

DECISION

Introduction

This hearing dealt with the Landlord's February 26, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

Landlord J.L. attended the hearing, as the owner of the single-family residential dwelling that is the residential property. The Landlord provided sworn testimony and referred to evidence submitted.

I used my discretion under RTB Rule of Procedure 3.17, to allow the Landlord to provide verifiable evidence of the written tenancy agreement with the three adult Tenants in this dispute who rent the property together.

The Landlord testified that this tenancy has been ongoing since 2019 and that current monthly rent is \$2,500.00 for the property.

No Tenants attended the approximately 60-minute hearing.

The Landlord indicated that Tenants were served by Registered mail on March 20, 2024, and that they were provided with all required documents, including invoices, pictures and proof of payment related to this application.

I used my discretion under RTB Rule of Procedure 3.17 to allow the Landlord to provide proof of mailing which included tracking numbers associated with the three packages sent to the three Tenants at the residential property.

I reviewed these tracking numbers and confirmed that they were mailed on March 20, 2024, and that two of the three packages were collected by the Tenants on March 22, 2024.

Rule 11.4 of the Residential Tenancy Branch Rules of Procedure requires the Landlord submit maintenance records in their possession for each component or system that was repaired. The Landlord testified that the window replacement project that is the subject of this application, was to replace the original windows of the property that was built in 1988 and that the Landlord has owned the residential property since 2008.

I therefore find that the question of maintenance records not relevant to this dispute, and that I will not draw adverse inferences against the Landlord in this respect.

I find the Landlord sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages as required by required by RTB Rule of Procedure 3.1 and 11.2. I deem the Tenant E.S.P. who did not collect their package, served on March 25, 2024, as required by 90(a) of the Act.

Issues to be Decided

Is the landlord entitled to impose an additional rent increase for capital expenditures in the amount claimed of \$ \$24,207.50 for a complete window replacement project at the residential property?

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 are set out below with my findings.

The Landlord testified that they have inspected the residential property multiple times during the tenancy, and that in early 2023, they were considering listing the property for sale, when the assigned real estate agent advised that the windows be replaced because pictures submitted, showed significant water leakage in the window frames and one photo even showed mushrooms growing in the tracks of the window.

The Landlord testified that they got two quotes for the costs to replace the windows and that they were similar, and that they went with the one company chosen, because the company was available to do the work sooner than the other company.

The Landlord provided copies of the following documents from a professional company for work that occurred at the residential property and was billed to the Landlord in the amount claimed including:

- a February 26, 2023, estimate for the work.
- A November 19, 2023, receipt showing payment in full

The Landlord testified that there was no grant funding available for their purchase and installation of double pane windows because the windows were installed in a rental property.

The Landlord stated that they understand potential grant funding is available for triple pane windows, but that they would have had to wait longer for the windows to be orders and it was important to install new windows quickly.

The Landlord testified that the Tenants are good tenants and they do not have the residential property listed for sale.

Analysis

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)).

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 (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

I find that the Landlord has not previously applied for an additional rental increase for capital expenditure within the previous 18 months.

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.

I find that there is one (1) specified dwelling unit in the residential property because it is a single- family dwelling that is rented to a family of three adult individuals, who together, pay one monthly rate of rent to the Landlord.

4. Amount of Capital Expenditure

The Landlord applied for \$24,207.50 for the window replacement project.

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.

I find that the window replacement project which included rebuilding some rotten window frames, was an eligible capital project because the Landlord testified that the windows were original to the residential property.

As seen in RTB Policy Guideline 40, the expected serviceable life of aluminum framed windows is 20 years and so this means, that the replacement in 2023 of all windows in the residential property, was to replace windows that were mostly like about 35 years old and far past the end of their expected serviceable life.

a. Reason for Capital Expenditure

I find that the window repair project was required because many of the original windows were leaking, and one window was even growing mushrooms which meant that the window system had failed, and water was actively entering the structure of the residential property.

I find that the Landlord replaced all windows in the residential property because they were malfunctioning and at the end of their serviceable life as permitted by 23.1(4)(a)(ii) of the Regulations.

b. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

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

I accept the Landlords uncontroverted evidence that the final payment for the windows was made in November 2023. I therefore find that the window replacement project was completed within 18 months prior to the Landlord making this application on February 26, 2024, as required by 23.1(1) of the Regulations.

c. Life expectancy of the Capital Expenditure

As stated above, the useful life for the new windows exceeds five years.

I therefore find that the costs of the window replacement project qualify as an eligible capital expenditure under the Regulations because they satisfy the requirements of as shown in 21.1(4)(c) of the Regulations.

6. 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 (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.

No Tenants attended the hearing or submitted evidence for consideration.

7. Outcome

The Landlord has been successful. I find that they have proved, 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 \$24,207.50.

Section 23.2 of the Regulations 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.

As shown in Part 3 above, I find that there is 1 specified dwelling unit for the project.

This means that I calculate the total possible rent increase for capital expenditures to be \$201.73.

\$24,207.50 (project cost) /1 Dwelling unit
Divided by 120
= \$201.73

If this amount exceeds 3% of the Tenant's monthly rent, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year and will be required to impose the rent increase in phases.

The parties may refer to RTB Policy Guideline 37/37c, 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 RTB website for further guidance regarding how this rent increase made be imposed.

<http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1>

Template RTB Notices of Rent Increases (RTB-53-xx) are also available online:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/tenancy-forms/forms-listed-number>

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$24,207.50**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord 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: June 6, 2024

Residential Tenancy Branch