



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

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

DECISION

Introduction

On June 12, 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 and one of the two Tenants who reside in the rental unit attended the scheduled hearing.

Preliminary Issue – service and disclosure of evidence

In the hearing, the Tenant confirmed they received the notice for the hearing and hearing information, as well as the Landlord’s document evidence.

Issue to be Decided

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

Background and Evidence

The single rental unit is the basement suite in the Landlord’s home. The Landlord in the hearing described acquiring ownership of the property in 2021. To the best of the Landlord’s knowledge, there were two previous owners of the rental unit property, and the home was built in approximately 2001- 2003. The Tenant moved into the rental unit in July 2021.

The Landlord in the hearing described their move into the rental unit property, and an inspector at that time noted damage to the original roof. The roofing materials –

particularly the shingles – were past their useful lifetime expiry, being approximately 20 years old. The Landlord provided 2 pictures of the old roof to illustrate the need for replacement.

The Landlord undertook completion of roofing material replacement, and paid the first deposit invoice on October 7, 2022, for \$2,500. The Landlord paid for the remainder of this invoice – totalling \$23,416 – on April 5, 2023.

The Tenant in the hearing stated they had no issue with the need for this completed work at the rental unit property.

The Landlord also described the home structure having “a few hearing sources including baseboards” in the rental unit. In the last year, the Landlord replaced the rental unit baseboards with heat pumps. In a picture the Landlord provided in evidence, the heat pumps sourced for the rental unit appear on the right side of the picture.

For the remaining areas in the home, the Landlord replaced the aging central air conditioner and baseboards, due to an old condenser unit quitting. The picture provided by the Landlord shows the larger heat pump installed on the exterior of the home, adjacent to the heat pump for the rental unit.

The Landlord provided a copy of the invoice they paid for installation of a heat pump that provides heat/cool air to the rest of the rental unit home, i.e., not exclusive to the rental unit. For the work in total, the Landlord stated they paid \$12,390 on June 3, 2024.

In the hearing, the Tenant stated this heat pump installation was for the main house, i.e., not the rental unit. The rental unit had its own heat pump installed in the previous year.

The Landlord described this 2024 heat pump installation as “part of the main house”, and while it does affect the heat/cool air in the basement at the home, it is not for the rental unit directly. The Landlord shared their understanding of the relevant legislation as referring to a “residential dwelling” (i.e., the definition that would include the rental unit).

As set out in this Application, the Landlord provided the following amounts for work completed:

- replacement of asphalt roof: \$23,416
- heat pump installation: \$12,390

The total amount of \$35,806 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

With no evidence to the contrary, I find the Landlord made no prior application for an additional rent increase of this type.

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.

As per this definition in the *Act*, I find there was 1 dwelling unit. For each capital expenditure, I parse the meaning of “specified dwelling unit” below.

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.

For the replacement of the asphalt roof, I find the rental unit is a “specified dwelling unit”. With reference to the *Regulation* s. 21.1 definition, I find the rental unit is “a dwelling unit that is affected by an installation made . . . in . . . a residential property”. I find the rental unit is susceptible to issues affecting the roof of the residential property, overall affected by any negative impact to the structural integrity of the residential property. The Tenant acknowledged this in the hearing.

In conclusion, I find that new roofing is a major component that the Landlord had to replace to comply with health, safety, and housing standards; therefore, this is an eligible expense under this statutory framework.

I find the rental unit does not fit the definition of “specified dwelling unit” with respect to the installation of the heat pump. For the purpose of this heat pump installation, I find the rental unit is not a specified dwelling unit: there was not an installation/repair/replacement made in the rental unit; alternately, the rental unit was not affected by an installation/repairs/replacement made at the rental unit property. This follows the definitions in s. 21.1 of the *Regulation*, set out above.

For this reason, I find the installation of the heat pump is not an eligible expense under this statutory framework.

Timing of the Capital Expenditure

For the asphalt roof replacement, I accept the Landlord’s evidence that they made a single payment for the work (in combination with the deposit) on April 5, 2023. This amount was \$23,416.

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 \$23,416. 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 is 1 specified dwelling unit, and that the amount of the eligible capital expenditure is \$23,416.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$195.13 (*i.e.*, $\$23,416 \div 1 \div 120$) per month. 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.

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 \$23,416.

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

I order the Landlord to serve this Decision to the Tenant, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve The Tenant by sending it to them 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: September 23, 2024

Residential Tenancy Branch