



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

On September 3, 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 scheduled hearing. None of the Tenants who reside at the rental unit property attended.

Preliminary Issue – service and disclosure of evidence

In the hearing, the Landlord described serving each Tenant in the separate rental units at the rental unit property with a copy of the Notice of Dispute Resolution Proceeding, information, and their evidence. I accept the Landlord served documents for this hearing appropriately, and within the established time limits.

Issue to be Decided

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

Background and Evidence

The rental unit property contains 6 rental units in total. The Landlord in the hearing described acquiring ownership of the property in June 2023. The Landlord was aware that the rental unit property was constructed in 1965.

The Landlord in the hearing described their acquisition of the property in 2023, involving an inspector. The inspector identified issues with the existing furnace/boiler, and

determined it was past its useful life. The Landlord noted this heating system was in place since the original construction of the rental unit property.

The Landlord provided photos of the original boiler, as well as the replacement. In the hearing, the Landlord described the extremely inefficient venting system, and a flame burning that was the incorrect colour. The Landlord obtained two quotes for the work involved, and proceeded with the more reasonable option.

The Landlord undertook a replacement of the central boiler system, and paid the first invoice for this work on July 6, 2023 for \$10,719.30. The Landlord paid for the remainder of the work on July 25, 2023, for the remaining \$10,719.30. The Landlord paid a third invoice for replacement of thermostat in the individual rental units, on August 3, 2023, for \$827.50.

Presented thus, the total amount of payment for this heating system replacement was \$21,186.00.

Attesting to the replacement heating system's effectiveness, the Landlord noted a marked decrease in their invoices for gas at the rental unit property.

The Landlord also paid an amount for emergency tree removal, after a large storm felled a large tree on the property at the rental unit building. This cost the Landlord \$1,942.50 in total. The Landlord noted the urgency of having this tree removed, providing photos to show how it was situated and blocking access to the parking area.

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

- replacement of heating system: \$21,186
- removal of felled tree: \$1,942.50

The total amount of \$23,128.50 is the total for capital expenses that the Landlord submits are 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 6 dwelling units.

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 heating system at the rental unit property qualifies as a replacement of a major component of a major system, with this “major system” being integral to the residential property.

For this work, I find each rental unit is a “specified dwelling unit.” With reference to the *Regulation* s. 21.1 definition, I find each rental unit is “a dwelling unit that is affected by an installation made . . . in . . . a residential property”.

In conclusion, I find that a new heating system is a major system that the Landlord had to replace to comply with health, safety, and housing standards; therefore, this is an eligible expense under this statutory framework. As well, the major system qualifies as that which achieves a reduction in energy consumption overall.

I find the removal of a felled tree does not qualify as an eligible capital expenditure – the expense was not incurred to install, repair, or replace a major system/component thereof. Not is this replacement of a major system/component that was malfunctioning, inoperative, or close to the end of its useful life. This does not align with the purpose and intention of s. 43(1)(b) of the *Act*.

For this reason, I find the removal of the felled tree is not an eligible expense under this statutory framework.

Timing of the Capital Expenditure

For the heating system replacement, I accept the Landlord’s evidence that they invoice totals in 2023, with the amount being \$21,186.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find furnace has a useful life of 20-25 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 a part of their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$21,186. 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 \$21,186.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$29.43 (*i.e.*, $\$21,186 \div 6 \div 120$) 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 \$21,186.

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: November 14, 2024

Residential Tenancy Branch