



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMARGUE PROPERTIES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the Landlord's application pursuant to 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.

The Landlord (agent of) attended the hearing. Several tenants provided oral testimony at the hearing. All parties provided affirmed testimony. The Landlord provided a proof of service document showing they served all the Tenants with the Notice of Dispute Resolution Proceeding and evidence package at their respective rental units by posting it to the door on November 2, 2023. I find the Tenants have been sufficiently served, as no service issues were raised.

Only one of the Tenants who attended the hearing provided documentary evidence. The Tenant sent it to the email address for the Landlord (as per the signed RTB 51). The agent for the Landlord who was present did not receive the evidence directly, but acknowledged that the email address the Tenant used was an acceptable email address. The Landlord did not take any issue with the manner in which the Tenant served her evidence and appeared willing to proceed.

No further service issues were raised, and I find all documents have been sufficiently served and are admissible.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Are the landlords entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The Landlord explained that this property consists of 61 separate rental units, all part of the same building. The building was built in 1981, and the Landlord has owned the building since 1992.

This application was filed to recover capital expenses the Landlord incurred in the amount of \$142,997.00 to replace one section of the roof on a large apartment building. This part of the roof is at least 30 years old, since the Landlord stated they have owned the building since 1992, and have not replaced this part of the roof in that period of time. The Landlord presented photos and testimony to demonstrate that there have been numerous patches and fixes done to the roof over the years. Photos were provided into evidence showing there have been numerous roof leaks into rental units below. The Landlord also noted there were some ducting/vent issues that were addressed as part of this roof replacement.

The Landlord provided testimony and documentation showing the repairs were completed by Erickson Roofing Ltd. in September 2023 and paid for in October 2023. The repairs included replacement of the roofing surface/plywood, all roofing, flashing and venting.

The Tenants each spoke to the hardships this rent increase could impose on them, and they generally agreed that this is an expense that should be incurred by the Landlord, and not passed on to the Tenants. The Tenants also each had different complaints about the Landlord's lack of maintenance in their respective units.

Analysis

1. Statutory Framework

Sections 21 and 23.1 of the Regulation 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, a 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 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 a 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), a 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

I have no evidence before me that the landlord has imposed an additional rent increase in the past 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.

This application is for 61 distinct apartment units. As such, there are 61 “dwelling units”. Furthermore, I find that these units are all “specified dwelling units” as each is located in the same general building where the Work was undertaken.

4. Amount of Capital Expenditure

Based on the work contract submitted into evidence, I find that the cost the landlords incurred to replace the roof was \$142,997.00.

5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order for the Work to be considered an eligible capital expenditure, a 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
 - 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.

I will address each of these in turn.

a. Type of Capital Expenditure

The Work amounted to replacing the entire roof of the house. Residential Tenancy Branch Policy Guideline 37 explicitly identifies a residential property’s roof as a “major system”.

As such, I find that the Work was undertaken to replace a “major system” of the residential property: the roof.

b. Reason for Capital Expenditure

The landlords stated that the roof was leaking water into at least one of the rental units. The Landlord also provided photos and testimony to show that the roof was past the end of its useful life.

I am satisfied this work was undertaken to remediate a failing roof system, which is an acceptable reason.

c. Timing of Capital Expenditure

I accept the landlords’ evidence that the work was completed and paid for in the Fall of 2023. As such, I find that the landlords incurred the cost of the capital expenditure within 18 months of making this application.

d. Life expectancy of the Capital Expenditure

RTB Policy Guideline 40 states that the useful life of a roof is between 15 to 20 years. For the purposes of this application, all the landlords must prove is that the capital expenditure is not expected to reoccur within five years. I find it more likely than not that the roof will likely last more than 5 years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

6. Tenants’ Rebuttals

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the landlords must prove (set out above), the 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 landlords have been paid, or is entitled to be paid, from another source.

There is no evidence that the Landlord has been paid or is entitled to be paid for this expense from another source.

Although many of the Tenants spoke to the fact that this rent increase may cause them hardship, I am unable to consider hardship when determining whether or not this application is successful. The Tenants were generally consistent in their statements saying that the Landlord has not performed requested repairs in a sufficient and timely

manner but they did not speak to any inadequate maintenance regarding the roof itself in a specific manner.

The Landlord explained that the roof was over 30 years old, and although they have tried to repair and patch it numerous times over the years, it is now at end of life. I find the photos and documentation provided by the Landlord support that this roof was beyond its useful life expectancy, and there is insufficient evidence to show that the failure of the roof was the result of inadequate maintenance. In fact it appears roof maintenance was done numerous times over the years, and the time has come to replace it. Overall, I find there is insufficient evidence to show this repair was required due to inadequate repair and maintenance. I am not satisfied the Landlord's application ought to be defeated for the reasons outlined above.

7. Outcome

The landlords have been successful. They have proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure. 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, there are 61 specified dwelling units and that the amount of the eligible capital expenditure is \$142,997.00.

So, the landlords have established the basis for an additional rent increase for capital expenditures of \$19.54 ($\$142,997.00 \div 61 \text{ units} \div 120$). Any individual rent increase of over 3% must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 40, sections 23.2 and 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 landlords have been successful. I grant the application for an additional rent increase for capital expenditure of \$19.54. The landlords must impose this increase in accordance with the Act and the Regulation.

I order the landlords 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