



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding Macdonald Commercial RES
Ltd and [tenant name suppressed to protect privacy]

DECISION

Introduction

The landlord's application filed on September 8, 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.

The parties listed on the covering page of this Decision attended the hearing. The tenants confirmed that they received the landlord's application and evidence.

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 documentary evidence of the landlord and testimony of the parties, 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 1941 and is a side-by-side duplex. There are 2 dwelling units subject to this application.

At the outset of the hearing the landlord's agent withdrew 3 of their items in their application and are only proceeding with the cost of the roof. I find that is reasonable as they appear to be basic maintenance and repairs which do not fall within the scope of this type of application.

The landlord is seeking to impose an additional rent increase for a capital expenditure (ADI) incurred to pay for a work done to the residential property.

The capital expenditure (the “Work”) incurred as follows:

Item	Description	Amount
a.	Roof upgrade	\$30,387.40

The landlord’s agent stated that the roof was old and failed and had to be replaced on the duplex. Filed in evidence is a receipt for the Work, and photographs.

The tenants stated that there was a heavy rain fall that flooded their kitchen as the roof failed. The tenant stated that although they noticed when they moved in 5 years earlier that the roof was old and should have been replaced; however, they did not say anything. The tenants stated the roof should have been replaced before they even moved in.

The tenants stated that they believe that these are cost that the landlord should be expected to pay and not be entitled to claim an additional rent increase on the tenants.

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. There are 2 specified dwelling units as this is a common roof for the premises, which are to be used for calculation of the additional rent increase. The landlord is claiming the total amount of **\$30,387.40** as outlined in the above table for capital expenditures.

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.

The landlord had the roof placed and upgraded. 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 and had failed.

The landlord provided the receipt 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.

While I accept the tenants believe this should be cost of the landlord to maintain their property or that the roof could have been replaced earlier; however, this is a major competent of the building which allows the landlord to claim under the Act. The fact the

useful lifespan may have exceeded is not grounds to defeat this application I can only apply the legislation as written. 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 replacing the roof in the amount of **\$30,387.40**.

Outcome

The building has 2 specified dwelling unit and that the amount of the eligible capital expenditure for the roof was **\$30,387.40**. I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$126.22** ($\$30,387.40 \div 2 = 126.22 = \126.61).

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: January 05, 2024

Residential Tenancy Branch