



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1550 WEST 10TH HOLDINGS LTD.
(1.W.1.H.L.) and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing dealt with the Landlord's April 30, 2023 Application under the *Residential Tenancy Act* (the "Act") and the Residential Tenancy Regulation (the "Regulation") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

Preliminary Matter – Named Respondent

The Landlord requested that the following Respondents be removed from the application as they no longer resided at the rental unit:

- J.C.
- O.B.
- R.J.

Preliminary Matter – Service and Evidence

The Landlord indicated that every respondent was sent the Proceeding Package along with the Evidence via Registered Mail on October 3, 2023. Upon request the Landlord provided four tracking numbers, the Landlord further confirmed that 45 Packages were sent on that day. The Tenant in attendance at the hearing confirmed receipt of the Proceeding Package and evidence. Pursuant to section 90 of the Act, the Tenants are deemed to have received these packages 5 days after they were sent by mail, on October 8, 2023.

Rule 11.4 of the *Residential Tenancy Branch Rules of Procedure* requires the Landlord to submit maintenance records in their possession for each component or system that was repaired. I note that the Landlord did not submit maintenance records related to the heating system.

The Tenant did not raise this as an issue, and the Tenant did not argue inadequate maintenance of the heating system. Therefore, I find the lack of maintenance records is not at issue, and I will not draw an adverse inference against the Landlord in this

respect. I find the Landlord sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages.

Issue to be Decided

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

Background and Evidence

The Landlord has applied for permission to impose an additional rent increase for capital expenditures that were incurred to replace the rental building's heating boiler, totalling \$75,299.27.

The Landlord advised that on May 13, 2022 the existing heating boiler (the boiler) stopped working, the boiler had been installed in 2000. As per the company who completed the inspection and replacement, they were called due to no heat in the building. The mechanic noted it was recommended that the boiler be replaced due to the lack of availability of parts and age of the existing boiler. The Landlord considered the factors outlined by the mechanic and the urgency of providing heat to the building in making the decision to replace the boiler.

The boiler was replaced by a high efficiency boiler on May 27, 2023. The total cost of the replacement was \$82,481.27 and the Landlord received a \$7,182.00 efficient boiler rebate from Fortis.

The Landlord confirmed that the old boiler had been maintained quarterly and that they followed the maintenance schedule as provided by the manufacturer. The Landlord provided the name of the company who completed the maintenance and confirmed that they would be able to provide a copy of the maintenance records.

The Tenant in attendance inquired if the Landlord had looked into insurance coverage, the Landlord advised that the replacement would not be insurable and that the buildings insurance deductible was \$100,000.00, far above the cost of replacement.

The Landlord confirmed that the building has 33 specified dwelling units, and that since making the application the residents of two units have moved.

The Landlord confirmed that no other applications for rent increases have been made in the last 18 months.

Analysis

Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a Landlord is entitled to impose an additional rent increase for capital expenditures.

The Landlord must prove the following, on a balance of probabilities:

1. the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
2. the number of specified dwelling units on the residential property (s. 23.2(2));
3. the amount of the capital expenditure (s. 23.2(2));
4. that the work was an eligible capital expenditure (s. 23.1(4)).

Tenants may defeat an application for an additional rent increase for capital expenditure if they prove the capital expenditure was incurred because of inadequate repair or maintenance on the part of the Landlord (s. 23.1(5)(a)) or that the Landlord has been paid, or is entitled to be paid, from another source for that expenditure (s. 23.1(5)(a)).

1. Prior Application for Additional Rent Increase

I am satisfied that the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months. This was not in dispute.

2. Number of Specified Dwelling Units

In the Regulation, a dwelling unit means a unit suitable for living accommodation, including a rental unit. A rental unit is only considered a “specified dwelling unit” once the work associated with a capital expenditure is completed and it affects that unit. In other words, ARI-C applications can only be made once the work associated with the capital expenditure is complete.

I accept the undisputed evidence that the work to replace the boiler has been completed for the entire rental building, as such there are 33 specified dwelling unit for this expenditure.

3. Amount of Capital Expenditure

The Landlord provided sufficient evidence that the cost of the boiler replacement was \$82,481.27 and that the Landlord received a \$7182.00 efficient boiler rebate from Fortis.

4. Eligibility of Capital Expenditure

For the work to be considered an eligible capital expenditure, the Landlord must prove the following:

- A. the work was done to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
- B. the work was undertaken for one of the following reasons:
 - a. to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
 - b. because the system or component:
 - i. was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
 - ii. had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
 - c. to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
 - d. to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
- C. the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- D. the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

A. Whether Capital Expenditure relates to Major System or Component

A major system is integral to the property or to providing services to the tenants and occupants of the property. RTB Policy Guideline 37 provides the following examples of major systems and major components: the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

I am satisfied the boiler is a “major component” as it is part of the heating system, and it services the whole building.

B. Reason for Capital Expenditure

Given the apparent age of the boiler and lack of parts availability, I am satisfied that the boiler was at the end of its useful life expectancy.

C. Timing of Capital Expenditure

The capital expenditure must have been incurred in the 18-month period preceding the date the landlord submits their application to be eligible for an additional rent increase.

A “capital expenditure” refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted. As such, the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made.

A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date.

For clarity, the entire cost of the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

The Landlord made the application on September 22, 2023. The final payment for the roof replacement was made on July 11, 2023, and I am satisfied work was completed and paid within the 18-month period preceding this application.

Outcome

For the above-stated reasons, I find that the capital expenditure for the boiler replacement is eligible for capital expenditures, as defined by the Regulation.

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 specified dwelling units divided by the amount of the eligible capital expenditure divided by 120.

I find that the Landlord may impose additional rent increases on the tenants in the amount of **\$19.01**, calculated as follows:

Capital expenditure	Cost	Address affected	# specified dwelling units	Rent increase permitted (cost / #specified dwelling units / 120)
Boiler	\$75,299.27	All	33	\$19.01
			Total	

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 37, 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 Landlord's application for an additional rent increase for capital expenditure in the amount of \$75,299.27.

The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenants 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: January 24, 2024

Residential Tenancy Branch