



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 435315 BC. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

On April 20, 2023, the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and section 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Regulation*.

The Landlord and the Tenant attended the hearing at the scheduled hearing time on July 25, 2023.

Service and disclosure of evidence

Based on the submissions before me, I find that the Tenant listing on the Landlord’s application was served the Notice of Dispute Resolution Proceeding and the Landlord’s evidence in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Tenant’s evidence was not served on the Landlord and cannot be considered in these proceedings.

Issues to be Decided

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

Background and Evidence

Landlord submissions

The rental property was constructed in 1970 and consists of one unit.

The Landlord presented capital expenses related to major systems or major components of the rental property, as follows:

A. Electrical upgrade to the rental property

The Landlord submitted that their insurance company ordered them to upgrade the electrical panel and wiring in the rental unit. The Landlord submitted that they completed the ordered upgrades in order to improve safety and insure the rental property. Four invoices were submitted with the Landlord's evidence package to support their claim for an additional rent increase for capital expenditure in the amount of \$10398.26.

The Landlord submitted that the upgrade of the electrical panel and wiring will enhance safety at the rental property due to the component being at the end of its useful life.

The Landlord agreed that one of the invoices submitted was for an inspection of the property and was not part of the expenses for the work completed in the rental unit.

The Landlord submits that the final expenditure occurred on February 1, 2022, within 18 months of their Application date, and that this expenditure is not expected to recur for at least 20 years.

Tenant submissions

The Tenant present in these proceedings offered no objection to this rent increase requested by the Landlord but did indicate that further repairs were required to the rental unit.

Analysis

The *Residential Tenancy Regulation* (the "*Regulation*"), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;

- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
 - to repair, replace, or install a major system or a component of a major system; and
 - undertaken:
 - to comply with health, safety, and housing standards;
 - because the system/component was either:
 - close to the end of its' useful life, or
 - failed, malfunctioning, or inoperative
 - to achieve either:
 - a reduction in energy use or greenhouse gas emissions; or
 - an improvement in security at the residential property
- and
- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
- and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;
- or
- the landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase within the previous 18 months.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

“dwelling unit” means:

- (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.

I find there is one rental unit on the rental property that is eligible. The Tenant did not submit or state otherwise in their response; therefore, the Landlord’s indication of one dwelling unit is undisputed evidence.

Eligibility and Amounts

I will address whether the expenditure is *eligible*, and the amount of the eligible expenditure. I also make findings on whether each expenditure will be incurred again within 5 years.

Replacement of electrical panel and wiring

I find this work was an upgrade in the buildings’ electrical panel and wiring. The Landlord stated this was to improve the overall safety of the rental unit and to comply with a requirement to maintain their property insurance; I find there is no evidence to the contrary on this point. As well, I find that electrical panels and wiring to be a major component as defined in Regulation section 21.1.

I find the reason for this work was to achieve a state of repair that complies with the health, safety and housing standards required by law, and to replace a component that was at the end of its useful life, as set out in s. 23 of the *Regulation*.

I find that there is no evidence before me to show that this capital expenditure is eligible for reimbursement.

The Tenant did not dispute the Landlord’s claim for and additional rent increase. As such, I find the Landlord has met the burden of proof on a balance of probabilities.

I accept the Landlord's evidence that the first payment for the work was incurred on December 24, 2021, and that the last payment was incurred on February 1, 2022, as per the invoices they submitted into evidence, that finalizes the transaction as per the *Residential Tenancy Policy Guideline 27: Rent Increases*. In simple terms, I find the expense, in the form of a finalized payment, occurred on the invoice dates that I have before me. This was a period of 15 months and 28 days to the Application date of April 20, 2023. I find the Landlord made the payments for this work within the 18-Month Period.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years. This is with regard to the type of materials used in the electrical panel and wiring, rated at 15 years' lifetime, as set out in the *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements*.

After reviewing the Landlord's invoices for this claim, I noted that the Landlord has included an invoice for an inspection of the property with this application. As this inspection is not actual work on the electrical panel and wiring, I find that this inspection invoice can not be included in the totals of the Landlord's application for an additional rent increase for capital expenditures.

In conclusion, I grant a portion of the Landlord's Application for the capital expenditure, in the amount of \$10,004.51.

Outcome

The Landlord has proven all of the necessary elements for their Application, and I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditures of \$10,004.51 (replacement electrical panel and wiring). This is pursuant to section 43(1)(b) of the *Act*, and section 23.1(4) of the *Regulation* referred to above.

The *Regulation* section 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of dwelling units, divided by 120. In this case, I found there is one dwelling unit, and that the amount of the eligible capital expenditure is \$10,004.51.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$83.37 ($\$10,004.51 \div 1 \div 120$) per month, per affected tenancy. This is as per section 23.2 of the *Regulation*. Note this amount may not exceed 3% of

any Tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37, page 11, to properly calculate the rent increase in accordance with the *Regulation* section 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to section 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$10,004.51.

I order the Landlord to serve all Tenant with this Decision, in accordance with section 88 of the *Act*. This must occur within two weeks of this Decision.

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: August 24, 2023

Residential Tenancy Branch