



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

A preliminary hearing was originally held on March 30, 2023, and adjourned to July 7, 2023 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.

While the landlord's agent, FD, ("landlord"), attended the hearing by way of conference call, no tenant attended. I waited until 11:10 a.m. to enable the tenants to participate in this scheduled hearing for 11:00 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the online teleconference system that the landlord and I were the only one who had called into this teleconference.

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. The landlord confirmed that they understood.

I had made the following order in my Interim Decision dated March 30, 2023:

"As per the Standing Order dated February 17, 2023, pursuant to sections 71(2)(a) and (c) of the Act, in addition to the methods of service set out in section 89(1) of the Act, the landlord may serve the tenants with a copy of their Application for Dispute Resolution under section 43(3) of the Act by attaching a copy of their application to the door or other conspicuous place at the address at which the tenant resides."

The landlord submitted proof of service to support that all the tenants were served on April 6, 2023 with the dispute resolution and hearing package by way of posting the packages on their doors. In accordance with sections 88 and 90 of the Act, I find all tenants deemed served with the hearing documents on April 9, 2023, 3 days after posting. No evidence was submitted by the tenants.

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 \$267,242.81 incurred for a roof replacement. This application pertains to a rental property that contains thirty-nine individual dwelling units.

The landlord provided a detailed breakdown of the expenses related to this capital expenditure, as well as pictures to show that the roof replacement was necessary, and completed by October 7, 2022.

The landlord confirmed that the referenced work was required, and the capital expenditures were incurred within the 18 months before this application was filed on November 2, 2022. The landlord testified that they did not expect that these expenditures would re-occur in the next 5 years.

The landlord submitted copies of invoices supporting the referenced capital expenditures, as well as proof of the payments made.

The landlord confirmed that they have not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the past 18 months.

The tenants did not respond to the landlord's claims, nor did the tenants provide written consent for the applied increase.

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:
 - o the Work was to repair, replace, or install a major system or a component of a major system
 - o 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;
 - o the capital expenditure was incurred less than 18 months prior to the making of the application
 - o 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

Based on the testimony of the landlord, 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. 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. As the specified work was performed pertains to the replacement of a roof for the building, for the purpose of this application, I find that there are thirty-nine "specified dwelling units".

4. Amount of Capital Expenditure

The landlord provided a comprehensive list of expenditures incurred in the 18 months prior to the filing of this application.

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 qualifies as a major component for the purposes of this application, I find that the landlord incurred this expenditure in order to replace this component, which was failing, and therefore I find that this expenditure qualifies.

b. Timing of Capital Expenditure

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." I accept that the landlord has met the timing requirements for this application, and that the incurred expenses occurred within 18 months of the landlord making this application.

c. Life expectancy of the Capital Expenditure

I am satisfied that the life expectancy of the component replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditures incurred to undertake the Work described are eligible capital expenditures, as defined by the Regulation.

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 did attend the hearing, nor did the tenants submit any written evidence, to provide any rebuttals or to dispute the landlord's claims.

I am satisfied that the capital expenditures incurred were because the repairs or replacements were required, and not due to inadequate repair or maintenance on the landlord's part. I am also satisfied that the landlord has only claimed amounts that have not been paid from another source, or which they are entitled to be paid from another source.

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 \$267,242.81. I find the

landlord has established all elements necessary for an additional rent increase for the eligible capital expenditures as set out in their application.

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 found that there are 39 specified dwelling units, and that the amount of the eligible capital expenditures is \$267,242.81.

Accordingly, I find the landlord has established the basis for an additional rent increase for capital expenditures of eligible capital expenditure as noted above ÷ number of units for that specific building (39) ÷ 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 each tenant 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: August 6, 2023

Residential Tenancy Branch