



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 0192675 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Introduction

The landlord's application filed on February 23, 2023, is seeking a rent increase pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act ("Act") and section 23.1 of the Residential Tenancy Regulation, B.C. Reg. 477/2003. Residential Tenancy Policy Guideline 37: Rent Increases.

This matter commenced on July 11, 2023. The interim decision should be read in conjunction with this Decision. The interim decision and reconvene Notice of Hearing was sent by the Residential Tenancy Branch to all parties on July 17, 2023.

Only the parties listed on the covering decision appeared on October 30, 2023. The landlord did provide a revised table reducing the capital expenditures as discussed at the hearing on July 11, 2023, which was confirmed received by the tenants.

Issue to be Decided

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

Background and Evidence

While I have considered the submission of the parties and documentary evidence not all details of their submissions are reproduced here. The relevant and important evidence related to this application before me have been reviewed, and my findings are set out below in the analysis portion of this Decision.

The rental property was constructed in 1982 and consist of 147 rental units that incorporate 3 buildings and was approximately 40 years old. "A building" has 44 dwelling units; "B building" has 47 dwelling units; and "C building" has 44 dwelling units.

The Regulations define specified dwelling unit"

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.

Therefore, I must consider each building separately as the repairs or replacement were carried out in the individual building and not shared areas.

The capital expenditure (the "Work") incurred as follows which was revised as indicated in the interim decision to remove items that were outside the 18-month time frame or a duplication.

Invoice Register - Summary Table

15-Sep-2023

A Building	
Category	Amounts
Hot Water Tank & associated Electrical Panel Upgrade	\$ 45,675.00
Plumbing - pipe replacement	\$ 65,809.74
Civil work - drywall removal and reinstallation, bath surrounds, firewatch, etc	\$ 120,085.81
Roofing	\$ -
Hallway Restoration - carpets and painting	\$ 45,371.83
Total	\$ 276,942.38

B Building	
Category	Amounts
Hot Water Tank & associated Electrical Panel Upgrade	\$ 45,675.00
Plumbing - pipe replacement	\$ -
Civil work - drywall removal and reinstallation, bath surrounds, firewatch, etc	\$ 1,176.00
Roofing	\$ -
Hallway Restoration - carpets and painting	\$ 46,979.68
Total	\$ 93,830.68

C Building	
Category	Amounts
Hot Water Tank & associated Electrical Panel Upgrade	\$ 45,675.00
Plumbing - pipe replacement	\$ 166,493.78
Civil work - drywall removal and reinstallation, bath surrounds, firewatch, etc	\$ 366,737.75
Roofing	\$ 186,896.85
Hallway Restoration - carpets and painting	\$ 41,172.67
Total	\$ 806,976.05

Roofing "C building"

The landlord submits that they had some leaks in the roof, and they had the roof inspected and a report was completed in November 3, 2020, and indicated the roof on "C building" had approximately two years left, and buildings "A building" and "B building" had approximately 5 to 8 years remaining which they will be following up in later years.

The landlord stated that based on that roof inspection report they had the roof replaced on "C building" and this completed in June of 2022 at the end of its useful life. The landlord submits they paid \$186,897.00.

The tenant AS submit that they do not have any issues with the roof on C building as it was nearing its useful lifespan.

One tenant raised the issue of a prior fire in the building and if the roof was replaced at that time.

The landlord responded that the fire only impacted a very small section of the roof, and it was repaired through their insurance company at the time.

Plumbing, civil work, and restoration " A, B & C building"

The landlord stated that they had work completed on the three building on the same residential property and that they had to sequence the program. The landlord stated that they started with B building, then A building and the last was C building.

The landlord stated that the buildings incurred the same capital expenditures, except for the roof; however, some of the work was not recoverable as it was outside the 18-month period and that is why there is a difference in the cost associated with the buildings. The landlord submits the above amended table, as agreed upon at the last hearing, is for the cost of all work completed within 18 months of filing their application with receipts.

The landlord submits that the old copper pipes were starting to leak, due to the age of the pipes which were approximately 40 years old and past their useful lifespan, and they had to have each building re-piped.

The landlord testified as part of the over arching plumbing replacement, civil work had to be done, as sections of drywall from walls, and ceilings had to be removed to access the pipes and then they had to repair the said items. The tub surrounds had to be

removed and replaced, new low flow toilets were installed, and some other bathroom fixtures and fire watch was needed.

The landlord submits that the hot water tanks and electrical panels for the hot water tanks were replaced in all three buildings as they were past their useful lifespan, and they were all replaced as part of the over arching project.

The landlord stated at the end of the construction they had to repaint the walls, reinstall lighting and replace the hallways carpets to bring the premises back to the original conditions.

The tenant AS raised the issue that one invoice is outside the 18 months period and there appears to be double charge. This is related to "A building". The landlord agreed to remove the invoice outside the 18 months and agreed to remove the duplicate charge. The landlord provided an update revise worksheet which has been noted above.

The tenant AS asked where the copper pipes went and if the landlord was entitled to any rebate for the copper pipe.

The tenant AS asked that since the landlord installed low flow toilets that over time they will save money, and this is a rebate.

The tenant AS stated that the biggest issue the tenants have with this project, is that the work that was done was substandard and many things were left unfinished, as an example some tenants are missing the back of toilets, drywall and painting.

The landlord responded that the copper pipes were removed by the contracted company and how it was recycled was not within their control. The landlord stated there was no rebate for replacing the pipes. The landlord responded that they did not receive any rebate on replacing the bathroom fixtures and future cost saving is not a rebate on the fixtures.

The landlord recognized that there are some deficiencies in the work, and they have a list that they are going through and dealing with the contractors. The landlord stated the tenants are not going to be charged for fixing any of the deficiencies.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application.

Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution

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.

In this matter, there have been no prior application for an additional rent increase within the last 18 months before the application was filed.

“A building” has 44 dwelling units; “B building” has 47 dwelling units; and “C building” has 44 dwelling units to be used for calculation of the additional rent increase.

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.

Roofing “C building”

In November 2020, the landlord had the roof inspected and a report completed which indicated C building had approximately two years left of its useful life span. The landlord replaced the roof at the end of its useful life and the work was completed in June 2022. I find this is a major component of the building. I find that the Work was done because the roof was past its useful life.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

The tenants presented no evidence to defeat this portion of the landlord’s application.

Therefore, I find the landlord is entitled to recover the capital expenditure for “C building” in the amount of **\$186,896.55**.

Plumbing, civil work, and restoration “ A, B & C building”

The landlord completed an over arching project on “A, B & C building” that required to have the old copper pipes replaced which were approximately 40 years old at the time. I find this is a major component of the building. I find that the Work was done because the pipes had exceeded their useful life span and were failing.

The over arching projected required civil worked to be done, such as removal of drywall and fixtures to give access to the pipes and then reinstalled. The new boiler systems were installed in each of the building that required an electrical upgrade and at the end of the projects the hallways were restored.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

However, I have not granted the landlord the cost of the fire watch that is related to “C building”. While I accept it was necessary and required by the local city or municipality or their insurance company; however, that was not Work done, it was a service that was provided. Therefore, I have removed the fire watch from “C building” in the amount of \$24,780.00

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure.

In this case, the pipes were 40 years old, long past their useful life span and needed to be replaced in all three buildings. This is simply the aging processing.

The tenants raised the issue, was the landlord entitled to receive or be paid from another source, relating to the recycling of the old copper pipes and the future cost savings of the energy efficient low flow toilets; however, I find this is not money the landlord was entitled to receive from another source to complete the capital expenditure. The copper pipes were removed by the contracting company and there was no money to be paid to the landlord for the recycling of the old pipes. The new efficient toilets may be a future cost savings to the landlord. This is not money the landlord is entitled to receive from another sources, such as a rebate on the fixtures.

The tenants provided no supporting evidence that the landlord was entitled to receive money from another source. I find the tenants have failed to defeat the application for additional rent increase.

While I accept there may be some deficiency in the Work completed by the contractors and the landlord is making efforts to have those fixed. However, that is not a ground the tenants can defeat an additional rent increase.

Based on the above, I find the landlord is entitled to recover the plumbing, civil, and restoration work for the individual “A, B and C building” as follows.

“A building” in the amount of \$276,942.38

“B building” in the amount of \$ 93,980.68

“C building” in the amount of \$595,299.20

Outcome

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.

“A building”

In this case, A building has 44 specified dwelling unit and that the amount of the eligible capital expenditures total the amount of **\$276,942.38**.

I find the landlord has established the basis for an additional rent increase for capital expenditures for “A building” of **\$52.45** ($\$276,942.38 \div 44 \div 120 = \52.45).

“B building”

In this case, B building has 47 specified dwelling unit and that the amount of the eligible capital expenditures total the amount of **\$93,980.68**.

I find the landlord has established the basis for an additional rent increase for capital expenditures for “B building” of **\$16.66** ($\$93,980.68 \div 47 \div 120 = \16.66).

“C building”

In this case, C building has 44 specified dwelling unit and that the amount of the eligible capital expenditure for the roof was \$186,896.85 and the cost of the plumbing, civil, and restoration work \$595,299.20 for the total the amount of **\$782,196.05**.

I find the landlord has established the basis for an additional rent increase for capital expenditures for “C building” of **\$148.14** ($\$782,196.05 \div 44 \div 120 = \148.77).

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 as set out above. The landlord must impose this increase in accordance with the Act and the Regulation.

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: November 29, 2023

Residential Tenancy Branch