



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding bclMC Realty Corporation and
[tenant name suppressed to protect privacy]

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 pursuant to s. 23.1 of the *Regulation*.

The Landlord attended the hearing at the scheduled hearing time. No Tenants attended the scheduled hearing.

Preliminary Issue – service and disclosure of evidence

The Landlord in the hearing described serving the Notice of Dispute Resolution Proceedings for this hearing, as well as all of their evidence as required, to each Tenant via overnight courier. The Landlord was sure of delivery given that some tenants had mentioned the issue to the Landlord after their service.

I find there is no issue with the Landlord’s service of the Notice of Dispute Resolution Proceedings and their evidence, to each Tenant involved. I am satisfied that the Landlord completed this task fully and completely as required, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Issue to be Decided

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

Background and Evidence

The rental unit property consists of 8 two-bedroom units. The Landlord listed 3 of these units, which exist on the second level of the rental unit building, as being subject to this Application, due to the roof leak issue that affected these units individually. These are the three units that

received a new roof. In the hearing the Landlord provided their reasons why they chose not to incorporate other rental units into this Application.

The Landlord provided that this building was constructed in 1979. The back half of the building received new roofing approximately 7 years prior to this Application, due to leak issues that the Tenants knew about.

The Landlord provided an estimate from a roof company that set out a detailed list of work involved. The stated price was \$16,697.

As set out in the quote, the Landlord paid the amount of \$23,088.45 on May 3, 2024. This included installed “cant and fascia flashings” for an additional amount. This amount 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

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase within the previous 18 months.

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.

I find there are 3 eligible dwelling units, as specified by the Landlord in the hearing. This is clearly showed in the Landlord's copy of each tenancy agreement in their evidence.

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.

I find, jointly and in the alternative, that new roofing is a major component that the Landlord had to replace to comply with health, safety, and housing standards.

I conclude this is an eligible expense under this statutory framework.

Timing of the Capital Expenditure

I accept the Landlord’s evidence that the single payment for the work was in May 2024. This date is within 18 months of the Landlord’s application to the Residential Tenancy Branch September 3, 2024.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find the flat roofing has a lifecycle of 20 years.

The warranty on the firm’s invoice gives a 10-year timeframe for coverage. 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 \$23,088.45. 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, as per the legislation specification on determining the amount of rent increase, there are 8 specified dwelling units

that must be applied to the calculation. The amount of the eligible capital expenditure is \$23,088.45.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$24.05 ($\$23,088.45 \div 8 \div 120$) per month, per affected tenancy. 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. 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 \$23,088.45

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by sending it to them via email. The Landlord must also be able to provide a copy to any tenant that requires a printed copy in person.

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 5, 2024

Residential Tenancy Branch