

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 attended the hearing. None of the tenants attended the hearing.

The landlord testified that the tenants were served with the Notice of Dispute Resolution Hearing packages via registered mail on November 24, 2023. The landlord provided the registered mail receipts to corroborate this testimony. I am satisfied the tenants were served the Notice of Dispute Resolution Hearing packages on November 29, 2023, five days after being sent by registered mail in accordance with sections 89 and 90 of the Act.

Issues to be Decided

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

Background and Evidence

The landlord gave the following undisputed testimony.

The landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application. The building has 21 dwelling units in it. The landlord testified that he has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

The landlord testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's boiler. He testified that the gas fired boiler system supplying heat and domestic hot water was replaced with a new high efficient system. (collectively, the "**Work**").

The landlord testified the Work was done because the last boiler, installed approximately 20 years ago, was failing, malfunctioning and at the end of its useful life. The cost of the work was \$91,061.25, however the work qualified for a rebate from FortisBC of \$7,182.00 as the new boiler will reduce carbon emissions. The landlord seeks to recover \$83,879.25 from the tenants as an additional rent increase.

The landlord submitted copies of invoices supporting these amounts.

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));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o 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

None.

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.

I find there are 21 dwelling units and all of them are eligible for an additional rent increase for capital expenditure.

4. Amount of Capital Expenditure

\$91,061.25 less the rebate from FortisBC of \$7,182, totaling \$83,879.25.

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.

The Work amounted to upgrades to the buildings' heating and hot water system. The Regulation explicitly identifies a residential property's heating system as a “major component”. The landlord replaced the building's boiler providing heat and domestic hot water to the residents of the residential property. These amount to significant components of the heating system, which cause them to be “major components”, as defined by the Regulation.

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

Based on the undisputed testimony of the landlord, I find the building's boiler was failing, malfunctioning or at the end of its useful life.

I have also reviewed the Rental Apartment Efficiency Program ("RAP") prepared by FortisBC and accept their findings that the replacement boiler would not only save energy but also avoid future costs of periodic hot water tank replacement. Therefore, the replacement boiler succeeds in achieving a reduction in energy use or greenhouse gas emissions.

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 that the work was done in October, 2022 and that the invoice was submitted to the landlord on October 18, 2022. I also accept the landlord's uncontroverted evidence that the invoice was paid shortly after the invoice was issued. The capital expenditure was incurred within 18 months of the landlord making this application (November 14, 2023).

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components replaced all exceed five years. There is nothing in evidence which would suggest that the life expectancy of the components replaced 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 recur 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.

None of the tenants attended this hearing to provide rebuttal testimony. As such, the landlord's evidence was accepted as undisputed.

7. Outcome

The landlord has been successful. He 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 21 specified dwelling units and that the amount of the eligible capital expenditure is \$83,879.25.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$33.29, calculated as: $\$83,879.25 \div 21 \text{ units} \div 120$. 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 \$33.29. 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 18, 2024

Residential Tenancy Branch