



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

This hearing concerned the Landlord's application pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act (the Act) and section 23.1 of the Residential Tenancy Regulation (the Regulation) for an additional rent increase for capital expenditure.

The parties listed on the coverage page attended the hearing on April 9, 2024.

The Landlord confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord by either personal delivery to Tenants or by posting to the Tenant's rental unit door. The Landlord provided completed Proof of Service forms for each Tenant establishing service by the Landlord to each Tenant on February 9, 2024. I find the Tenants were served with the required materials in accordance with the Act.

It is noted that no Tenant submitted any documentary evidence for consideration in this proceeding.

Issues to be Decided

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

Background and Evidence

I have reviewed the evidence, and have considered the testimony of the parties, but will refer only to what I find relevant to my decision.

Evidence was provided by the Landlord that the tenancy building was constructed in 1964, and the Landlord purchased it approximately 3 years ago. The Landlord's president J.F. testified that at the time of purchase there was no disclosure concerning

the condition, nor production of prior maintenance records, from the seller regarding the boiler. Therefore, the Landlord had no information as to the age or condition of the boiler at the time of purchase of the residential tenancy building. The Landlord's president stated that maintenance on the boiler had been done by a local company since purchase of the residential rental building. The Landlord's representative stated there is only one heating pipe for the building.

The Landlord's president testified that he had received complaints (written and verbal) from Tenants in October and November, 2023, that they did not have heat in their units. Copies of emails from various Tenants to the Landlord regarding lack of heat were submitted in evidence.

The Landlord contacted the local service company to repair the boiler. The Landlord submitted a copy of the most recent maintenance record and invoice from the local company dated November 14, 2023. The repair technician's statement on the invoice recommended the boiler be exchanged (that is, replaced) or that the pilot burner be exchanged and the heat exchanger washed. The Landlord's president stated that he opted for the pilot burner exchange with washing of the heat exchanger. This work cost \$651.00, and was reflected on the November 14, 2023, invoice. The Landlord's president stated that this repair failed as the boiler stopped working approximately a week later.

Therefore, on November 22, 2023, the Landlord replaced the boiler at a cost of \$33,000.00. The Landlord's president testified that the company retained to replace the boiler obtained any necessary work permits, which were included in the final cost. A copy of the invoice and the Landlord's payment were submitted in evidence.

The Landlord requested an additional rent increase of \$0.32 per month per unit for the initial repair completed November 14, 2023; and, \$16.18 per month per unit for the cost to replace the boiler. The Landlord's representative stated that aside from permitted annual rent increases, the Landlord had not previously sought an additional rent increase for a capital expenditure or extraordinary expense.

The Tenant who attended the proceedings and has resided in the residential rental building since July 2023, commented that he had not experienced any disruption in heat to his unit during the 2023 winter season. He did state that a downstairs tenant had complained to him on one occasion that there was no heat in that tenant's unit.

Analysis

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. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord has the burden to support the application.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

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));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

A tenant 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

In this case, the Landlord's evidence establishes there have been no prior applications for an additional rent increase within the last 18 months prior to this application.

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.

There are 17 specified dwelling units to be used for calculation of the additional rent increase.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **\$33,615.00** for capital expenditures.

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.

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. (emphasis added.)

I find the boiler is a major component of the building and its replacement was necessary. I find this is sufficient to satisfy the requirements of the Regulation. However, I decline to find that the repair done to the old boiler at a cost for \$615.00 is a

capital expense properly a subject for an additional rent increase as that repair pertained to maintenance of the then-existing boiler which failed and was replaced.

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made.

I accept the Landlords evidence that the final payment for the Work was made November 22, 2023; that is, within 18 months of the Landlord submitting this application on January 24, 2024.

The Landlord provided the invoice and proof of payment for the capital expenditure of \$33,000.00, and I find the final payment was incurred less than 18 months prior to making the application. Furthermore, I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years. It is noted that Policy Guideline 40 provides that heating systems, generally, have a useful life of 15 years.

As stated above, the Regulation limits the reasons 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.

The Tenant attending the hearing advanced no evidence for either objection. The Landlord's president testified that there was no collateral source available for payment to replace the boiler.

I find the Landlord completed necessary repair, was required to pay for the repair, and is bound only by the statutory framework in seeking the capital expenditures.

I find there was no basis presented to defeat the Landlord's application.

Based on the above, I find the Landlord is entitled to recover the amount of **\$33,000.00**.

Summary of Additional Rent Increase

The Landlord has been successful in this application. The Landlord has established, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for total capital expenditures of **\$33,000.00**.

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 17 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$33,000.00**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$16.18 [calculated as: $(33,000 \div 17) \div 120 = 16.18$]**. 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 40, 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 **\$33,000.00**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord serve each Tenant with a copy of this Decision in accordance with section 88 of the Act.

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 09, 2024

Residential Tenancy Branch