



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1100935 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ARI-C

INTRODUCTION

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase for capital expenditures under section 43 of the Act, and section 23.1 of the Regulation.

Landlord's agent P.C., and Tenant K.S. attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. All parties testified that they were not recording this dispute resolution hearing.

SERVICE

The Landlord served the Notice of Dispute Resolution Proceeding Package and evidence for this hearing to the Tenants by registered mail on October 19, 2023 (Proceeding Package). Tenant K.S. confirmed receipt of the Proceeding Package and the Landlord's evidence. I find that the Tenants were deemed served with the Proceeding Package for this hearing on October 24, 2023, in accordance with section 89(1)(c) and 90(a) of the Act.

Tenant K.S. confirmed that he did not upload or serve any evidence on the Landlord.

ISSUE TO BE DECIDED

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

BACKGROUND, EVIDENCE AND ANALYSIS

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 Landlord's claim, and my findings are set out below.

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. The onus to prove their case is on the person making the claim.

Summary of Proceedings

The hearing for this matter covered one hearing time. The Landlord confirmed that Tenants T.L.E. and L.C.Z voluntarily signed the Additional Rent Increase Agreement. Tenant K.S. has not voluntarily signed the Additional Rent Increase Agreement. I accept the Landlord's convincing and credible testimony about the eligible capital expenditures.

The Landlord testified that the residential property was originally built in 1966. There are 20 rental units in the building. The Landlord gave evidence that they have replaced all outdated fuse boxes with circuit breaker panels in the residential property. The Landlord submitted that the old fuse boxes were at the end of their useful life, and for safety purposes they replaced all fuse boxes with circuit breaker panels when tenants vacated their rental units. The project was completed in 2023.

The Landlord stated that all the units either have new tenants or older tenants have voluntarily signed the Additional Rent Increase Agreement. Tenant K.S. is the last Tenant in the building who has not agreed to the additional rent increase. The Landlord submitted this application against the remaining Tenants, and in the process after serving their evidence, Tenants T.L.E. and L.C.Z voluntarily signed the Additional Rent Increase Agreement.

This matter is now only against Tenant K.S.

A. Statutory Framework

Sections 21 and 23.1 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 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 submitted capital expenditures were:
 - o an *eligible* capital expenditure;
 - o incurred less than 18 months prior to making the application; and,
 - o 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.

B. Prior Application for Additional Rent Increase

The Landlord submitted that they have not applied for an additional rent increase for the capital expenditures against any of the Tenants prior to this application. Based on the Landlord's testimony, I find the Landlord has not made a previous application for an additional rent increase for the eligible capital expenditures in the last 18 months in accordance with section 23.1(2) of the Regulation.

C. 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 the number of specified dwelling units for the purposes of the capital expenditure is equal to the total number of units in the building, or 20 units. The Landlord stated they previously settled with several tenants or new people have moved into the residential property after the capital expenditure work was completed, and their rents were suitably adjusted for the increase.

D. Amount of Capital Expenditure

The Landlord submitted this application on October 10, 2023. I find the prior 18-month cut-off date for eligible capital expenditures is April 10, 2022.

The Landlord submitted they broke the work into two projects, and presented their evidence to reflect the additional rent increase for capital expenditures for just Tenant K.S.'s rental unit. The Landlord testified that they are seeking, under section 23.1(4) of the Regulation, to impose an additional rent increase for the following capital expenditures incurred:

Capital expenditure	Amount
Project #1 - all 20 units	
Electrical permit	\$780.10
Fuse box changed to circuit panel	\$10,233.32
Utility room repair and paint	\$1,000.00
Project #1 total:	\$12,013.42
Project #2 - 1 unit	
Change in-suite fuse box to circuit panel	\$630.00
Wall repairs for breaker replacement	\$486.67
Project #2 total:	\$1,116.67

E. Is the Work an Eligible Capital Expenditure?

For the capital expenditure to be considered eligible, the Landlord must prove all of the following:

- the capital expenditure was to repair, replace, or install a major system or a component of a major system
- the capital expenditure 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 Landlord testified they did not receive payments from another source for any of the above capital expenditures. Further they submitted they are not expecting, and are not eligible to receive any payments going towards any of the capital expenditures. Tenant K.S. did not submit that the repairs or replacements were required because of inadequate repair or maintenance on the part of the Landlord.

Based on the Landlord's credible testimony, I find the Landlord has established that the capital expenditures undertaken neither have been required for repairs or replacement

because of inadequate repair or maintenance on the part of the Landlord, nor has the Landlord been paid, or is entitled to be paid, from another source for the above capital expenditures in accordance with section 23.1(5) of the Regulation.

Types of Capital Expenditure

Section 21.1(1) of the Regulation defines “major system” and “major component” as:

"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;*

"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;*

Project #1) Replacing fuse boxes with circuit breaker panels for all 20 units in the residential property in the utility room

Reason for replacement of fuse boxes with circuit breaker panels

Agent P.C. testified they took over management in the building in 2016. Agent P.C. stated that some tenants were having difficulties finding replacement fuses for their fuse boxes. Agent P.C. said the electrical system was outdated and needed to be replaced. I find the electrical system is a major system in the residential property which provides services to all the tenants and occupants of the building.

Residential Tenancy Policy Guideline #40-Useful Life of Building Elements (PG#40) provides a general guide for determining the useful life of building elements. The useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. PG#40 states that the useful life of electrical panels and wiring is 15 years. I find the fuse box replacement project for each rental unit in the building was required as the existing electrical system was past its useful life.

The Landlord incurred the expenditures for replacing the fuse boxes to circuit breaker panels due to the installation, repair or replacement of major components that have failed or are close to the end of their useful life.

Agent P.C. searched on the internet about the expected useful life of the replacement system. Agent P.C. testified that they expect the useful life of the replacement installation to be somewhere around 50 years.

I find the electrical system in the residential property is integral to the residential property and it provides a needed service to the tenants and occupants of the residential property.

I find the Landlord has established that the replacement of fuse boxes with circuit breaker panels in the utility room in the residential property was required as the existing electrical system was outdated and past their useful life. I find the capital expenditures for the replacement of fuse boxes with circuit breaker panels in the utility room are not expected to be incurred again for at least five years. I find the replacement of the fuse boxes with circuit breaker panels is not a routine repair to or maintenance of a major system in the residential property. I find the Landlord has proven that the replacement of the fuse boxes with circuit breaker panels is an eligible capital expenditure.

Timing of replacement of fuse boxes with circuit breaker panels in the utility room

The Landlord provided invoicing for acquisition of the electrical permit from the city, fuse box replacement with circuit breaker panels in the utility room, and repair and paint work to finish the replacement work in the utility room. Invoicing occurred from July 1, 2022 to November 13, 2022, and the payment dates were at least one week after invoicing.

RTB Policy Guideline 37C-Additional Rent Increase for Capital Expenditures (dated June 2023) states:

If a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be "incurred" is the date the landlord issued the final cheque. If a landlord pays for the capital expenditure using a post-dated cheque, the date the capital expenditure is considered to be "incurred" is the date the post-dated cheque is dated.

The expenditures claimed by the Landlord must have been incurred in the 18-month period prior to the application date. The onus is on the Landlord to establish on a

balance of probabilities that the expenditures meet these requirements to be eligible for an additional rent increase.

I find the Landlord has proven that the capital expenditures were “incurred” or paid within the 18-month period preceding the date on which the Landlord made their application.

Therefore, I accept that the capital expenditures for the replacement of the fuse boxes with circuit breaker panels in the utility room totalling **\$12,013.42** supported by the detailed invoicing were paid for within the required timeframe.

Project #2) In-suite fuse box replacement for circuit breaker panel and wall repairs

Reason for in-suite fuse box replacement for circuit breaker panel and wall repairs

The replacement of the fuse box for a circuit breaker panel in Tenant K.S.’s suite was a continuation of the bigger replacement work in the residential property. The original components were installed in 1966.

PG#40 states that the useful life of electrical panels and wiring is 15 years. The existing outdated system was well past its useful life.

Based on the Landlord’s testimony, and PG#40, I find the in-suite fuse box replacement for circuit breaker panel and wall repairs is a major component that is integral to the residential property and is a significant component of a major system in the residential property.

The Landlord testifies that the useful life expectancy of the in-suite fuse box replacement for circuit breaker panel and wall repairs is 50 years. I find this life expectancy is excessive, but I accept that the useful life is at least 5 years.

I find the Landlord has established that the in-suite fuse box replacement for circuit breaker panel and wall repairs were required as the existing items were past their useful lives. I find the capital expenditures for the in-suite fuse box replacement for circuit breaker panel and wall repairs is not expected to be incurred again for at least five years. I find the Landlord has proven that the in-suite fuse box replacement for circuit breaker panel and wall repairs is an eligible capital expenditure.

Timing of replacement of in-suite fuse box replacement for circuit breaker panel and wall repairs

The Landlord provided invoicing for changing the in-suite fuse box to a circuit breaker panel. Invoicing occurred from July 12, 2023 to July 22, 2023, and the payment dates were at least one week after invoicing.

Therefore, I find the Landlord has made payment for the invoices within the 18-month period preceding the date on which the Landlord made their application, and I accept that the in-suite fuse box change to a circuit breaker panel in Tenant K.S.'s rental unit totalling **\$1,116.67** supported by the detailed invoicing was paid for within the required timeframe.

For the above-stated reasons, I find that the following capital expenditures incurred are eligible capital expenditures as defined by the Regulation:

Eligible capital expenditure	Amount
Project #1 - all 20 units	
Electrical permit	\$780.10
Fuse box changed to circuit panel	\$10,233.32
Utility room repair and paint	\$1,000.00
Project #1 total:	\$12,013.42
Project #2 - 1 unit	
Change in-suite fuse box to circuit panel	\$630.00
Wall repairs for breaker replacement	\$486.67
Project #2 total:	\$1,116.67

OUTCOME

The Landlord has been successful. They have proven, on a balance of probabilities, all the elements required to be able to impose an additional rent increase for capital expenditures. Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as such:

$$\text{Additional rent increase} = \left[\frac{\text{Eligible capital expenditure}}{\text{Number of specified dwelling units}} \right] / 120$$

For Project #1:

$$= \left[\frac{\$12,013.42}{20} \right] / 120 = \$5.00$$

For Project #2:

$$= \left[\frac{\$1,116.67}{1} \right] / 120 = \$9.31$$

The Landlord submitted that they seek \$5.00 for Project #1, and \$9.00 for Project #2. I find this submission is reasonable, and I find the Landlord has established the basis for an additional rent increase for capital expenditures of \$14.00. 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 Guidelines 37 (June 2023), and 40 (March 2012), 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 of \$14.00 for the Landlord's submitted capital expenditures against Tenant K.S. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve Tenant K.S. with a copy of this decision in accordance with section 88 of the Act when submitting the documents for the additional rent increase.

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: February 23, 2023

Residential Tenancy Branch