



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding bclMC Realty Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

On January 22, 2024, the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase because of capital expenditures.

The Landlord attended the hearing at the scheduled hearing time. One Tenant was present for the entire duration of the hearing on March 26, 2024. Collectively, I refer to the “tenants” listed as the “Tenant” in this decision.

Preliminary Issue – service and disclosure of evidence

The Landlord provided the Notice of Dispute Resolution Proceeding and other key information to the Tenant in advance of the hearing as required. This was via registered mail and by individual units’ mail slots/mailboxes.

At the outset of the hearing, the Landlord acknowledged service of evidence from two of the building residents. I give this information consideration where relevant and necessary to do so.

Issue(s) to be Decided

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

Background and Evidence

The rental property consists of a single building divided into three levels. As described by the Landlord/Tenant in the hearing, the bottommost level houses units 4 and 5, units 2 and 3 are on the middle level, and unit 1 is on the topmost floor. These are the 5 rental units in total in this rental property. The Landlord came in as the manager at this rental unit property approximately April/May 2021.

The rental property furnace, originally installed in 1981, broke down in December 2022. In the hearing, the Landlord described the issue with obtaining parts at that time, due to the area and the age of the furnace. This recurred again in January 2023.

The Landlord decided to install electric wall fan heating devices in each unit. There is 1 electric wall fan heating device in each room in each unit, with 2 installed heaters in wider spaces. Each Tenant thus has full control over the temperature in each unit, unlike the central furnace that could not adjust to individual tenant comfort levels.

The work, as described by the Landlord in the hearing and set out in the documented evidence they provided, started in early March 2023. Necessary repair to drywall in each unit and further electric wall fan heating device installation was completed in October. Along the way, the Landlord answered Tenant calls for restored furnace heat, and a re-seal of individual windows because of temperature and temperature control issues.

The Landlord's design is to phase out use of the rental property furnace altogether, although they left the furnace running over the colder months of 2023. The Landlord submits through this application that it is a replacement of the furnace heating system that was in place in the rental property. This is an "upgrade" in terms of each individual rental unit having control of their own temperature.

In their evidence, the Landlord produced the following records:

	Description	invoice date	paid date	paid
A.	walls patch/drywall, painting	Mar 27, 2023	April 19, 2023	\$973.88
B.	door sweep install, hole in wall cover (Landlord claimed \$75)	Oct 25, 2023	June 18/21, Jul 9/21	\$131.82 \$75
C.	"force fans" x 4 (\$3,876.20 subtotal)	Mar 20, 2023	Mar 20, 2023	\$4,070.01
D.	"force fans" x 4 (\$3,764 subtotal)	Mar 20, 2023	Mar 20, 2023	\$3,952.21
E.	"force fan" x 10 (\$9,103.40 subtotal)	Oct 23, 2023	Oct 23, 2023	\$9,558.57

	Total	\$18,629.67
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The Landlord provided images of the furnace, to establish the age of that component. The Landlord provided an image of a typical wall fan heating device that they installed in each of the rental units. The Landlord provided a copy of their note to the Tenant dated February 9, 2023 wherein they set out the schedule of installations: the middle floor in March 2023, and the ground floor in the fall. This ran in tandem with a second contractor who came in to fix/patch drywall.

In the hearing the Tenant described the original tenancy agreement as specifying “natural gas” and not referring to “heat”. This was the Landlord providing “heat” as part of the agreement, and the cost of the electrical utility was not included in the base amount of rent. As a result of these installations of electric wall fan heating devices, the Tenant will have to pay higher amounts for that utility. Aside from this, the Tenant found the electrical wall fan heating devices were not effective, and “didn’t heat up the place.”

The Tenant provided a written submission wherein they set out these same points. They state plainly that the Landlord’s intention is to “transfer the cost of heating the building and the units from the landlord to the tenants.” The Tenant recalled the initial messaging to them when their tenancy started: this was that “heat” was included in the rent amount, and there was no distinction between “natural gas” and “heat”. The Tenant set out their disagreement that they should have to pay for the increased electricity utility cost, as well as the component installation.

Analysis

The *Residential Tenancy Regulation* (the “*Regulation*”), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:

- to repair, replace, or install a major system or a component of a major system;
and
- undertaken:
 - to comply with health, safety, and housing standards;
 - because the system/component was either:
 - close to the end of its' useful life, or
 - failed, malfunctioning, or inoperative
 - to achieve either:
 - a reduction in energy use or greenhouse gas emissions; or
 - an improvement in security at the residential property
- and
- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;
- or
- the landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase affiliated with capital expenditures within the previous 18 months.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

“dwelling unit” means:

- (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 5 dwelling units, of which all 5 are eligible. The Landlord's indication of 5 individual dwelling units is undisputed evidence.

Eligibility and Amounts

For the Landlord's submitted expenditures A. through E. above, I address whether each expenditure was eligible, and each expenditure amount. I also make findings on whether each expenditure will be incurred again within 5 years. I have divided these categories into the electric wall fan heaters/thermostats, and wall repairs associated with the installations.

- electric wall fan heating devices/thermostats

I find this work was a replacement of the rental property's heating system. I find this improves energy efficiency throughout the rental property. Also, the electric wall fan heating devices and thermostats to control them are significant components of a major system, which cause them to be major components as defined in the *Regulation* s. 21.1.

I find the reason for this work was for replacement of a major system. This was in order to maintain the residential property in a state of repair that complies with the health, safety, and housing standards required by law. As well, alongside this, I find the reason for this work was to achieve energy efficiency, as set out in s. 23.1(4)(iii)(A) of the *Regulation*.

The Tenant submitted that this would increase the cost of the electricity utility they must pay. That is not a deciding factor in my decision on the eligibility of capital expenditures for which a landlord may increase rent. I find the Tenant's submission does not point to the Landlord's inadequate repair or maintenance of the prior heating system; rather, the Tenant is focused on the impact to them that these electric-based heaters will impose, and they questioned the absolute effectiveness thereof. These are matters that do not affect the Landlord's eligibility for capital expenditure rent increase which is the focus of this hearing. What the Tenant raised in terms of the issues affecting them may be the subject of a separate application for dispute resolution to the Residential Tenancy Branch.

The Tenant presented that the Landlord would no longer be paying for heat. I find it is debatable whether the Landlord intended that as a term of convenience when acquiring new tenants – i.e., the promise that heat was included in the basic rent amount. While not having to pay for ongoing natural gas costs is associated with keeping the furnace operating, I find

that is not a significant savings to the Landlord such that it would constitute a recovery of the cost of electric-based heaters' installation. That would be subject to fluctuations in energy costs and other financial variables; therefore, any savings would not equate to the Landlord having "been paid, or entitled to be paid, from another source."

I accept the Landlord's evidence that the first payment for the work was incurred on March 20, 2023 when they paid first invoices. That finalizes the transaction as per the *Residential Tenancy Policy Guideline 37C: Additional Rent Increase for Capital Expenditures*. In simple terms, I find the expense occurred within 18 months prior to the Landlord making their Application to the Residential Tenancy Branch on January 22, 2024.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years.

In conclusion, I grant this part of the Landlord's Application for the capital expenditure of \$17,580.79. That is \$4,070.01 + \$3,852.21 + \$9,558.57 for electrical wall fan heating devices.

- wall repairs associated with installations

I find the wall repairs – painting, refinishing, and patching holes – was part of the installation of the major system, *i.e.*, the electrical wall fan heating devices. The wall repairs in question were not merely cosmetic changes or improvements. This means they are eligible as per s. 23.1(4) of the *Regulation*.

I grant this part of the Landlord's Application for capital expenditure of \$1,048.88. That is \$973.88 + \$75 (the Landlord's claimed amount for this) for wall repairs associated with the heating system installation.

Conclusion

The Landlord has proven all the necessary elements for two items in their Application, that of the electrical wall fan heating devices, and repairs to the walls associated with their installation. I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditures of \$17,580.79 and \$1,048.88. This is pursuant to s. 43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation* referred to above.

The *Regulation* s. 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the

number of dwelling units, divided by 120. In this case, I found there are 5 specified dwelling units, and that the amount of the eligible capital expenditure is \$18,629.67.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$31.05 ($\$18,629.67 \div 5 \div 120$) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of any Tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37C, subsection H, to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

I order the Landlord to serve all Tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. As per the Landlord's request in the hearing, I authorize the Landlord to serve each Tenant by posting a copy of the decision to each rental unit door. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a copy via email.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 8, 2024

Residential Tenancy Branch