



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1093277 BC LTD
and [tenant name suppressed to protect privacy]

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. 5 Tenants attended the hearing. All parties provided affirmed testimony. The Landlord confirmed that he posted the Notice of Dispute Resolution Proceeding and evidence to the door of each rental unit on December 9, 2023. None of the Tenants refuted this. I find this package was sufficiently served.

None of the Tenants present at the hearing provided any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

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 indicated that this rental building consists of 20 rental units.

The Landlord applied for this rent increase to cover costs of \$81,137.70 incurred to replace the roof on the rental complex. These costs are made up of an expense for the roof itself, gutters, and roof vents that had to be replaced at the same time. Receipts and invoices were provided into evidence, as well as a roof inspection report which details that the roof is around 15-20 years old, and had several deficiencies. Its replacement was recommended.

The Landlord pointed out that the roof had leaked several times in 2022, which led to further investigation, and replacement.

A few of the Tenants spoke at the hearing, but none presented any documentary evidence. The Tenants generally were unhappy with how the roof repairs were completed because there were several leaks and some general incompetence of contractors. The Tenants also raised other issues with the building that were not relevant to this decision.

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. This was not in dispute.

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 are 20 separate units in the building. I am satisfied that all 20 of the separate units in the building are both dwelling units, and specified dwelling units, given they are all located in the same building, where all of the renovations were completed.

4. Amount of Capital Expenditure

The Landlord applied to recover \$81,137.70.

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 will address each of the items in the same order they were laid out above:

1) \$81,137.70 – Roof, gutters and vents

I am satisfied this work counts as work on a “major component” of a “major system” in the building.

b. Reason for Capital Expenditure

I am satisfied that the work was completed to replace aging building components. I am satisfied that the roof was close to the end of its useful life expectancy as it was at least

15 years old. I am also satisfied that some of related components had already started malfunctioning and failing.

c. Timing of Capital Expenditure

I note the Landlord made the application on November 23, 2023, and I am satisfied that all work was completed and paid within the 18-month period preceding this application.

d. Life expectancy of the Capital Expenditure

RTB Policy Guideline 40 states that the useful life of a roof is between 15 to 20 years. 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 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.

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.

Although the Tenants were not happy with how the repairs were completed, and they raised some other issues with their tenancy in general, I find none of it speaks to either of the two points noted above in order to defeat the application.

Outcome

I find the Landlord is 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 20 specified dwelling units and that the amount of the eligible capital expenditure is \$81,137.70.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$33.81 ($\$81,137.70 \div 20 \text{ units} \div 120$). 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 \$81,137.70. 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: February 28, 2024

Residential Tenancy Branch