



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 September 8, 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 one of the Tenants (hereinafter, the “Tenant”) 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 (i.e., the Notice of Dispute Resolution Proceeding) and hearing information, as well as the Landlord’s document evidence.

The Tenant provided evidence to the Residential Tenancy Branch on November 12; however, in the hearing they stated that they did not provide this to the Landlord. For the reason of procedural fairness, I am excluding the Tenant’s evidence from consideration. In the hearing the Tenant had full opportunity to speak to the issues; their testimony stands as recorded evidence in this proceeding.

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 Landlord presented that the rental unit property is “about 50 years old”. They became the owner of this rental unit property in 2016. All the information that the Landlord had about the rental unit

came from the previous owner, as well as an inspection completed at the time of their purchase in 2016.

In the hearing, the Landlord and the Tenant both confirmed that the tenancy started in 2020.

The Landlord made this Application for a rent increase based on eligible capital expenditures for three expenses to them: a furnace (\$6,300), a roof replacement (\$11,000), and a toilet/water supply valve (\$674.10).

The Landlord provided the following evidence:

- Invoices:
 - a final invoice for the supply/install of gas furnace, \$6,300, dated December 4, 2023
 - a final invoice for roof replacement, \$11,000, dated March 20, 2024
 - a final invoice for replacement toilet/water supply valve, \$674.10, dated July 12, 2024
- messages to/from Tenant regarding the furnace not working (emitting noise), the requirement for a plumber
- pictures showing roof replacement, new toilet
- documents showing gas installation permit replaced to the replacement furnace

In the hearing, the Landlord set out that the furnace was working and in a “normal” status for approximately 2 years when they took ownership of the rental unit property. Prior to this tenancy, the furnace broke down twice and a technician cited a broken motor as the cause. The Landlord was trying to maintain a working status furnace since that time. On the last repair (in October/November 2023), the technician set out the need for replacement, and so the Landlord undertook the furnace replacement in December 2023.

The Tenant confirmed there were furnace problems each winter. The Tenant was aware that the furnace was quite old in the rental unit. Since the time of the furnace replacement, the Tenant’s energy bill has decreased.

In the hearing, the Landlord set out that the Tenant messaged to the Landlord about the ceiling in the living room leaking. A technician visited and after an inspection made the determination that the roof at the rental unit property needed replacement.

The Tenant acknowledged the need for roof replacement in the hearing.

Regarding the toilet replacement, the Landlord noted they were told of problems with this by the Tenant. The Landlord stated this was the original toilet that was in the rental unit property. The Tenant confirmed the need for toilet replacement after a plumber visited and recommended a replacement.

In the hearing, the Tenant questioned the rationale for a rent increase where these replaced items appear to be basic amenities that make the rental unit livable, in light of the rental unit property being very old.

The total amount of \$17,974.10 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 is 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 this expenditure is eligible, in the amount of \$6,300.

I also find the replacement of the roof of the rental unit qualifies as a replacement of a major system, supporting a critical function at the residential property. I find the roof was past the end of its useful life, as confirmed in the home inspection report from 2016 that the Landlord provided in their evidence. Therefore, I find it is an eligible expenditure, in the amount of \$11,000.

The *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements* is a general guide for determining the useful life of building elements. It lists a toilet as having a useful life of 20 years. With this information, I find the toilet in the rental unit was more likely than not past its useful life, thereby requiring replacement.

For this reason, I grant a replacement expenditure amount to the Landlord, for \$674.10.

I conclude that each of these components either failed or exceeded their useful life at the residential property. For these reasons, I find each replacement is an eligible expense under this statutory framework.

Timing of the Capital Expenditures

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 reference 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 roof has a useful life of 15 years. As set out above, the toilet has a useful life cycle of 20 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 \$17,974.10. 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 \$17,974.10.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$149.78 (*i.e.*, $\$17,974.10 \div 1 \div 120$) 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 \$17,974.10.

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 22, 2024

Residential Tenancy Branch