a major system within the residential property. I further accept the evidence from the Landlord's agent that the boiler was over 20 years old and was beyond its useful life. I also accept that the cost of the boiler replacement was incurred within the 18 months prior to filing the application. Finally, I accept that the cost for the replacement boiler will not be reincurred within the next five years given the life of the previous boiler.

I find that the Landlord has established that the boiler replacement is an eligible capital expenditure under s. 23.1 of the Regulation. I accept that this cost, as demonstrated in the invoices in evidence, was \$99,505.18.

Looking next to the parking area, Policy Guideline #37C provided guidance on what may be considered a major component or system. It provides a list of items that would fall within the definition, including pavement in parking facilities. I accept that the pavement is a major component of the residential property based on the guidance provided in Policy Guideline #37C and further accept that the associate electrical in the parking area is a major system of the residential property.

I accept the Landlord's evidence that the previous parking area had not been paved for over 20 years. The photographs support this, showing that the pavement to be degraded, with potholes, and various patches. I find that the Landlord has shown that

the pavement had reached the end of its useful life and that that parking area required repair. I accept that doing so also required electrical work to be redone when the area was regraded.

The invoices provided demonstrate that the costs were incurred within 18 months of the Landlord filing its application. Further, I accept that the costs will not be reincurring again within the next 5 years as the previous parking area had a useful life exceeding that period.

I find that the Landlord has established that the parking area repairs is an eligible capital expenditure under s. 23.1 of the Regulation.

The invoices in evidence demonstrate total cost for the work for the parking area in the amount of \$412,050.54. I accept that this is eligible.

I do not accept that the cost of finding alternate parking for the tenants is eligible as it is not directly tied to the repair work for the parking area. The tenants pay to use the parking area. The Landlord accepted those additional fees during the repair work. The Landlord could have terminated access to the parking under s. 27(2) of the *Act*, even if it was only temporary. It chose not to do so and found alternate parking for the tenants, which was its choice in the course of its business.

I do not allow the expense of \$2,000.00 for alternate parking arrangements for the tenants as this is not for the repair or replacement of a major component or system.

The Landlord has demonstrated total capital expenditures of \$511,555.72 (\$412,050.54 + \$99,505.18). I accept that there are 89 dwelling units. Accordingly, I grant the Landlord authorization for an additional rent increase for capital expenditures totalling \$47.90 ($\$511,555.72 \div 89 \text{ dwelling units} \div 120$).

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

The Landlord was successful. I grant the Landlord its application under s. 23.1 of the Regulation for an additional rent increase for capital expenditure of \$47.90. The Landlord must impose this increase in accordance with the *Act* and Regulation.

I order that the Landlord serve a copy of this decision in accordance with any of the methods set out under s. 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 20, 2023

Residential Tenancy Branch