

DECISION

Introduction

This hearing dealt with the Landlord's application under section 43 of the *Residential Tenancy Act* (the "Act") and section 23.1 of the Residential Tenancy Regulation (the "Regulation") for an additional rent increase based on capital expenditures.

The Landlord attended this hearing and gave affirmed testimony.

None of the Tenants attended this hearing. I left the teleconference hearing connection open until 10:07 am in order to enable the Tenants to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

Service of Notice of Dispute Resolution Proceeding and Evidence

The Landlord testified that she emailed copies of the notice of dispute resolution proceeding, supporting documents, and evidence to all Tenants on December 1, 2023. The Landlord confirmed she had requested permission from the Tenants to receive documents via email on November 30, 2023. The Landlord submitted signed address for service forms (#RTB-51) and email correspondence indicating that the Tenants had agreed to accept service via email.

Based on the foregoing, I find the Tenants to be served with the Landlord's notice of dispute resolution proceeding, supporting documents, and evidence in accordance with sections 88 and 89 of the Act and section 43 of the Regulation. Pursuant to section 44 of the Regulation, I find the Tenants are deemed to have received the Landlord's documents on the third day of emailing, or December 4, 2023.

Issue to be Decided

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

Background and Evidence

The residential property contains three rental units. The Landlord acquired the property in 2019.

The Landlord seeks to impose an additional rent increase for capital expenditures incurred to pay for replacement of the roof and hot water tanks (collectively, the “Work”).

The Landlord submits that the total cost for the Work was as follows:

Description	Amount
Roof Replacement	\$22,890.00
Hot Water Tank Replacement	\$3,997.35
Total	\$26,887.35

The Landlord gave the following testimony and evidence:

- The roof was old when the Landlord purchased the property. The Landlord was told by the previous owner that the roof was over 30 years old and needed to be replaced. The shingles were highly deteriorated and falling off. It took a while to save up money so the Landlord could replace the roof. The roofing company hired by the Landlord removed three layers of old roofing to remediate the roof, and added an additional layer of plywood sheathing before the new asphalt roofing system was installed.
- The old hot water tanks had also pre-dated the Landlord’s purchase of the property. The tanks flooded and the Landlord had to immediately replace them. The Landlord hired a plumbing and heating company to supply and install two new electric water heaters.
- The Landlord provided work order estimates with paid receipts from the roofing company. The Landlord provided a plumbing invoice for replacing the hot water tanks. The Landlord does not expect to recover the cost of these expenditures from another source.

Analysis

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, a 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;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the work was an eligible capital expenditure, specifically that:
 - a. the work was to repair, replace, or install a major system or a component of a major system;

- b. the work was undertaken for one of the following reasons:
 - i. to comply with health, safety, and housing standards;
 - ii. because the system or component:
 - was close to the end of its useful life; or
 - had failed, was malfunctioning, or was inoperative;
 - iii. to achieve a reduction in energy use or greenhouse gas emissions;
or
 - iv. to improve the security of the residential property;
- c. the capital expenditure was incurred less than 18 months prior to the making of the application; and
- d. the capital expenditure is not expected to be incurred again within five years.

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.

Prior Application for Additional Rent Increase

I find the Landlord has not previously imposed an additional rent increase on any of the Tenants within the last 18 months.

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.

Residential Tenancy Policy Guideline 37C states that a specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred, or if not located in the building, is affected by the capital expenditure at the residential property.

I find the number of specified dwelling units for the purposes of the Work is equal to the total number of rental units in the building, or three units. I find all units are located in the same building in which the Work was performed, and therefore, no units are exempted.

Amount of Capital Expenditure

I find the Landlord has submitted invoices to support all expenditures claimed. Therefore, I accept that the Landlord has incurred expenditures of \$26,887.35 in relation to the Work.

Eligibility of Capital Expenditure

As stated above, in order for the Work to be considered an eligible capital expenditure, the landlord must prove the following:

- a. the work was to repair, replace, or install a major system or a component of a major system;
- b. the work was undertaken for one of the following reasons:
 - i. to comply with health, safety, and housing standards;
 - ii. because the system or component:
 - was close to the end of its useful life; or
 - had failed, was malfunctioning, or was inoperative
 - iii. to achieve a reduction in energy use or greenhouse gas emissions; or
 - iv. to improve the security of the residential property;
- c. the capital expenditure was incurred less than 18 months prior to the making of the application;
- d. 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” as follows:

“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;

According to Policy Guideline 37C, the roof and the plumbing system are both examples of major systems or major components that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. I find the hot water tank is a core component of the plumbing and hot water system.

As such, I am satisfied that the Work was undertaken to repair or replace a “major system” or “major component” of the residential property.

b. Reason for Capital Expenditure

Based on the evidence presented, I am satisfied that the roof was replaced because it was close to or had exceeded the end of its useful life. I find the hot water tanks were replaced as they had failed and were malfunctioning or inoperative.

c. Timing of Capital Expenditure

As stated in Policy Guideline 37C, the capital expenditure must have been incurred in the 18-month period preceding the date the landlord submits their application. The date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made.

A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

I find the Landlord submitted this application on November 16, 2023, which means the cut-off date for the 18-month period was May 16, 2022.

I find the Landlord received roofing estimates dated February 21, 2023 and March 6, 2023, which were subsequently paid for by the Landlord. I find the Landlord provided a letter from the roofing company confirming that they inspected the property in January 2023 and completed the roof replacement project on May 31, 2023.

I find the plumbing invoice dated March 21, 2023 indicates the installation was completed on March 13, 2023, and payment was received from the Landlord on May 16, 2023.

Based on the foregoing, I find the Landlord's capital expenditures for the Work were incurred within the 18-month period as required.

d. Life Expectancy of Capital Expenditure

According to Residential Tenancy Policy Guideline 40, sloped roofs (asphalt shingle) have an estimated useful life of 15 years, while domestic hot water tanks have an estimated useful life of 10 years.

Additionally, I find the roofing estimate provided by the Landlord states that there is a 10-year warranty on the roofing company's workmanship when they complete the entire roof. I find the plumbing invoice states that the tank comes with a limited 6-year tank and 6-year parts warranty.

Based on the foregoing, I find the capital expenditures incurred by the Landlord cannot reasonably be expected to re-occur within five years.

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, tenants 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.

I find there is insufficient evidence to prove that there was inadequate repair or maintenance on the Landlord's part which necessitated the Work.

I also do not find the evidence to indicate that the Landlord has been paid or is entitled to be paid for the Work from another source.

Outcome

The Landlord has been successful in this application. The Landlord has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for some of the capital expenditures claimed. 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 specified dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there

are **three** specified dwelling units. I find the amount of eligible capital expenditures established by the Landlord is **\$26,887.35**.

Therefore, I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$74.68** ($\$26,887.35 \div 3 \text{ units} \div 120$). 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 Residential Tenancy Policy Guideline 37C, 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 Residential Tenancy Branch website for further guidance regarding how this rent increase made be imposed.

Conclusion

The Landlord's application for an additional rent increase for capital expenditures is granted as specified above. 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 Act.

Dated: March 27, 2024

Residential Tenancy Branch