



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The landlord and the tenant noted on the covering page attended the hearing. The landlord stated the tenants were served with their application, evidence and notice of hearing by personal service on October 16, 2023. The tenant confirmed that this is accurate

Issue to be Decided

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

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

The residential property is comprised of three living accommodations. The landlord lives in the upper portion which is 2/3 of the premises and the tenants have separate units that combined is 1/3 of the premises.

The landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property as they had installed solar power panels for the purpose of reducing energy consumption and painted and upgraded all blinds.

The landlord did not provide any evidence of proof of painting or upgrading blinds and no cost was associated with this expenditure as required. Further, this would not meet the definition of the Act. Therefore, I decline to consider painting and upgraded to all blinds.

The landlord is claiming the amount of \$19,342.55 for work that was completed October 1, 2023, for installation of solar panels.

The landlord testified that they installed solar panels to reduce energy. The landlord provided the invoice and photographs to support the installation. When I question the landlord about the invoice and the amount claimed in their application they indicate they do not know if they have been approved for the rebate. I note it is clearly indicated on the purchase agreement.

The tenant testified that their electricity is included in the rent, so they do not see any benefit of this expenditure.

Analysis

Statutory Framework

Sections 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.

Prior Application for Additional Rent Increase

I accept the landlord has not made a previous application for an additional rent increase against the tenants.

Number of Specified Dwelling Units

"rental unit" is defined in the Act, means living accommodation rented or intended to be rented to a tenant

23.1 (1) of the Regulations states, subject to subsection (2), a landlord may apply under section 43 (3) [*additional rent increase*] of the Act for an additional rent increase **in respect of a rental unit that is a specified dwelling unit** for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.

Residential Tenancy Policy Guideline 37C (PG 37C) defines "dwelling unit" which includes living accommodation that is not rented and not intended to be rented and a rental unit defined in the RTA as living accommodation rented or intended to be rented to a tenant. Rental units, units occupied by a landlord, or other units not occupied under a tenancy agreement (for example, a short-term vacation rental) are all dwelling units.

In this case, the landlord's private residence, their home, is 2/3 of the residential premises, in other words the majority of the premises. While I accept the PG 37 defines a dwelling unit to include a unit that is occupied by the landlord; however, this is not a unit, this is their home and consumes the majority of the premises and would consume the majority of the energy. The PG is only a guideline and cannot contemplate all circumstances.

I do not accept the Act, or the Regulations intended for this to apply to the landlord's private residence and have the tenants in the two small units in the basement, which was said to be 1/3 of the residential home, when combined, pay for the majority of the cost of the expenditure when they have little to no benefit as in this matter, utilities are included in the monthly rent. This would be unreasonable and highly unfair, particularly in this case. The only person benefiting is the landlord by reducing their personal energy consumption from the solar panels, which would be a significant difference from any use these two small units may use.

While I accept the PG 37 in principal may apply if the landlord is living in a unit within a larger building or even a similar size; however, I find it is not reasonable such as in this case as there is an unfair imbalance in both size and energy use.

Further, the Act is not intended for tenants to pay to upgrade the landlord's home or for the purpose of the landlord to save energy on their own portion of the house. This would be extremely unfair as the 2 rental unit only take up 1/3 of the building when combined. If I took into consideration the landlord's private residence and applied three dwelling units, this would mean the two rental units would be responsible for 2/3 of the expenditure, and the landlord 1/3 which I find is not fair or reasonable and not contemplated by the Act or the Regulations or the PG.

In addition, the landlord's application requested the tenants to pay for the full expenditure without any consideration for the area in which they reside. Based on this, I find it appropriate to exclude the landlord's residence and reduce the capital expenditure by 2/3 which I have attribute to the landlord's private residence and is solely for the landlord's benefit as the tenants' rent included utilities, so there is no benefit to them.

Therefore, I find there are two rental units that are specified dwellings and tenants would only be responsible for 1/3 of the cost of the expenditure, in total and if granted.

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.

I am satisfied that the landlord installed solar panels to achieve a reduction in energy usage in October 2023. I find this is sufficient to satisfy the requirement of the Regulation.

The landlord provided the receipt which is the purchase agreement and photographs showing the work was completed. The capital expenditure was 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.

The receipt shows the total system cost with GST was \$17,342.33, less a \$5,000.00 rebate, bring the cost to \$12,342.33. As I have previously found that the tenants would only be responsible for 1/3 or 33.33% of the cost and the other 2/3 or 66.66% was attributed to the landlord's private residence as it is not a rental unit as indicated in the Regulation, I find the amount to be equally divided by the two dwelling units is the amount of **\$4,114.93**.

Tenants' Rebuttals

The tenant did not provide any relevant rebuttal testimony.

Outcome

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 2 specified dwelling units and that the amount of the eligible capital expenditures total the amount of **\$4,114.93**.

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$17.14** ($\$4,114.93 \div 2 \div 120 = \17.14). I note the landlord was seeking \$80.58; however, **they failed to consider** that their private residence **receives the majority or full benefit of installing the solar panels**.

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 partially successful with their application. I grant the application for an additional rent increase for capital expenditure in the above amount. 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 30, 2024

Residential Tenancy Branch