DECISION

Introduction

The Landlord in this matter seeks an additional rent increase for capital expenditure pursuant to s. 43 of the Residential Tenancy Act (the "*Act*") and s. 23.1 of the Residential Tenancy Regulation (the "Regulation").

P.P. attended as counsel for the Landlord. The tenants B.B., R.B., S.L., J.W., R.E.-E., P.Y., M.G., P.P., E.P., R.B., S.B., J.M., and J.R. attended the hearing. N.L., advocate to the Tenant R.B., also attended.

Service of the Application and Evidence

Landlord's counsel advised that each named respondent was served with two packages.

I am told by counsel that the first contained the Notice of Dispute Resolution and most of the Landlord's evidence and was served via registered mail sent on October 28, 2024. I have been given proof of service documents for the first package sent to the named respondents as well as associated tracking information. The tracking information shows that the recipients did not need to sign for the documents.

Applications of this type must be served in accordance with the methods of service set out under s. 89(1) of the *Act* or as permitted by order of the Director dated February 17, 2023, namely by posting the documents to a tenant's door or leaving them in a conspicuous place at the address in which the tenant resides. Registered mail, being a method of service set out under s. 89(1), requires the recipient to sign for it.

I asked the tenants who attended whether they raised issue with the method of service, having discussed the lack of signature with Landlord's counsel. None of those present, nor R.B.'s advocate, took issue with method of service employed by the Landlord. The tenant B.B. advised that mail for the rental units is dropped through a slot in the door for the units themselves, though confirmed she did not sign for the package.

I do take issue with the contention that the packages sent on October 28, 2024 were served via registered mail. Plainly they were not. There is a clear distinction between regular mail or couriered mail where no signature is required, and registered mail where the recipient must sign for the package. This distinction is raised in Policy Guideline #43, which provides guidance on service of documents.

Despite this, I accept that the documents were still served in accordance with the *Act*. The Director's order of February 17, 2023 permits service by delivering documents in a conspicuous place at the rental unit. Since the mail is delivered in a mail slot in the doors for the residential property, I accept that its delivery would satisfy this requirement. The tenants, in coming and going from their rental units, would have taken note of the documents.

Accordingly, I find that the Landlord's initial packages were sufficiently served on the respondent tenants in accordance with s. 71(2) of the *Act* in accordance with the Director's order. Under s. 90 of the *Act*, I deem the tenants received this package three days after they were dropped into their mail slot.

With respect to the second package, Landlord's counsel explained it contained a maintenance service contract and inspection report from April 2021, which were requested by R.B.'s advocate. I am told these documents were served on December 7, 2024 by either personal delivery to the tenants or having them left in the mail slot.

Landlord's counsel acknowledges that deemed receipt of these documents would contravene the 30-day service deadline imposed by Rule 11.2 of the Rules of Procedure. None of the tenants present, nor R.B.'s advocate, took issue with late delivery of the evidence. Indeed, R.B.'s advocate indicated she intends to rely on the later evidence as it was produced at her request.

As I cannot confirm receipt of the documents for each respondent as many were not present, deemed receipt of documents delivered on December 7, 2024 would contravene the minimum service deadlines imposed by Rule 11.2 of the Rules of Procedure, being 30 days prior to the hearing.

Despite this, I find the evidence should be included. None of the tenants present raised any issue with prejudice on late receipt of the evidence, which I note was produced at the request of R.B.'s advocate. Arguably, there would be greater prejudice to the tenants who requested the documents if they were excluded.

I exercise my discretion under Rule 3.17 of the Rules of Procedure to permit the late evidence as there is no prejudice to the recipient tenants caused by the slight breach of the service deadline. I find that the evidence was served in accordance with s. 88 of the *Act* and deem its receipt by the respondents under s. 90 of the *Act*.

R.B.'s advocate advises that she emailed her clients evidence to the Landlord, which Landlord's counsel acknowledges receiving without objection. Accepting this, I find under s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant R.B.'s evidence.

I noted at the hearing that the Tenant W.L. provided some documents to the Residential Tenancy Branch. Landlord's counsel denies receiving any documents outside of those served by R.B.'s advocate. W.L., who did not attend the hearing, did not provide

documentation indicating how he served these on the Landlord, such that I find they were not served.

Both as a basic rule of procedural fairness and, specifically, Rule 11.3 of the Rules of Procedure, respondents are required to serve documents upon which they intend to rely on the applicants. As that was not done here with respect to the Tenant's W.L.'s documents, I find it would be procedurally unfair to include or consider documents for which the Landlord had no notice. Accordingly, they are excluded.

Issues to be Decided

1) Is the Landlord entitled to an additional rent increase for a capital expenditure incurred within 18 months of filing the application?

Evidence and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

1) Is the Landlord entitled to an additional rent increase for a capital expenditure incurred within 18 months of filing the application?

Section 43(3) of the *Act* permits landlords to request approval from the Director to impose a rent increase greater than the limit imposed by s. 43(1)(a). 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.

Landlords seeking an additional rent increase under s. 23.1 of the Regulations must prove, on a balance of probabilities, the following:

- The landlord has not successfully applied for an additional rent increase against the tenants within 18 months of their application.
- The capital expenditure was incurred for the repair, replacement, or installation of a major component or major system for the property.
- The capital expenditure was incurred for one of the following reasons:
    - to comply with health, safety, and housing standards required by law in accordance with the landlord's obligation to repair the property under s. 32(1) of the *Act*;
    - the major component or system has failed, is malfunctioning or inoperative, or is close to the end of its useful life; or
    - the major component or system achieves one or more of either reducing greenhouse gas emissions and/or improves security at the residential property.
- The capital expenditures were incurred in the 18-month period preceding the date on which the landlord applies.
- The capital expenditures are not expected to be incurred again for at least 5 years.

Tenants may defeat a landlord's application for additional rent increases for capital expenditures if they can prove on a balance of probabilities that:

- the repairs or replacements were required because of 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.

Once the threshold question has been met, the Landlord must also demonstrate how many dwelling units are present in the residential property and the total cost of the capital expenditures incurred.

Section 21.1(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;
>
> […]
>
> **"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;
>
> **"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;
>
> "**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.
>
> *Submissions*

Landlord's counsel advises that the Landlord replaced the roofing at the subject residential property, with the work substantially completed in December 2022. I am told by counsel that Landlord purchased the residential property in June 2021 and that it contains 52 dwelling units. Counsel advises that the Landlord has not obtained a previous order for an additional rent increase for a capital expenditure with respect to the property.

I have been directed by counsel to a condition assessment report for the residential property from April 2021 obtained prior to purchasing the property. The report confirms the number of units at the residential property, while also indicating it was built in 1966.

The April 2021 condition assessment notes issues with the roof, recommending it be removed and replaced. With respect to the roofing, the following comment is made:

> Roof assembly of the building is a built-up system with gravel on top. The roof system appears to be over 30 years of age. Embedded gravel into the asphaltic mastic and felts was observed and may have deteriorated the membrane and water infiltration is highly probable.

Counsel indicates that after purchasing the property, the Landlord retained a company to oversee ongoing maintenance and repair for the property. I have been provided with portions of the service agreement, which notes that monthly roof drain cleaning was to be provided.

I am told by counsel that the Landlord obtained a subsequent inspection focused solely on the condition of the roof, with that inspection conducted on June 20, 2022. The Landlord's evidence contains a copy of the June 2022 roof condition report, which makes the subsequent observations and recommendations:

- Roof levels appear to be approximately 25 years old and are in very poor condition.
- Numerous blisters, deteriorated membrane, blueberries and a heavy accumulation of organics and vegetation was noted throughout these roof levels.
- Multiple leaks have also been reported inside the facility.
- Roof replacement should be scheduled as soon as budgeting permits.

Speaking to the main portion of the roof, the June 2022 report notes that "[d]ue to the age and deteriorated state of the installed roofing system, we recommend that this roof level is scheduled for replacement in as soon as budgeting permits". Similar comments are made with respect to the other portions of the roof.

I am told by counsel that following the roof condition inspection in June 2022, the Landlord put the project out for tender, securing a contractor in August 2022. The Landlord's evidence contains copies of the tender as well as the contract for the project. The contract notes the work was to be completed between September 25, 2022 and December 31, 2022 at a quoted price of $454,690.00.

Counsel advises that the total cost for the roof replacement ended up being $427,549.50. I have been provided with two invoices, one dated December 16, 2022 in the amount of $384,794.55 and the second, tied to the release of a holdback, is dated June 8, 2023 in the amount of $42,754.95.

Counsel submitted that the roof is a major component of the residential property, that the reports indicate it had deteriorated and was beyond its useful life, and that the last payment was incurred within 18 months of filing the application. Counsel further indicates that the roof has an expected useful life of 20 years based on Policy Guideline #40, which provides guidance on the useful life of building elements.

The Landlord's evidence contains a report dated May 9, 2023 pertaining to an assessment of the building envelope. The May 2023 report notes that the roof was in the process of being replaced and that the effective useful life of the new roofing material ranged between 20 to 25 years, depending on material quality and workmanship. No active leaking was noted on the fourth floor in those areas inspected for the May 2023 assessment.

R.B.'s advocate argued that the Landlord's request for an additional rent increase should be denied as there is evidence the Landlord obtained funding from a separate source and that the replacement was precipitated by inadequate repair and maintenance.

At the hearing, R.B.'s advocated indicates that the poor state of the roof was known to the Landlord when it purchased the property, arguing that this likely factored into the purchase price. It was further argued that the reduced purchase price amounted to funding received by the Landlord for replacement of the roof, since its repair was recommended in the inspection from April 2021.

To support this argument, R.B.'s advocate directs me to a pair of decisions in R.B.'s evidence dated August 16, 2024 related to claims under s. 23.1 of the Regulations that were dismissed. Both decisions are authored by the same arbitrator. Though R.B.'s advocate admits these decisions are not binding on me, it was argued they may still be persuasive and supports their argument.

In written submissions provided by R.B.'s advocate, it was further argued that the Landlord was compensated for the roof replacement from rent revenue. There is further argument that the Landlord has "failed to show that the costs incurred for the roof cannot be covered through existing rental revenue" and that "[t]he purpose of rent is precisely to collect revenue from tenants to cover such expenses".

The written submissions from R.B.'s advocate go on, arguing that the "roof replacement was foreseeable and does not rise to the level of an extraordinary circumstance", an argument that relies on wording from Policy Guideline #40 and the decisions from August 16, 2024. The cost of the repair, it is argued, was a consequence of the Landlord's choice to purchase the property.

R.B.'s advocate finally argued that there were obvious signs of poor maintenance in the roof, as the Landlord's reports note vegetation growth with damaged or blocked drains. It was highlighted that the Landlord's reports merely estimate the age of the roof, such that it cannot be determined whether it was, in fact, beyond its useful life or deteriorated

faster due to improper maintenance. The advocate indicates the Landlord's service agreement is not proof of any actual maintenance to the roof, and that there is no evidence of maintenance repairs to the roof from the previous owner.

The June 2022 report notes that the roofing membrane was exposed at the roof perimeter. The report states that "[d]eteriorated flashing membranes were noted throughout the perimeter of this roof level" and that "[w]hen felts are left exposed to the elements they will deteriorate quickly and shorten the lifespan of the roof". As noted above, the June 2022 report estimates the age of the roof to be 25 years old or older.

The other tenants who attended and made oral submissions all resisted the Landlord's request for the additional rent increase. The tenants R.B. and J.B. individually echoed the argument advanced by R.B.'s advocate, namely that the roof replacement was foreseeable when the property was purchased and the obligation should not be shifted onto the tenants.

The tenants J.W. and R.B. individually argued that the cost of the roof repair was a consequence of property ownership and that this burden should not be shifted onto the tenants of the building. The tenants R.E.-E. and R.B. both indicate they moved to the residential property after the roof was replaced, such that their current rent ought to reflect the costs of the repairs.

The tenant P.Y. indicated that she lives on the upper floor and that she dealt with a major water leak in December 2022 and periodically since then. The tenant P.Y. argued that the tenants at the building should not pay for a roof repair where the roof still leaked.

Landlord's counsel largely countered by arguing that many of the arguments put forward by the tenants are not relevant to whether the Landlord is entitled to compensation under s. 23.1 of the Regulations. In short, counsel argued the roof was well beyond its useful life and needed replacement, such that it qualifies for an additional rent increase as a capital expenditure. Further, counsel argued that a reduction in the purchase price, even if it did occur, does not amount to payment from another source, which is contemplated as a payment from a third-party.

Findings

There was some discussion with respect to the decisions from August 16, 2024 provided to me in R.B.'s evidence as well as the concept of reasonable foreseeability. Given s. 64(2) of the *Act*, I am not bound to follow other decisions made by other delegates of the Director and I must make this decision based on the merits disclosed to me on the admitted evidence.

I have reviewed the decisions from August 16, 2024. I find the reasoning problematic. The concept of "reasonable foreseeability" appears to be pulled from an excerpt from Policy Guideline #40, which I reproduce below:

> A landlord may apply for an additional rent increase in an amount greater than the basic Annual Rent Increase in extraordinary circumstances. One of those circumstances is when a landlord has completed significant repairs or renovations that could not have been foreseen under reasonable circumstances and that will not recur within a reasonable time period. When reviewing applications for additional rent increases, the director may use this guide to determine whether the landlord could have foreseen the repair or renovation.

The issue with this is that Policy Guideline #40 was drafted in March 2012, nearly a decade before s. 23.1 of the Regulations came into force. It bears some consideration that Policy Guidelines are interpretative aids intended to assist in applying the legislation. They do not and cannot vary or alter statutory language.

At the hearing, I asked R.B.'s advocate whether s. 23.1 of the Regulations made any reference to the expense being foreseeable. The advocate admits there was none. Landlord's counsel refers me to *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 213, which is case pertaining to bankruptcy proceedings but most frequently cited for the rule of concerning statutory interpretation. As summarized in *Sayyari v Provincial Health Authority*, 2023 BCCA 413, the rule and process are as follows:

> [27] The basic rule of statutory interpretation is that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para. 21.
>
> [28] The usual first step in interpreting a statute is to examine the text of the provision to determine its plain or ordinary meaning. Ultimately, however, the true meaning of the words being interpreted can only be determined contextually by considering other indicators of legislative meaning—context, purpose, and relevant legal norms: La Presse Inc. v. Quebec, 2023 SCC 22 at para. 23; R. v. Alex, 2017 SCC 37 at para. 31. Put differently, a court engaged in an exercise of statutory interpretation must not construe a provision in isolation. Instead, individual provisions must be considered in light of the Act as a whole, with each provision informing the meaning to be given to the rest. As the Supreme Court of Canada explained in *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 45, the rule ensures that the statutes are read as coherent legislative pronouncements.

It is an error, in my view, for the arbitrator in the cited decisions to include requirements that are not stated within the *Act* and Regulations. Section 23.1 of the Regulations does not speak to whether the repair or renovation was reasonably foreseeable. There is little

sense in assessing legislative intent when the *Act* and Regulations do not impose requirements of reasonable foreseeability in their explicit language. I find that the first step in interpreting the legislation, namely giving the words used their ordinary meaning, was not undertaken. In essence, the cited decisions are an exercise in inserting language into the legislation that do not exist.

I place no weight in the argument that the roof replacement was reasonably foreseeable. It goes without saying that building elements will need replacement in time, such that all capital expenditures would be foreseeable in a general sense. I find that the portion of Policy Guideline #40 cited by the R.B.'s advocate has no bearing on interpreting the requirements imposed under s. 23.1 of the Regulations.

I similarly put no weight in the argument that the Landlord has failed to demonstrate it could not obtain funding from other sources, namely from rental income. That is not a requirement imposed by s. 23.1 of the Regulations. This appears to be based, in part, from Policy Guideline #40 where it notes additional rent increases may only be imposed in extraordinary circumstances.

Again, the words "extraordinary circumstances" are not used in s. 23.1 of the Regulations. The Policy Guidelines cannot amend or alter the plain wording of the *Act* and Regulations, much less in a case where Policy Guideline #40 was written nearly a decade before s. 23.1 came into force. In short, financial impecuniosity or demonstrating the costs could not be recouped from current rental income is not a requirement under s. 23.1.

Turning back to the requirements stated within the Regulations, I have little difficulty finding that the roof forms an integral part of the building envelope and is a major component of the residential property within the meaning of the term defined under s. 21.1(1) of the Regulations. I further accept the undisputed submission from counsel that the Landlord had not previously obtained an order under s. 23.1 of the Regulations for an additional rent increase for capital expenditures incurred with respect to the residential property.

The Landlord submits that the roof was beyond its useful life. It is difficult to make that assessment based on the evidence before me. Both the assessment from April 2021 and June 2022 make separate estimates on the age of the roof, varying between 25 and 30 years old. However, there is no direct evidence to support when the previous roof was installed.

However, I accept from both reports that the roof needed replacement. Regardless of the useful life of the roof, I find the roof had begun to fail. This is clear based on both reports submitted by the Landlord. I further find that the maintaining the roof, thus preventing leaks, falls within the ambit of the Landlord's obligations under s. 32(1) of the *Act*. It goes without saying that water ingress from a roof leak would result in a breach of the Landlord's obligation to maintain a rental unit and make it suitable for occupation by

the tenants at the residential property. I find that the roof replacement was required and falls within the ambit of s. 23.1(4)(a)(i) and (ii) of the Regulations.

With respect to the next requirement that the expense be incurred within the preceding 18-months from the date of the application, I note that the Landlord filed this application on October 18, 2024. Policy Guideline #37C, which provides guidance on applications for additional rent increases for capital expenditures, states the following:

> A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

The final invoice for the roof replacement is dated June 8, 2023, which is when the holdback was released to the building contractor. The May 2023 report noted that the roof replacement was ongoing, such that I accept it had not yet been completed at that time. Finally, I accept this final cost for the roof replacement was paid by the Landlord on the date of the invoice, being June 8, 2023, such that the expenditure can be said to have been incurred within 18 months of filing on October 18, 2024 given the guidance set out in Policy Guideline #37C.

Finally, I accept that the useful life of the roof replacement is likely to exceed 5 years given Policy Guideline #40 suggests the useful life of a flat roof is 20 years. The May 2023 report in the Landlord's evidence supports this as well, indicating that the roofing system used by the Landlord, if installed correctly, should last 20 to 25 years.

The Tenant P.Y. expressed that she has been dealing with leaks since the roof was replaced. Even if I accept that to be true, and I have no reason to disbelieve the Tenant, it does not alter the underlying expectation that the roof has a lifespan exceeding 5 years. The wording of s. 23.1 focuses on the expectation that a capital expenditure will not reoccur within the next 5 years, which as noted above I accept to be true in this instance.

I find that the Landlord has established the necessary elements to demonstrate that the capital expenditure for the roof replacement is an eligible capital expenditure under s. 23.1(4) of the Regulations.

As noted above, a claim for an additional rent increase may be defeated under s. 23.1(5) of the Regulations if it is shown that the costs were incurred due to inadequate maintenance by the landlord or that the landlord has been paid from another source.

It was argued by R.B.'s advocate that the Landlord was compensated when they purchased the property as the purchase price likely reflected the age of the roof. I note that I have been no evidence by the advocate or any tenant to show me the price the Landlord purchased the property, nor evidence to evaluate that the purchase price

decreased to reflect the poor state of the roof. Though I conceptually understand the argument, there is simply no direct evidence to support a finding that there was a dollar-for-dollar reduction in the purchase price against the cost of the capital expenditure.

Further, Policy Guideline #37C states the following with respect to payments from another source:

> **2. Payment from Another Source**
>
> If an amount of a capital expenditure is recovered or could have been recovered through grants, rebates, subsidies, insurance plans, or claim settlements, that amount becomes ineligible and must be deducted from an order for an ARI-C. For example, a landlord may be eligible to receive a rebate for installing a high-efficiency boiler. An owner's insurance typically covers repairs required due to a fire. Similarly, if repairs become necessary because of inadequate work by an earlier tradesperson, those repairs may be able to be claimed through a lawsuit.
>
> Landlords can access tax credit and deduction schemes to reduce their taxable income when they incur capital expenditures. Some examples include:
>
> - capital cost allowance (CCA), which allows landlords to deduct the depreciation from the cost of some depreciable assets purchased for a rental property (e.g., electrical wiring, plumbing, elevators) from their taxable income over many years, and
> - the clean buildings tax credit, which landlords can claim to deduct from their taxable income if they complete a qualifying retrofit.
>
> To be considered a "payment from another source," a landlord must be reimbursed by a third party for some or all of the cost of the capital expenditure. For grants, rebates, subsidies, insurance plans, and claim settlements, landlords are reimbursed for the cost of capital expenditures by a third party (e.g., insurance provider, government, private individual). However, landlords are not reimbursed by another party under tax credit and deduction schemes. Instead, a landlord is simply paying another party a lesser amount. As such, schemes that landlords can access to reduce their taxable income when they incur capital expenditures do not constitute "payments from another source" because the landlord is not receiving payment by reducing their taxable income.

Given the guidance set out above, I find that even if it were proven that the Landlord enjoyed a price reduction due to the poor quality of the roof, which has not been shown here, it would not matter. Payments from another source are considered as direct payments from a third party for the specific capital expenditure.

As set out in Policy Guideline #37C, landlords may enjoy reductions in their tax obligation due to the certain capital expenditures, though still be entitled to the additional rent increase. Similarly, the Landlord here may have enjoyed a reduction in the cost in purchasing the property, but they cannot be said to have received payment for the roof replacement from the seller for the cost of replacing the roof. It is a decrease

in an obligation for money owed, not a benefit received for a specific capital expenditure.

With respect to the final argument that the roof was inadequately maintained, R.B.'s advocate pointed to the 2021 report that noted the roofs poor condition and the signs of vegetation in the roof. However, pointing out the roof is in poor condition is quite different from proving that it was inadequately repaired.

Though I do not have any maintenance records tied to the period the residential property was owned by the previous landlord, I similarly have no evidence to support a finding that the capital expenditure was incurred because of inadequate maintenance. The June 2022 report notes exposed membrane material was present, such that it would "deteriorate quickly and shorten the lifespan of the roof". However, the same report notes that the roof appeared to be over 25 years old and beyond its useful life.

In brief, the tenants bear the onus of proving that the repair or replacement was required due to inadequate maintenance and repair. In my view, this requires assessment from individuals knowledgeable on the topic. It is insufficient, in my view, to draw an inference based on an observation in the June 2022 report, which may have been present regardless due to the age of the roof.

Further, the word used in s. 23.1(5)(a) is "required", which is stronger than arguing that inadequate maintenance contributed to the repair. This is, in my view, a high burden as it means there must be a direct link between the repair and the landlords' inaction or neglect. Policy Guideline #37C provides the following guidance on the topic:

> **1. Inadequate Repair or Replacement**
>
> An example of an ineligible capital expenditure due to the inadequate repair or maintenance of a landlord would be if a landlord knew or ought to have known that the roof was leaking but did not act promptly to fix the leak adequately and, as a result, had to repair structural damage, remediate mould, and replace drywall. The roof expenditures would be eligible because the roof was at the end of its service life. However, if the extent of the repairs or replacement necessary is due to a landlord's inaction, the full amount may not be eligible. For example, if the leaking roof was not at the end of its useful life and could have been repaired instead of being fully replaced had a landlord acted sooner, then only the amount that reflects what the repairs would have cost would be eligible.
>
> Unanticipated repairs may be discovered during a repair or renovation. For example, if a landlord is replacing a roof that is at or near the end of its service life and discovers some of the sheathing is rotted and must be replaced, the expenditure for this may be eligible for an additional rent increase. A landlord may undertake regular maintenance yet the need for major repairs develops because of a delay that was outside of their control. For instance, if they hired a roofer to fix a leak and the roofer cancelled, this would not make additional

> expenditures to repair the worsening leak ineligible. A landlord is expected to act like any other reasonable homeowner.

Though somewhat indirect in its guidance, I find that Policy Guideline #37C supports the interpretation of s. 23.1(5)(a), namely that there must be a direct causal link. In my view, the June 2022 report suggests maintenance may have been an issue, though does not go so far as to say that the replacement is required due to the inadequate maintenance and that it may have simply degraded due to its age.

Similarly, the existence of vegetation on the roof does not prove that roof degraded before its time. Further, vegetation growth is not necessarily evidence of inadequate maintenance without some form of opinion from an individual knowledgeable on the topic to provide that opinion or assessment.

It was argued there were blocked drains at the residential property. None of the reports submitted by the Landlord support this. Water pooling is noted in a carport roof, though this is irrelevant as the Landlord is not claiming for its repair and it was not included in the work undertaken by the contractor retained by the Landlord in August 2022.

I find that there is insufficient evidence to support that it is more likely than not that the roof replacement was precipitated by inadequate repair or maintenance by the Landlord.

Two of the tenants argued they moved into the rental unit after the capital expenditure was incurred. With respect, that is not a relevant consideration under s. 23.1 of the Regulations. It does not matter when an individual tenant moved in as the rent increase is imposed equally across all affected dwelling units in the residential property. This point is clear in Policy Guideline #37C, which states “[a] landlord may apply for an additional rent increase against a tenant, even if that tenant moved into the rental unit after an eligible capital expenditure was incurred”.

Other tenants argued that the cost of the roof replacement is tied to ongoing maintenance by the Landlord owner such that that cost should not be imposed on them. Again, that is not a relevant consideration under s. 23.1 of the Regulations based on its explicit wording. The goal of s. 23.1 was to permit landlords a means of recouping costs for significant projects tied to ongoing maintenance of a residential property. Both the timing and amount of a rent increase is constrained by Part 3 of the *Act*, such that over time older buildings with long-term tenancies do not realize sufficient rental income to achieve the costs for major projects. Section 23.1 was intended to address this issue.

I accept that additional rent increases under s. 23.1 are controversial. The tenants who were present raised valid arguments for why rent increases for capital expenditures should not generally permitted. However, most of these were grounded in issues and considerations beyond the explicit wording contained in s. 23.1. They were policy arguments. Whether landlords should be permitted to impose rent increases for capital

expenditures is a distinct issue from whether they are permitted to do so given the legislation currently in force.

Given the facts before me, I find that the Landlord roof replacement, which cost $427,549.50 as demonstrated by the invoices in evidence, is an eligible capital expenditure under s. 23.1 of the Regulations.

Imposition of the Additional Rent Increase

Under s. 23.2(2) of the Regulations, a rent increase permitted under s. 23.1 must be imposed by dividing the eligible capital expenditure by the number of specified dwelling units, with this number divided by 120. In short, the cost of an eligible capital expenditure is equally distributed across all affected dwelling units with the cost amortized over 10 years.

I accept there are 52 dwelling units as demonstrated in the 2021 report. Since the capital expenditure totalled $427,549.50, I find that the Landlord is entitled to an additional rent increase in the total amount of $68.52. To be clear, the Landlord is required to impose the rent increase in accordance with ss. 23.2 and 23.3 of the Regulations, such that the additional rent increase may not exceed 3% of a tenant's rent in the year the increase is imposed with the total additional rent increase of $68.52 to be imposed in three phases.

For more information on the method and timing of the additional rent increase, the parties should consult Policy Guidelines #37C and #37 for more information.

Conclusion

I find that the Landlord has established that the roof replacement is an eligible capital expenditure, with the total capital expenditure being $427,549.50. I further find that the tenants failed to demonstrate the Landlord is not entitled to the additional rent increase under s. 23.1 of the Regulations.

Accordingly, I grant the Landlord its requested relief and find that it has established a total additional rent increase for capital expenditure in the amount of **$68.52** to be applied against those respondent tenants named on this application in accordance with the *Act* and Regulations.

I order that the Landlord serve a copy of this decision on each of the respondent tenants by means of any of the methods of service outlined in s. 88 of the *Act*.

This interim decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Act*.

Dated: January 16, 2025

Residential Tenancy Branch