



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Christian C. Hoy Corporation
and [tenant name suppressed to protect privacy]

DECISION

Introduction

On June 13, 2024 (the “Application date”) 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 for capital expenditures.

The Landlord attended the hearing at the scheduled time. No Tenants attended.

Preliminary Issue – service and disclosure of evidence

In the hearing, the Landlord confirmed that they served the Notice of Dispute Resolution Proceeding – the document that gives all details about the conference call hearing – and information about a rent increase of this nature. The Landlord served the information to each Tenant in the mail slots at the rental unit property. The Landlord provided a photo to show how they accomplished this on July 12, 2024.

I find there is no issue with the Landlord’s service of the Notice of Dispute Resolution Proceeding, and their evidence, to each Tenant involved. I am satisfied that the Landlord completed this task fully and completely as required, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Issue to be Decided

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

Background and Evidence

The rental property consists of 6 individual rental units at a single property. The Landlord in the hearing described acquiring ownership of the property in December 2020. To the best of the Landlord's knowledge, the rental unit structure was built in the early 1900s.

The Landlord pursued roofing work at the rental unit property after a tenant notified them about a leaking roof. The Landlord obtained an estimate from one roofing firm who confirmed the roof needed replacing. The Landlord obtained a second estimate from a separate roofing firm who confirmed the need for replacement, and then completed the work. Both roofing firms verified that the roof/materials were past their useful life span.

In the evidence, the Landlord provided a picture of the work prior to completion, to emphasize the need for work on the roofing that had holes.

The Landlord provided two invoices for the work completed:

- a deposit they paid on February 17, 2023 for \$8,925 – roofing materials and start up costs
- a final payment of \$7,455 on March 7, 2023 – completion of roofing

This amount is the capital expense that the Landlord submits is related to a major system or major component of the rental property.

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 proof of a prior application from the Landlord. In the hearing, the Landlord confirmed this was a new capital expense to them in 2023.

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 6 eligible dwelling units, as specified by the Landlord in the hearing. They clearly presented the name of each tenant in separate units and listed this on their Application.

Eligibility and Amounts

I address whether the expenditure was *eligible*, and the expenditure *amount*.

As set out in s. 23.1(4) of the *Regulation*, I find the replacement of roofing on the rental unit building qualifies as a replacement of a major component of a major system, with the “major system” being structural, *i.e.*, integral to the residential property.

I find, jointly and in the alternative, that new roofing is a major component that the Landlord had to replace to comply with health, safety, and housing standards.

I conclude this is an eligible expense under this statutory framework.

Timing of the Capital Expenditure

I accept the Landlord’s evidence that they made two payments for the work, on February 17, 2023 and March 7, 2023. This date is within 18 months of the Landlord’s application to the Residential Tenancy Branch June 13, 2024.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find the roofing material has a useful life of 15 years. On this basis, I am satisfied the capital expenditure will not reoccur, and there will be no expenditure incurred again within 5 years.

Outcome

The Landlord has proven all of the necessary elements for their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$16,380. This is pursuant of 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 6 specified dwelling units, and that the amount of the eligible capital expenditure is \$16,380.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$22.75 ($\$16,380 \div 3 \div 120$) 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, calculated above, in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37C to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation.

I also direct the Landlord's attention to the Policy Guideline 37C section H., which sets out the need for use of the correct form¹. The form itself establishes timelines for a landlord's service of a notice to each tenant.

¹ Residential Tenancy Branch-53-p1: Notice of Additional Rent Increase – Eligible Capital Expenditures (Phase 1)

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.

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$16,380.

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. I authorize the Landlord to serve each tenant by sending it to them via email. The Landlord must also be able to provide a copy to any tenant that requires a printed copy in person.

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: September 13, 2024

Residential Tenancy Branch