



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.

An Agent for the Landlord and the Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As both parties were present, service was confirmed at the hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Package (the Materials). Based on their testimony, under section 71 of the Act, I find that the Tenant was served with the Materials as required per sections 88 and 89 of the Act.

The Landlord's Agent testified the evidence, which comprised of a copy of an invoice and two photographs, may have been omitted from the Materials in error. The Tenant confirmed they did not receive the Landlord's evidence but consented for the hearing to proceed, that they were aware of the work carried out on the residential property, the substance of the Landlord's Application and the amount the Landlord is seeking to increase rent by. Given the Tenant agreed for the hearing to proceed without their receipt of the Landlord's evidence, the hearing was not adjourned to allow service of the Landlord's evidence onto the Tenant.

Issue to be Decided

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

Background and Evidence

The parties were 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 parties agreed that the residential property (the Property) is a house comprising of two dwellings in total, an upper and lower suite. The Tenant lives in the upper suite.

The Landlord's Agent testified as follows. The Landlord is seeking to impose an additional rent increase for a capital expenditure in the amount of \$12,012.00 which was incurred as a result of replacing the roof of the Property (collectively, the Work).

The Landlord's Agent confirmed no previous applications for an additional rent increase for capital expenditure had been made against the Tenant before this Application was made.

The Property was built around the 1960s and the roof was around thirty years old. The roof was failing, and the Landlord was concerned it would not make it through the winter, so took the opportunity to carry out the Work in the summer of 2023.

The Landlord bought the Property around a year ago and had been told the roof would last longer, though a leak developed in September 2023 which caused a water stain on the ceiling of the rental unit. As a result, the Landlord had the Work carried out.

Per the invoice dated September 8, 2023 entered into evidence, the total cost of the Work was \$12,012.00. The Landlord's Agent stated \$380.00 of the total cost was incurred as rotten plywood had to be replaced. The Work is expected to last 25 to 30 years and comes with a 5 year labour guarantee.

The Landlord does not have any maintenance records as none were made available to them by the previous owner and no records were made by the Landlord since they purchased the Property.

The Tenant testified as follows. They moved into the Property two years ago when it was owned by the previous landlord. They noticed a smell develop, and in September 2023, there was a leak which dripped through their ceiling. They advised the Landlord and sent photographs. The Landlord fixed the roof shortly afterwards. The Tenant acknowledged the Landlord was quick to respond to the leak.

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, the Landlord must prove, on a balance of probabilities:

- That the Landlord has not made an application for an additional rent increase against the Tenant within the last 18 months;
- The number of specified dwelling units on the 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 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, the Tenant may defeat the Application 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 two 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 \$12,012.00 in respect of the Work.

Eligibility of the Capital Expenditure

I find that the capital expenditures were incurred for the replacement of the roof of the Property, which I find falls into the definition 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 roof of the Property was failing and causing leaks. Additionally, I find given the age of the roof was around 30 years, it was on a balance of probabilities past its useful life.

As set out in the invoice entered into evidence, \$380.00 of the costs for the Work were for replacement of rotten plywood. As confirmed in Policy Guideline 37C, unanticipated costs discovered during the Work may also be eligible for an additional rent increase.

As previously stated, I find on a balance of probabilities the roof was past its useful life and, as confirmed by the Tenant in their testimony, the Landlord responded to reports of the leak quickly, I find the replacement of the rotten plywood as not caused by any delay

or inaction of the part of the Landlord and is an eligible element of the capital expenditure.

Given the above, I find the Work was undertaken for a valid reason, namely the replacement of a major system that had both failed and was close to the end of its useful life, 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 September 8, 2023, and the Landlord made their Application on October 24, 2023. Therefore, the capital expenditure was incurred in the 18 month period preceding the date the Landlord made their Application.

Based on the evidence before me, I conclude that the capital expenditure is not expected to be incurred again within the next five years and note there is a five year labour guarantee associated with the Work.

Tenants' Submissions

The Tenant attended the hearing, but no oral or written evidence or arguments were advanced in respect of inadequate repair or maintenance on the Landlord's part, or payment from another source.

Given the above, I find the Tenant has not established on a balance of probabilities, 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 \$12,012.00.

For this reason, I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditures of \$12,012.00, 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 two specified dwelling units and that the amount of the eligible capital expenditure is \$12,012.00 in total.

Therefore, I find the Landlord has established the basis for an additional rent increase for capital expenditures of \$50.05 per affected tenancy ($\$12,012.00 \div 2 \div 120$). This amount may not exceed 3% of the 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 \$50.05 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 17, 2024

Residential Tenancy Branch