



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HARWOOD HOLDINGS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing concerned the Landlord's application pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act (the Act) and section 23.1 of the Residential Tenancy Regulation (the Regulation) for an additional rent increase for capital expenditure.

The parties listed on the cover page called into and/or participated during the hearing held November 14, 2024.

The Landlord's representative confirmed service of the Notice of Dispute Resolution Proceeding and documentary evidence (proceeding package) to each Tenant by posting the proceeding package to each rental unit door on September 13, 2024. I find the Tenants were served with the required materials in accordance with the Act.

Issue for Decision

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

Background and Evidence

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants attending the hearing. However, not all details of the parties' submissions are set forth herein. Rather, only relevant and material evidence related to the Landlord's application and necessary to my findings are provided in my analysis.

The Landlord's application requests an additional rent increase for the installation of a replacement system that provides heating and domestic hot water in the residential rental building. The Landlord's representative confirmed the Landlord had not submitted an application for additional rent increase for this rental property in the prior 18 months.

The residential rental building was constructed in 1972 and has 35 rental units.

The cost of the replacement hot water tanks was \$122,167.50, which was paid by the Landlord on September 13, 2023. A copy of the plumbing installation company's itemized invoice and indicates payment by the Landlord was submitted in evidence.

The plumbing company retained to conduct the work provided a letter signed by the owner, also submitted by the Landlord in this proceeding, which states the company had provided maintenance to the replaced hot water tanks since 2017. It was the installing company's owner's opinion based upon its knowledge of the system that the mid-efficient hot water tanks were approaching the end of their useful life. The system was replaced with three 97.5 percent high-energy efficiency (natural gas) tankless boilers, described as having a larger capacity and expected to use less than 30 percent energy. The Landlord submitted a summary from the natural gas utility establishing the lower gas usage of the energy-efficient boilers compared to the replaced units. The Landlord's representative stated the new system continues to be regularly maintained. The plumbing installation company provided a warranty for the system. The company's owner's letter further states the new energy efficient tankless system is expected to last in excess of 20 years with proper service and maintenance.

The Landlord's representative testified there were no rebates to cover any portion of the cost for the replacement system, nor were there any funds from a collateral source (such as insurance) that would off-set the cost incurred for the system.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not the facts occurred as claimed. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord bears the burden of proof in support of its application.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount greater than the annual amount provided under the Regulations by submitting an application for dispute resolution.

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. 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 Regulations provide tenants may have an application for an additional rent increase for capital expenditure dismissed 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 its evidentiary burden and the tenant fails to establish the 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

In this matter, based upon the Landlord's representative's testimony, I find there have been no prior applications for an additional rent increase within the last 18 months before the present application was filed.

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 35 specified dwelling units to be used for calculation of the additional rent increase.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **\$122,167.50** as provided in the Landlord's evidence regarding the capital expenditure, there being no collateral source or rebates to off-set this cost fully or partially.

5. Is the Work an *Eligible* Capital Expenditure?

As stated above, 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.

An item of capital expenditure is reviewed under this analysis.

Section 21.1 of the Regulation defines "major system" and "major component":

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

- (a) to the residential property, or
- (b) to providing services to the tenants and occupants of the residential property;

"major component", in relation to a residential property, means

- (a) a component of the residential property that is integral to the residential property, or
- (b) a significant component of a major system;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

Residential Tenancy Branch Policy Guideline 37 states:

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

Policy Guideline 37C provides "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."

I find the domestic hot water and heating system for the residential property is a major system as defined by the Regulation. I further find the Landlord incurred the cost to replace this system within 18 months prior to the filing of this application.

I find the prior domestic hot water and heating system was at or near the end of its useful life as determined by the plumbing company that had provided maintenance to the system since 2017. Additionally, I find the replaced system is an energy-efficient system evidenced by the reduced use of natural gas in the time since installation based upon the utility company's billing and usage records.

I find it reasonable to conclude the system will not require replacement for at least five years, as demonstrated by the plumbing installation company's position the system is expected to have a useful life in excess of 20 years with regular maintenance.

I further accept the Landlord's representative's testimony there was no other source of payment (such as insurance proceeds or rebates) to pay some or all of this capital expenditure.

Tenant Objections to the Capital Expenditures

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.

During the hearing, Tenant K.W. commented the new boiler system was “excellent” and provided “warmth and comfort,” but expressed concern as to the amount of the additional rent increase, particularly when the Landlord had raised rent annually in the amount provided by the Regulations. Tenant M.S. considered it was equitable to divide the cost of the system per number of occupants per unit, rather than per specified dwelling unit. Tenant M.S. also noted, as an aside, there had been no hot water for one day in the recent past. Tenant M.H. inquired as to the period of time the additional rent increase would be in effect. Undersigned addressed the Tenants concerns as to the application of the Regulations governing additional rent increases for capital expenditures. More fulsome information is provided in this Decision.

The Tenants comments do not raise issue with those factors provided by the Regulations sufficient to dispute the Landlord’s application.

Summary

The Landlord has established, on a balance of probabilities, the elements required in order to be able to impose an additional rent increase for total capital expenditure in the amount of **\$122,167.50**, for the major component and system as described herein.

Section 23.2 of the Regulation 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. In this case, I have found that there are 35 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$122,167.50**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$29.09 (determined as: $122,167.50 \div 35 \div 120 = 29.09$)**. 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 40, 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

I grant the application for an additional rent increase for capital expenditures totaling **\$122,167.50**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenants with a copy of this decision in the manner required by section 88 of the Act.

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 14, 2024

Residential Tenancy Branch