



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 and the Landlord's witness BG (the Landlord's Witness) attended the hearing. The Tenants were present at the hearing.

The Landlord advised they taped two copies of the Notice of Dispute Resolution and evidence (collectively, the Proceeding Packages) to the rental unit door on October 3, 2023. The Landlord's Witness confirmed they were present at the time and saw the Landlord serve the Proceeding Packages by taping them to the rental unit door. Pursuant to section 90 of the Act, I find the Tenants were deemed served with the Proceeding Packages 3 days after they were taped to the rental unit door. I find the Landlord sufficiently served the Tenants with the Proceeding Packages.

The Tenants did not attend the hearing or submit any evidence.

Issues 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 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 application applies to a residential single-family dwelling that has one rental unit, which is rented by the Tenants.

The Landlord testified they are seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's roof (the Work).

Description	Date	Amount
Replace Roof	April 10, 2023	\$6,066.90
	Total	\$6,066.90

Replace Roof

The Landlord advised the rental unit was built in 1952 and they bought the rental unit in 2008. The Landlord testified the roof was the original roof since at least 2008 and they had not replaced the roof before. The Landlord believes the roof is at least 40 years old. The Landlord argued the roof was missing shingles and their insurance company advised them if they did not have the roof replaced, they were no longer eligible for insurance. The Landlord provided photographic evidence to support the state of the roof prior to replacement and a photograph showing the replaced roof. Additionally, the Landlord submitted a copy of the invoice to support their claim.

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

I am satisfied that the Landlord has not successfully applied for an additional rent increase against these Tenants within the last 18 months.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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.

The Landlord explained that there is 1 specified dwelling unit on the residential property. I accept that there is only 1 specified dwelling unit.

4. Amount of Capital Expenditure

The Landlords applied for \$6,066.90 for the replacement of the roof.

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 am satisfied the roof replacement is considered a repair to a “major component”, of a “major system” as the roof is essential to support or enclose the building, protect its integrity or support critical function of the residential property.

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

b. Reason for Capital Expenditure

With no evidence to the contrary, I am satisfied that the Work was completed to replace an aging building component. I am satisfied that roof was at least 16 years old if not older and was close to the end or past its useful life expectancy.

c. 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 payment for the Work was incurred April 10, 2023, as supported by the invoice submitted into evidence. This falls within 18 months of the Landlords making this application.

d. Life expectancy of the Capital Expenditure

Policy Guidelines #40 sets out the useful life expectancy for typical building components. I note that the guideline indicates sloped roofs are expected to last around 15 years.

I find that the life expectancy of the component 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 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 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.

As the Tenants did not attend the hearing and they did not provide any evidence to the Landlord, no rebuttal was provided by the Tenants.

7. Outcome

The Landlord has 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, I have found that there is 1 specified dwelling unit and that the amount of the eligible capital expenditure is \$6,066.90

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$50.55 ($\$6,066.90 \div 1 \text{ unit} \div 120$). 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 \$50.55. 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 11, 2024

Residential Tenancy Branch