



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

The hearing dealt with the Landlord's application (Application) under the *Residential Tenancy Act* (the Act) and the *Residential Tenancy Regulation* (the Regulation) for an additional rent increase for capital expenditure under section 43(3) of the Act and section 23.1 of the Regulation.

The Landlord, an Agent for the owner of the residential property (the Property), attended the hearing. Although I waited until 10:05 AM to enable the Respondent Tenants to connect with this teleconference hearing scheduled for 9:30 AM, none of the Tenants attended.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator. Accordingly, the hearing proceeded in the absence of the Tenants, per rule 7.3 of the *Rules of Procedure*.

The Landlord's Agent testified they served the Notice of Dispute Resolution Package (the Materials) onto all of the Respondent Tenants by registered mail on October 25, 2023. The Canada Post postage labels and tracking numbers for the packages for the Tenants were provided by the Landlord as evidence.

In light of the above evidence and testimony from the Landlord, I find that per sections 71, 88 and 89 of the Act, the Landlord's Materials were sufficiently served to the Tenants in accordance with the Act and rule 11 of the *Rules of Procedure*, and were deemed received on October 30, 2023, the fifth day after mailing per the provisions of section 90(a) of the Act.

Issue to be Decided

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

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord testified as follows. The Property is a low rise, townhouse style three storey building comprising of sixteen residential units in total. There are three separate building numbers as there are three separate entrances, though the Property is just one building with a single roof.

The Landlord is seeking to impose an additional rent increase for a capital expenditure in the amount of \$5,145.00 which was incurred as a result of replacing the roof drainage system in the Property (collectively, the Work). The Landlord confirmed no previous applications for an additional rent increase for capital expenditure had been made against any of the Tenants before this Application was made.

The Property was built in 1963 or 1964 and was re-roofed around fifteen or twenty years ago. There were initially no issues with the roof, then atypical freezing events began to cause water in the downspouts to freeze. As components in the roofing membrane stayed at a higher temperature, water escaped via an abnormal route from the roof. The copper o-rings, which connected the metal spun drain on the roof to the plastic downpipe failed, which caused water to leak into units within the Property.

The Landlord initially thought the o-rings may have been installed incorrectly, so they were replaced twice. The issue persisted during freezing spells, and the Landlord had to decide if they would leave the existing design in place and risk future leaks, or rebuild the roof drainage system. The Landlord opted for the latter, and modifications were made to the drainage system whereby troughs were made in the roof which connected to a new downpipe on the overhang. This meant there would be no leaks into the Property if the downpipes freeze. These troughs were made in four places on the roof. Photographs of the Work being carried out were entered into evidence.

The Landlord testified there is no warranty in place in relation to the Work, but they believe the roof, and the Work will last for another 25 years as the quality of the work and type of roof is expected to last considerably longer than older technology.

As the warranty for the roof had expired and insurance did not cover the Work, there was no prospects of recovering payment for the Work elsewhere.

The Landlord did not submit into evidence any maintenance records in respect of the roof or drainage system. The Landlord testified that as they are the only member of staff of the owner that deals with the Property, they do not keep maintenance records. The Landlord drew my attention to photographs of the roof entered into evidence and stated the patches in the surface are where the roof was previously repaired after the leaks occurred.

The Landlord also submitted into evidence an invoice dated October 3, 2023 for \$5,145.00 and a copy of a cheque made out to the contractor for \$5,145.00, also dated October 3, 2023.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the Application related to the Landlord's request for an additional rent increase based upon eligible capital expenditures, the Landlord has the onus to prove the required elements of their Application.

Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount set out per sections 22 and 22.1 of the Regulation by making an application for dispute resolution.

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. To be successful in their application, a landlord must prove, on a balance of probabilities:

- that the landlord has not made an application for an additional rent increase against the 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 before the application was made;
- the capital expenditure is not expected to be incurred again within five years.

However, 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 either:

- 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.

18 Month Requirement

In this case, there was no evidence before me that the Landlord had made a prior application for an additional rent increase for the work done within the prior 18 months.

Number of Specified Dwelling Units

Based on the evidence before me, I find there are 16 dwelling units in the Property and the evidence supports that all of the dwelling units are eligible.

Amount of Capital Expenditure

The Landlord submitted invoices for all claimed expenditures. There was only one invoice for \$5,145.00 in respect of the Work.

Eligibility of the Capital Expenditure

I find that the capital expenditures were incurred for the replacement of the drainage system for the roof of the Property, which I find falls into the definition of a component of a major system, as defined in Policy Guideline 37C.

Considering the evidence of the Landlord, I find the reason the capital expenses were incurred was because the drainage system of the roof failed and during freezing spells, caused leaks. Given this, I find the Work was undertaken for a valid reason as set out in section 23.1(4)(a)(ii) of the Regulation.

After review of the invoice submitted into evidence by the Landlord, I find that the capital expenditure was incurred on October 3, 2023, per the invoice submitted into evidence, and the Landlord made their Application on October 22, 2023. Therefore, the capital expenditure was incurred in the 18 month period preceding the date the Landlord made their Application.

Based on the Landlord's undisputed testimony, which I found to be detailed, consistent and credible, I conclude that the capital expenditure is not expected to be incurred again within the next five years.

Tenants' Submissions

None of the Tenants attended the hearing and so no oral evidence or arguments were advanced in respect of inadequate repair or maintenance, or payment from another source.

One Tenant provided a written submission, which I have reviewed. I find the contents of the Tenant's written submission are more general concerns about an increase in rent, which I acknowledge, but I found nothing within the written submissions that proves on a balance of probabilities the capital expenditures were incurred for either or the reasons as stated above.

Given the above, I find the Tenants have not established a reason for me to dismiss the Application under section 23.1(5) of the Regulation.

Outcome

I find the Landlord has submitted sufficient evidence to support on a balance of probabilities their claim for capital expenditures of \$5,145.00.

For this reason, I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditures of \$5,145.00, per section 43(1(b) of the Act and section 23.1(4) of the Regulation.

Section 23.2 of the Regulation provides the formula for calculating 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 16 specified dwelling units and that the amount of the eligible capital expenditure is \$5,145.00 in total.

Therefore, I find the Landlord has established the basis for an additional rent increase for capital expenditures of \$2.67 per affected tenancy ($\$5,145.00 \div 16 \div 120$). This amount may not exceed 3% of a Tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

The Landlord is directed to Policy Guideline 37C, page 16, to properly calculate the rent increase in accordance with the Regulation, as this is the Landlord's responsibility.

Conclusion

The Landlord's Application for an additional rent increase for eligible capital expenditures is granted, for a total of \$2.67 per affected tenancy.

The Landlord is directed to serve this Decision on each affected Tenant, individually, within two weeks 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 Act.

Dated: January 12, 2024

Residential Tenancy Branch