

DECISION

Introduction

This hearing dealt with the Landlord's August 22, 2024, application pursuant to the *Residential Tenancy Act* (the "**Act**") and the *Residential Tenancy Regulation* (the "**Regulation**") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The Landlord incurred costs for a new roof at the residential property in the amount of \$13,515.35, for work that was completed in July 2024.

Landlord N.K. attended the November 1, 2024, hearing to provide sworn testimony and refer to evidence. They testified that the residential property was built in the 1960s, and that the Landlord purchased it in or around 2016, and that the report from the Home Inspector on purchase was that the roof was in "fair condition" at the time.

None of the Tenants attended the November 1, 2024, hearing.

Landlord N.K. testified that Tenants were served by email to the email addresses provided on RTB-51, Address for Service Forms, that were signed and dated by all Tenants to this dispute, approving service by email from the Landlord.

Landlord N.K. provided proof of the emails as sent to their Tenants on September 10, 2024, to confirm that the Tenants were provided with all RTB documents regarding the hearing on November 1, 2024, along with copies of the Landlord's evidence in this dispute.

Landlord N.K. testified that their Tenants responded to thank the Landlord for their efforts in completing the new roof, and for sharing all information related to the Landlord's application for additional rent increase for capital expenditure.

Rule 11.4 of the Residential Tenancy Branch Rules of Procedure requires the Landlord submit maintenance records in their possession for each component or system that was repaired. I find that the Landlord served the Tenants with relevant evidence related to the new roof project, but did not serve maintenance evidence on the Tenant.

I nevertheless find the Landlords sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence package since the residential property in question is a house built in the 1960s, and the roof is a typical shingled roof.

Issues to be Decided

Is the Landlord entitled to impose an additional rent increase for capital expenditures in the amount claimed of \$13,515.35 for a new roof project at the residential property?

Background and Evidence

The Landlord testified that the residential property contains an upper and a lower rental unit. They provided the written tenancy agreements for both units and confirmed that current Tenants have occupied their units since 2021.

The Landlord testified that current rent for the upper unit is \$1,875.91 and that current rent for the lower unit is \$1,229.42.

The Landlord testified that the upstairs Tenant emailed the Landlord in March 2024 to report that water was entering the rental unit from the ceiling. A copy of this email and associated photos was provided as evidence.

The Landlord testified that they then had a roofing expert investigate the residential property, and that they found the shingled roof was at the end of its expected serviceable life, and that further, a portion of the roof structure was done in shiplap which was causing a series of microleaks into the attic.

As shown in the roofing company invoice dated July 13, 2024, the Landlord testified that this required the installation of a new plywood base for the roof, as well as new shingles, all of which were properly installed to code with a 10-year labour warranty.

The Landlord also provided proof of an July 19, 2024, email from the roofing contractor to share additional verifiable information confirming the need for the new roof in 2024.

Analysis

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. I will not reproduce the sections here but 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:
 - o 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)).

Tenants may defeat an application for an additional rent increase for capital expenditure 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 their evidentiary burden and the tenant fails to establish that an 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

I find that the Landlord has not previously applied for an additional rental increase for capital expenditure within the previous 18 months for this residential property.

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.

I find that there are two dwelling units in the residential property.

4. Amount of Capital Expenditure

The Landlord applied for \$13,515.35 for the new roof project.

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

As stated above, in order 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.

a. Reason for Capital Expenditure

I find that the residential property required a new roof because the shingles were at the end of their serviceable life, and the upstairs Tenants reported a leak in their unit that triggered an investigation by a qualified professional who then recommended an appropriate solution.

I find that a new roof is a major building component, and that this project needed to be completed in July 2024 because it was starting to fail and was close to the end of its useful life as permitted by 23.1(4)(a)(ii) of the Regulations.

b. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

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

I accept the Landlords’ uncontroverted evidence that they incurred the costs for the new roof in July 2024, and that all costs were duly paid to the roofing contractor that same month.

I find that these dates are within 18 months of the Landlord making this application to the RTB on August 22, 2024, as required by 23.1(4)(b) of the Regulations.

c. Life expectancy of the Capital Expenditure

The new shingles are expected to satisfy, if not exceed the 15-year serviceable life that is proposed in RTB Policy Guideline 40.

I therefore find that the new roof project is an eligible capital expenditure because it is expected to last more than five years as required by 23.1(4)(c) of the Regulations.

6. Tenants’ Rebuttals

As stated above, the Regulations limit 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.

None of the Tenants attended the hearing.

7. Outcome

The Landlord has been successful. I find that they have satisfied, on a balance of probabilities, all elements as outlined above and are entitled to impose an additional rent increase for total capital expenditures on the Tenants.

Section 23.2 of the Regulations sets out the formula to be applied when calculating the amount of the additional rent increase as:

$$\frac{\text{Amount of Capital Expenditure} / \text{Number of Specific Dwelling Units}}{120}$$

I find that there are two specified dwelling units for the new roof project that cost **\$13,515.35** and that the Landlord can impose an additional rent increase for capital expenditures of **\$56.31** ($\$13,515.35 \div 2 \text{ units} \div 120$).

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 and may need to implement the increase in phases.

The parties may refer to RTB Policy Guideline 37, 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 may be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$13,515.35**. 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 accordance with section 88 of the Act.

Dated: November 1, 2024

Residential Tenancy Branch