



DECISION

Introduction

This hearing dealt with the landlord's March 13, 2024, 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.

Landlord K.S. and B.P. attended for the Landlord, a corporate entity.

Tenants K.P., L.M., S.S., and D.C, attended for the Tenants.

All parties were given an opportunity to provide sworn testimony and present evidence.

The Landlord K.S. indicated that tenants were served in person or to the door on March 20, 2024, with Notice of the Dispute and associated supporting information relating to the Landlord's claim. Proof of service was provided for all Tenants, and the Tenants who attended the hearing confirmed receipt of service on March 20, 2024.

The Landlord K.S. indicated that Tenants were served in person or to the door with additional evidence on May 21, 2024, and that this additional evidence consisted of individual tenancy agreements and individual notice of previous rent increases. Proof of service was provided for all Tenants, and the Tenants who attended the hearing confirmed receipt of service on May 21, 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. I find that the Landlords failed to provide relevant service and maintenance records related to the projects identified in this application.

The Landlord K.S. testified that the Landlord has owned the residential property since 2008 and that they have various maintenance and other expert reports related to the residential property but that none were submitted with this application. The Landlord K.S. stated that the Landlord recently experienced a cyber-attack and that they lost most of their records.

I find the Landlord sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages.

Preliminary Matters

The Landlord requested to remove the following project from their claim:

- Fire system Attachment ref: 1) Invoice # 10 \$2,907.19

The Tenants present at the hearing agreed to the removal of this claim and so I permitted it to be withdrawn from the Landlord's claim under RTB Rule of Procedure 7.12.1.

I do not give leave to reapply for this claim.

Issues to be Decided

Is the Landlord entitled to impose an additional rent increase for capital expenditures in the amount claimed of \$362,307.09 for the following projects at the residential property including:

- Replaced aging asphalt = \$58,275.00
- Replace flat roof and shingles = \$282,187.50
- Elevator - upgrade Auxiliaries, Overload in Control and Hydraulic valve = \$5,643.75
- New appliances = \$2,434.35
- Renovation New Vinyl Flooring replacement, painting and bathroom upgrades = \$13,766.49

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 claims from the parties and my findings are set out below.

The residential property is a 60 unit, three-storey L shaped building constructed in the 1990s. The Landlord has owned and operated this residential property since 2008.

Regarding the Asphalt Project, the Landlord testified that:

- This included replacement of asphalt used for parking in the area between the building and the main road.
- The Landlord got quotes from different companies and chose to work with a contractor in the amount claimed because the Landlord has previously worked successfully with the contractor.
- The Landlord did not submit proof of payment of the invoice because those are internal records.
- The Landlord did not submit formal assessments or expert reports of the condition of the asphalt prior to paving.

- Paving was done because the curbs were said to be crumbling, there was cracking in the asphalt and there was risk to the suspensions of the cars parked by Tenants in the Lot.

The Tenants disputed the Asphalt project, stating:

- There were no documented issues prior to paving, and there has been no difference in driving on the pavement since.
- I do not have a car, but I walk on the asphalt as I come and go.

Regarding the roof replacement project, the Landlord

- Referred to invoices in the amount claimed.
- Referred to invoice 5 and 7 for how they specify that rotten components were replaced on the shingled section, and that the roof grade had to be altered in the flat roof section to enhance drainage.
- Testified that the roof replaced was original to the building, and that the Landlords had added a protective coating to it in 2008 to extend its lifespan.
- Testified that there were various leaks and so the decision was made to replace the roof.
- No expert reports were provided confirming the need for replacement.
- No proof of payment in the amount claimed was provided.
- Proof of inspection confirming the new roof meets all requirements, was provided.

The Tenants did not dispute this project and agreed that the work was needed.

Regarding the elevator project, the Landlord:

- Referred to invoice provided in the amount claimed.
- Confirmed no proof of payment was provided.
- Stated that the elevator is inspected yearly and monthly, and that work claimed was done to replace obsolete components that are necessary for safety and accessibility.
- Stated that replacing such components helps the elevator last longer.
- Stated that electrical components were replaced but did not specify.

The Tenants offered mixed submissions on the elevator project, noting either that they do not use the elevator because they live on the main floor, or that the elevator is older and has various issues that persist to this day.

Regarding the new appliance projects, the Landlord:

- Referred to invoices in the amount claimed.
- Stated that appliances are necessary components for safe living.
- Stated that new appliances are more environmentally friendly than older appliances.

The Tenants disputed the appliance replacement project and stated, that appliances are unit specific and should not be a cost for all residents because not all residents receive or are entitled to new appliances.

Regarding the vinyl replacement project, the Landlord stated that:

- The work is for renovations to specific units.
- Invoices are provided and identified.

The Tenants disputed this project and stated:

- Long-term tenants cannot enjoy unit enhancements without having to pay market rent.
- New tenants are experiencing issues with the toilets in their units.
- This is not a major capital project.

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:
 - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
 - 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));
 - the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and

- 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 for this residential property 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.

There are 60 dwelling units in the residential property.

The Landlord provided proof a rent roll to the RTB as proof of current rental rates paid by Tenants in the residential property and to confirm that all 60 units are occupied by the tenants.

The Landlord indicated that a copy of this document was not provided by the Landlord to the Tenants for privacy reasons.

The Landlord declared that there are 60 specified dwelling units for the projects that benefit the whole entire residential property, and that the unit specific projects, are only for those specified dwelling units.

4. Amount of Capital Expenditure

The Landlord provided proof of invoices in the amount claimed for their respective projects but did not provide verifiable proof of payment for any of the amounts claimed.

As shown in RTB Policy Guideline 37(c): “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.”

The Landlord provided invoices for what I find to be major components of the roof:

Inv 656-2	\$20,000.00	April 25, 2023
Inv-6565-5	\$161,650.00	July 13, 2023
Inv-65604	\$92,400.00	June 12, 2023
Inv-656-6	\$2,625.00	August 8, 2023
Total	\$276,675.00	

I do not consider the Landlord’s claims for roof reports related to the completion of the new roof, because I find that the costs of the report are separate and distinct from the capital costs of the roof itself.

I find that that the Landlord incurred costs of \$276,675.00 related to the roof.

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 roof replacement project is an eligible capital expenditure because the maximum serviceable life of roof components including shingles and a flat roof membrane is 15-20 years, and the four Tenants who attended this hearing agreed that the roof replacement project was required because the previous roof had reached the end of its useful life and was malfunctioning.

I find that the Landlord duly completed the roof replacement project because they provided proof of the expert report on the completion of the new roof.

I find that the asphalt replacement project is not an eligible capital expenditure because the Landlord failed to provide verifiable documentation related to condition of the asphalt prior to its replacement to justify the costs and confirm that the asphalt was indeed malfunctioning.

I make this finding in part because the Landlords failed to meet their evidentiary burden, and because the Tenants testified that they observed no noticeable difference when driving on the asphalt which is significant because the Landlord testified that they replaced the asphalt in park for the sake of the Tenants who park their vehicles at the residential property.

The only supporting evidence provided by the Landlord for the asphalt project, is a single picture depicting a partially torn up parking lot.

I find that the Landlords failed to establish on the balance of probabilities that the following projects are either major components or major system components as required by RTB-Policy Guideline 37(c) and defined above:

- Elevator - upgrade Auxiliaries, Overload in Control and Hydraulic valve = \$5,643.75
- New appliances = \$2,434.35
- Renovation New Vinyl Flooring replacement, painting and bathroom upgrades = \$13,766.49

I find that the Landlords failed to specify the significance and function of the elevator project component replaced, that it is a major system component, and also failed to confirm that the component replaced would not need to be replaced for 5 years as required by RTB Policy Guideline 37(c), the Act, and Regulations.

I find that the renovations and appliances are unit specific projects and not major system components or major components of the residential property.

a. Reason for Capital Expenditure

I find that the Landlords established on the balance of probabilities that the roof replacement project was needed, but only with the support of testimony from the Tenants who agreed that the project was required.

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 find that the Landlord established on the balance of probabilities that the roofing replacing project was completed July 2023, because Purchase Orders were cross referenced on the invoices provided and the Tenants present at the hearing confirmed that the roof of the residential property was replaced.

I find that August 2023, the latest invoice date related to capital elements of the roof replacement project, is within 18 months of the Landlord’s April 2024 application.

c. Life expectancy of the Capital Expenditure

As stated above, the useful life for the components replaced all exceed five years.

I find that the roof replacement project will exceed five years.

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.

As noted above, I find that the Tenants accepted the cost of the roof replacement project but dispute various aspects of the other projects, including the necessity of the asphalt replacement project and the eligibility of the other projects as eligible capital expenditures.

7. Outcome

The Landlord has been successful in the roof replacement project because this is the only project for which they satisfied all elements required to impose an additional rent

increase for capital expenditures of \$276,675.00 as set out above in section 4 of this report.

Section 23.2 of the Regulations sets out the formula to be applied when calculating the amount of the additional rent increase as amount of capital expenditure, divided by the number of specific dwelling units divided by 120.

I find that there are 60 specified dwelling units for the roof replacement project.

I find that the Landlords are entitled to impose additional monthly rent amount of \$38.42 on the Tenants at the residential property.

$\$276,675.00/60/120 = \38.43 per unit.

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 37, 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's application for additional rent increase for capital expenditure for the following projects, is dismissed, without leave to reapply:

- Replaced aging asphalt = \$58,275.00
- Elevator - upgrade Auxiliaries, Overload in Control and Hydraulic valve = \$5,643.75
- New appliances = \$2,434.35
- Renovation New Vinyl Flooring replacement, painting and bathroom upgrades = \$13,766.49
- Fire system Attachment ref: 1) Invoice # 10 \$2,907.19

I grant the Landlord's application for additional rent increase for the capital expenditure of **\$276,675.00** for the roof replacement project.

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 21, 2024