



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

On July 30, 2023 (the “Application date”), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase for a capital expenditure pursuant to s. 23.1 of the *Regulation*.

The Landlord and the sole Tenant attended the hearing at the scheduled hearing time.

Preliminary Issue – service and disclosure of evidence

In the hearing, the Landlord reviewed how they served the Notice of Dispute Resolution to the Tenant in this matter. This was via email, as per the Landlord’s substituted service request for this method that was approved at the Residential Tenancy Branch on August 29, 2023. The Tenant in the hearing confirmed they received an email from the Landlord with the Notice of Dispute Resolution Proceeding attached on August 31, 2023.

The Tenant confirmed they received receipts provided by the Landlord to show the amounts they spent on what they deem to be capital expenditures. The Tenant specified they did not receive photos or ledger information from the Landlord, and the Landlord confirmed they provided that information only to the Residential Tenancy Branch. This information receives no consideration in this hearing for this reason.

The Tenant provided evidence in response to the information they received from the Landlord. This concerned other matters in the rental unit and information attesting to the Landlord increasing the rent amount in 2023. In the hearing, the Landlord acknowledged they received this documentation from the Tenant.

Preliminary Issue – separate matters in the tenancy raised by the Tenant

I instructed the Landlord and the Tenant in the hearing that I was considering information only related to the Landlord's Application for a rent increase because of capital expenditures that the Landlord deemed eligible.

The Tenant presented a number of other issues. Some of these are related to a Landlord's rent increase as discussed at the start of the hearing. Other issues are related to the Landlord's compliance with the legislation, provision of repairs and/or other services to the Tenant. I explained to the Tenant that those issues require their separate Application because they are unrelated to the Landlord's Application which is the sole issue for my consideration in this hearing.

Issue to be Decided

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

Background and Evidence

The rental property in this matter is a single rental unit. The Landlord obtained ownership in 2014.

The Landlord set out that this tenancy started on November 1, 2017, for the monthly rent amount of \$1,950. The Landlord could not locate a copy of the documented tenancy agreement. The Tenant confirmed this basic information about the tenancy.

The Landlord stated they did not increase the rent during the tenancy until 2023. The Landlord issued a Notice of Rent Increase to the Tenant on May 24, 2023, for an increased rent amount of \$39 that took effect on September 1, 2023. The Tenant confirmed they have been paying the amount of \$1,989 from September 2023 onwards.

The Landlord and Tenant both described an update to the original agreement, signed by them on July 24, 2023. This provides for the Tenant paying an extra amount toward the electrical utility. The parties in the hearing described at least one payment toward this utility paid in this way since they made this addition to the agreement in July 2023.

In this Application, the Landlord provided the amount of \$21,971.61 as the amount they spent on capital expenses, completed on April 11, 2022. The Landlord and Tenant both described having the work completed in a kitchen renovation from late February 2022 into March 2022.

On the Application, the Landlord listed the following:

- installed new laminate flooring in one bedroom, kitchen, living-room and dining-room
- installed new kitchen cabinets, sink, faucet, quartz countertops, crown molding
- installed baseboards in all said rooms and trim around kitchen window
- installed tile backsplash in kitchen

The Landlord provided receipts and invoices for materials they purchased from various locales, and the services of a plumber in certain parts of the renovation. The Landlord clarified that certain of the receipts were for electrical issues in the rental unit and were outside the scope of a kitchen renovation.

In the hearing the Tenant confirmed their position on the Landlord's Application for a rent increase because of capital expenditures. In a summary statement in their 18-page written submissions, the Tenant stated: "Kitchen cabinets, flooring and moldings are NOT MAJOR SYSTEMS". The provided an image of a guideline from the Residential Tenancy Branch public-facing information website that describes eligible costs for this process.

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.

Eligibility and Amount

For the Landlord's submitted expenditures, I address whether it was *eligible*, and then determine the expenditure *amount*.

The *Regulation* s. 23.1(4) sets out what qualifies:

- (a) the capital expenditures were incurred for one of the following:
 - (i) the installation, repair or replacement of a major system or major component in order to maintain the residential property . . . in a state of repair that complies with the health, safety and housing standards required by law in accordance with s. 32(1)(a) of the Act;
 - (ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
 - (iii) the installation, repair, or replacement of a major system or major component that achieves one or more of the following:
 - (A) a reduction in energy use or greenhouse gas emissions
 - (B) an improvement in the security of the residential property;

The *Regulation* defines "major component" as "a component of the residential property that is integral to the residential property.

The *Regulation* defines “major system”: an electrical system, mechanical system, structural system or similar system that is integral to the residential property, or that which provides services to the tenants/occupants of the property. The *Residential Tenancy Policy Guidelines*, in particular 37C: *Additional Rent Increase for Capital Expenditures* describes major systems and major components as “essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property” (e.g., parking facilities, elevators).

I find what the Landlord presented on their renovations of the kitchen in the rental unit does not qualify as eligible for the reason that this feature of the rental unit is neither a “major system” nor “major component” as defined in the legislation. I find the kitchen does *not* support a critical function of the residential property, namely that of shelter. A kitchen renovation is not in line with the purpose and intent of the *Act*.

For this reason, I find s. 23.1(4) of the *Regulation* does not apply. I find these expenditures are not eligible, and I dismiss the Landlord’s Application for this reason, without leave to reapply.

Conclusion

I dismiss the Landlord’s Application for an additional rent increase for the capital expenditure in question.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 10, 2023

Residential Tenancy Branch