



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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's agent BP attended the Hearing, and two tenants attended. **The landlords agent was given a full opportunity to present their claim and make submissions.** The tenants were able to fully respond to the claim. The parties confirmed that they had exchanged each others documentary evidence.

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 landlords' claims, and my findings are set out below.

The Landlord submits the rental property consists of one side by side duplex containing 2 rental units.

The Landlord submits that they are seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property. The Landlord submits that they have conducted the following as noted on their application:

“Supply & install of new water line from city connection to house - excavation of trench - bedding of waterline with sand - backfill trench - Labour & Material - Restoration of property grounds to condition prior to watermain line break”

The Landlord submits that the Work was done because it was an emergency to repair the watermain line that connected to the city service line. Two Tenants submitted evidence in response to the Landlord's Application. The Landlord submitted copies of an estimate for the plumbing work and invoice for landscaping work which amounts to \$10,074.79. The Landlord submits that the total expenditure amounts were paid between November 19, 2022 and November 2, 2023.

The Landlord submits that they have not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Analysis

The Landlord is the applicant and therefore has the burden to prove their claim as no I note that the following from the Residential Tenancy Branch Rules of Procedure:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

...

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

In addition, the following information was provided to the Landlord as part of the Notice of Dispute Application package:

Burden of Proof

The Landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove their application and monetary claims. The *Act, Regulation, Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of their claims, in order to obtain an order.

The Landlord received an application package from the RTB, including instructions regarding the hearing process. The Landlord received a document entitled "Notice of Dispute Resolution Proceeding," dated November 10, 2023 ("NODRP") from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- ***It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.***
- ***Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.***

- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- **A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.**

The NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. I informed both parties that I had 30 days to issue a written decision after this hearing. They affirmed their understanding of same.

The Landlord received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the Landlord to be aware of the *Act, Regulation, Rules*, and Residential Tenancy Policy Guidelines. The Landlord is required to provide sufficient evidence of her claims, since they chose to file this application on their own accord.

The Landlord submitted an “estimate” of the costs for the watermain repair but no final receipt showing the **actual** amount that the landlord spent. In addition, the landscaping work was completed a year after the watermain line was allegedly repaired. The tenants rose some concerns that the gap between the two repairs was suspect and that they were advised during the process that the Landlords insurance covered all these costs. The Landlord has not provided sufficient evidence of when the watermain was repaired, and how much was the actual out of pocket cost incurred.

In addition, the Landlord agent’s reason for a one-year delay in getting the landscaping and driveway repair done raised more questions than it answered. Furthermore, when I asked the agent what the amount of the rent increase is he was seeking, he directed me to his evidence and asked me to get the information from his documentary submission, however, no calculation was made or presented either in writing or verbally. Also, the Landlord listed tenant BH under the wrong name which the parties agreed that I could amend. As noted above, the Landlord has the burden to prove their claim, however their documentation was insufficient and incorrect in some areas and lacked the specificity required to be successful, therefore I must dismiss this application.

The request for an additional rent increase is not granted.

Conclusion

The Landlord's application is dismissed in its entirety without leave to reapply.

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 15, 2024

Residential Tenancy Branch