



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

]

DECISION

Introduction

On August 19, 2024 (the “Application date”) the Landlord filed the 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 the two Tenants who reside in the rental unit attended the scheduled hearing.

Preliminary Issue – service and disclosure of evidence

In the hearing, the Tenants 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 a stand-alone home structure owned by the Landlord. The tenancy agreement that the Landlord provided for the hearing shows this tenancy starting on July 15, 2018. Neither the Landlord nor the Tenants mentioned any specific points in the tenancy agreement in the hearing.

The agreement states: “The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction in made under section 27(2) of the Act.”

The agreement in paragraph 12 also sets out the conditions of any applicable yearly rent increase.

The Landlord made this Application for a rent increase based on eligible capital expenditures for two expenses to them: a gas furnace (\$8,118), and hot water tank (\$2,026.50).

The Landlord was invoiced on February 27, 2023. In the hearing the Landlord described the heat not working around this time. They attempted to do repairs on the existing furnace and heating system; however, the heat exchanger was cracked and “not replaceable.” Concerning their payment of \$8,118 for the replacement furnace, the Landlord noted that the diagnostic work involved with this change was not included in the invoice or their claim for this capital expenditure.

The Landlord also noted the existing furnace/heating system was very old, and pre-dated their purchase of the rental unit property. The technicians who performed the work estimated that the heating system was over 40 years old.

The Landlord provided images of the two cheques they issued to the furnace installed, each for \$4,059.59, dated April 5, 2023. The Landlord also included images of the new furnace installed in the rental unit.

The Landlord paid the invoice for the water heater purchase and installation, dated June 2, 2023. They provided the reason for this expenditure: the existing water heater (installed in a closet) was leaking. The Landlord provided a video that showed this leaking.

The Landlord provided an image of the cheque dated August 25, 2023, for the full invoice amount of \$2,026.50. The Landlord in the hearing noted this was a simple/residential water heater, with an average lifespan of around 8 years.

The Tenant in the hearing raised no issues of inadequate repair from the Landlord on any maintenance issues in the rental unit. The Tenant did not speculate on payment of these expenditures to the Landlord from any other source.

The Tenant did observe that the need for the replacement of a 40-year-old furnace did not arise through anything the Tenant did, either deliberately or negligently. As stated in the hearing “usually [the expense] is something that lands with the Landlord.’

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

- replacement of furnace: \$8,118
- replacement of water heater: \$2,026.50

The total amount of \$10,114.50 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.

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 the furnace in the rental unit qualifies as a replacement of a major component of a major system, with the major system supporting a critical function of the residential property: that of the heating system in the rental unit.

I find the replacement of the water heater in the rental unit qualifies as a replacement of a major component of a major system: that of the provision of water in the rental unit. Therefore, this is an eligible expense under this statutory framework. This is also in line with the Landlord's obligation to maintain the residential property in a state of repair that complies with the health, safety, and housing standards required by law.

I conclude that each of these major components failed, or was malfunctioning, or was inoperative. Moreover, I find that in the case of the furnace the major component exceeded its useful life. The existing water heater was clearly failing and inoperative.

For these reasons, I find the installation of furnace and water heater are eligible expenses under this statutory framework.

Timing of the Capital Expenditure

I accept the Landlord's evidence that they made payments for this work on April 5, 2023 and August 25, 2023. I find the Landlord completed each expenditure within the 18-month timing requirement set out in the *Act*.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find the furnace has a useful life of 20 – 25 years. The water heater has a useful life of 10 years. On this basis, I am satisfied each of these capital expenditures will not reoccur, and there will be no expenditures again incurred for these items 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 expenditures totalling \$10,114.50. 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 \$10,114.50.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$84.54 (*i.e.*, $\$10,114.50 \div 1 \div 120$) 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.

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

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$10,114.50.

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: October 22, 2024

Residential Tenancy Branch