



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code 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 Landlord S.I. attended the hearing on November 25, 2024. The Tenants did not attend.

The Landlord confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. The Landlord provided the Canada Post registered mail tracking numbers for the proceeding package sent to each Tenant on October 11, 2024. I find the Tenants were served with the required materials in accordance with the Act.

Additionally, the Landlord read an email she received from the Tenants in response upon their receipt of the proceeding package. The Landlord stated the email was sent by the Tenants on October 18, 2024, wherein the Tenants inquired what the "ultimate rent" amount may be in the event the Landlord's application was approved, stating they may not attend depending on the amount of the monthly rent increase. The Landlord replied to the Tenants providing information that the Landlord says over-stated the amount that could be anticipated as a monthly rent increase should the application be approved. The Landlord stated at the time she replied to the Tenants she had not properly calculated the amount and had provided them with an estimate greater than what she later realized could be imposed. The Landlord also stated the Tenants had received notice of an annual rent increase effective February 1, 2025. The Tenants did not submit evidence for this proceeding.

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 Landlord, the Landlord's testimony and the documentary evidence provided for this hearing. However, only relevant and material evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The Landlord's application requests an additional rent increase for certain capital expenditures for the rental unit:

- Replacement of a deck and railing on the rental property totaling \$12,956.96
- Repair of the rental property roof totaling \$7,350.00

The residential rental property was constructed in 1999 and is a single-family home. The Landlord stated the capital expenditures occurred within 18 months preceding the date the application was filed on September 13, 2024, and that neither expenditure was expected to recur for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The Landlord further confirmed there was no other source of payment for these expenditures (such as, rebates or insurance proceeds).

The Landlord explained the rental property has a metal roof, which requires little maintenance, which the Landlord noted was a key feature of this type of roofing. The Landlord stated the Tenants had advised her of water leaking in the rental unit, and upon investigation by a contractor, it was determined the source of the water intrusion were from the area where the screws in the metal roof were located. As a result, repair work was undertaken and the screws were replaced and sealed with silicon. The Landlord submitted the invoice and proof of payment for this capital expenditure. The Landlord, who has continuously owned the property since its construction, stated the screws were last replaced approximately 11 years ago. Since this repair work was completed, the Landlord stated that no further water has leaked into the unit.

The Landlord stated the deck is south-facing and had sustained significant weather-related damage as a result. She noted the deck, fascia and railing are original to the rental unit (approximately 24 years old) and at the end of its useful life. The Landlord provided photographs depicting the Tenants' concern that several of the posts to the deck were in a dilapidated and unsafe condition. The deck was repaired, including the installation of new posts for the railing, new fascia and the deck surface was replaced and sealed.

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:
 - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
 - o 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));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o 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, I accept the Landlord's testimony and find there have been no prior applications for an additional rent increase within the last 18 months before the 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 is 1 specified dwelling unit to be used for calculation of the additional rent increase.

4. Amount of Capital Expenditure

The Landlord claims the total amount of \$20,306.96 as detailed in the Landlord's itemized capital expenditure set forth above, 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.

Each item of capital expenditure will be 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.”

Roof Repair

I find the roof is a major component of the building. I find the work was necessary as the existing roof required the repair of replacing all screws and adding silicon as a sealant around the screw to prevent water leaking into the unit. I find this repair satisfies the requirements of the Regulation.

I accept the Landlords evidence that the final payment for the Work was made April 15, 2023, within 18 months of the Landlord making this application on September 13, 2024.

The Landlord provided the receipts for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to recur again within five years. I further accept the Landlord’s testimony there was no other source of payment (such as insurance proceeds or rebates) to pay for some or all of this capital expenditure.

Deck Railing Repair and Deck Flooring Replacement

The Landlord submitted photographs of the deck on the rental unit. Based upon the Landlord’s testimony and evidence, I find the deck is a major component of the rental unit. I further find the deck had exceeded its useful life, as it was original to the building and was approximately 24 years old. I also find the deck posts and fascia required replacement for safety reasons. I find the Landlord’s repair of the deck railing and replacement of the deck flooring meet the requirements of the Regulation.

I accept the Landlord’s evidence the last payment for this repair was made on June 1, 2023, within 18 months of the application, and the Landlord’s testimony there were no other sources of payment for this capital expenditure. I accept the Landlord’s testimony that the deck repair and replacement is not expected to occur again within 5 years.

The Tenants did not object to either capital expenditure.

Based on the above, I find the Landlord is entitled to recover for the capital expenditures described herein in the total amount of **\$20,306.96**.

Summary

The Landlord's application is successful. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$20,306.96**, for those major components 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 there is 1 specified dwelling unit and the total amount of the eligible capital expenditures is \$20,306.96.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$169.22 ($\$20,306.96 \div 1 \text{ specified dwelling unit} \div 120 \text{ months (10 years)} = \$169.22/\text{month}$)**. If this amount exceeds 3% of the Tenants' 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 **\$20,306.96**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve each Tenant 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 the Decision to each via email in lieu of registered mail. The Landlord must also be able to provide a copy of this Decision to any Tenant that requires a printed copy.

This decision is made 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 27, 2024

Residential Tenancy Branch