

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An additional rent increase for eligible capital expenditure

The Landlord's agents K.F. and R.C. (the Agents) attended the hearing for the Landlord.

Tenants P.R., M.J. and C.W. attended the hearing for the Tenants.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

Agent K.F. testified that the Tenants were each served with the Proceeding Package and Landlord's Evidence via posting on October 20, 2023. Tenants P.R., M.J. and C.W. testified that they received the above documents in October of 2023.

Based on the testimony of the P.R., M.J. and C.W. and K.F., I find that the Tenants were each served with the Proceeding Package and Landlord's Evidence via posting on October 20, 2023 in accordance with section 88 of the Act.

No evidence from the Tenants was entered into evidence for consideration.

### **Issues to be Decided**

Is the Landlord entitled to an additional rent increase for eligible capital expenditure?

### **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 Agents testified that there are 26 specified dwelling units in the subject rental building. The Agents testified that the Landlord is seeking to impose an additional rent increase because a new boiler was installed. The Agents testified that the boiler that was replaced was original to the rental building built in the 1980's. The Agents testified

that the boiler needed to be replaced because it was no longer providing enough hot water to the rental units and the water that was provided was not hot enough. The Landlord filed this application for dispute resolution on October 11, 2023.

The Agents testified that the new boiler cost \$30,112.49 to install. An invoice dated July 29, 2022 for same was entered into evidence. The invoice states a due date of August 1, 2022. The Agents testified that the Landlord paid the invoice on August 1, 2022. The Agents testified that the Landlord received a \$2,000.00 rebate from Fortis BC for the boiler replacement. Proof of same was entered into evidence. The Agents testified that the new boiler is natural gas and is more energy efficient than the old boiler.

Tenant P.R. testified that he does not believe it is right to put the onus on the Tenants to pay for the new boiler. Tenant P.R. testified that the Landlord is nickel and diming the Tenants. Tenant P.R. testified that the new boiler was needed, but the Landlord will continue to reap the benefits of the rent increase after the new boiler is paid off.

Tenant M.J. testified that she is against the rent increase and that the boiler replacement is the owner's responsibility.

Tenant C.W. testified that she disagrees with her fellow tenants and that the Landlord must pass on the costs to the Tenants. Tenant C.W. testified that the rent increase is worth having hot water on demand.

There is no record in the Residential Tenancy Branch Dispute Management System of the Landlord filing another application for an additional rent increase in the last 18 months.

## **Analysis**

### **1. 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. 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 successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- 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 (S. 23.1(4));
  - o the Work was undertaken for one of the following reasons:
    - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));

- because the system or component:
  - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
  - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
- to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
- to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

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 (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

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.

## 2. Prior Application for Additional Rent Increase

Upon review of the Residential Tenancy Branch Dispute Management System, I find that the Landlord has not filed a previous application for an additional rent increase in the last 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.

Based on the undisputed testimony of the Agents, I find that the rental property contains 26 specified dwelling units.

#### 4. Amount of Capital Expenditure

Based on the invoice for a new boiler entered into evidence, I find that the Landlord has proved that a new boiler was installed at a cost of \$30,112.49 less the \$2,000.00 rebate received, for a total of \$28,112.49.

#### 5. 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
    - 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

Section 21.1 of the Regulation defines “major system” and “major component”:

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

(a) to the residential property, or

(b) to providing services to the tenants and occupants of the residential property;

"major component", in relation to a residential property, means

- (a) a component of the residential property that is integral to the residential property, or
- (b) a significant component of a major system;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, 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 find that the boiler replacement amounted to upgrades to the buildings' plumbing system. The Regulation explicitly identifies a residential property's plumbing system as a "major system". I find that a boiler, providing hot water to each unit in the rental building is a major component of the plumbing system as defined by the Regulation.

As such, I find that the boiler replacement was undertaken to replace "major components" of a "major system" of the residential property.

#### b. Reason for Capital Expenditure

The Agents testified that the boiler was not providing enough hot water to the rental units and the water provided was not hot enough. This testimony was not disputed by the Tenants in attendance at this hearing. I find that the boiler was replaced because it was not functioning properly. I find it reasonable that a malfunctioning boiler was replaced.

The Agents testified that the boiler was installed in the 1980s. This was not disputed by the Tenants in attendance. If the boiler was installed in 1989, as of the date of replacement, it would have been approximately 33 years old. Residential Tenancy Branch Policy Guideline #40 (PG #40) does not set out the useful life of a boiler; however, I may use items with similar characteristics in the table to determine the useful life of the boiler. PG #40 states that the useful life of an electric furnace is 25 years. I find that a furnace and a boiler share a similar heating function and likely have similar lifespans. I find, on a balance of probabilities, that the boiler that was replaced had a useful life of approximately 25 years. I find that the boiler was well beyond its useful life at the time of replacement.

I find that the boiler was replaced because it was malfunctioning and was well past its useful life.

#### Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made.

I accept the landlords uncontroverted evidence that the boiler was paid for on August 1, 2022, the due date of the boiler invoice. I find that August 1, 2022 is within 18 months of the landlord making this application.

c. Life expectancy of the Capital Expenditure

As stated above, the useful life for the boiler replaced exceeds five years. There is nothing in evidence which would suggest that the life expectancy of the new boiler would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40. For this reason, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditure incurred to replace the boiler 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 landlord 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 landlord has been paid, or is entitled to be paid, from another source.

I find that the arguments advanced by Tenant R.P. and Tenant M.J., who opposed the additional rent increase, do not contradict any of the testimony or evidence presented by the Agents. The Testimony heard from Tenant R.P. and M.J. did not allege 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 that the Landlord was paid or was entitled to be paid from another source.

Tenant R.P. and Tenant M.J. both argued that the Landlord should be responsible for the costs incurred to replace the boiler. However, as stated above, the Regulation limits the reasons which a tenant may oppose an additional rent increase for capital expenditure. I find that the objections raised by Tenant R.P. and Tenant M.J. do not form a basis to dispute the application as permitted by the Regulation.

## 7. Outcome

The landlord has been successful. The Landlord has 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, I have found that there are 26 specified dwelling units and that the amount of the eligible capital expenditure is \$28,112.49.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$9.01 ( $\$28,112.49 \div 26 \div (120)$ ). 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**

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$9.01. 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 23, 2024

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Residential Tenancy Branch