

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- additional rent increase under section 43 of the Act

The Landlord attended the hearing on January 24, 2025. No Tenant attended the hearing.

The Landlord's representative confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord to each Tenant was done by Canada Post registered mail on November 10, 2024. The Landlord provided copies of the tracking numbers for each package sent to each Tenant together with a copy of the Canada Post customer receipt. The Landlord testified he also sent each Tenant by email a copy of the proceeding package. I find the Tenants were served with the required materials in accordance with the Act. The Landlord testified he was approached by two Tenants regarding the application, but neither expressed any objection. He stated the Tenants in the building have been long-term.

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 parties, the documentary evidence as well as the testimony of the participants attending the hearing. However, not all details of the respective submissions are reproduced in this Decision. 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 the following capital expenditures:

- Roof repair - \$9,766.88 for installation of sump drains (paid in full by May 29, 2023)

- Weatherproofing of building - \$22,050.00 (paid in full by September 1, 2023)
- Replacement of sewer line on east side of building - \$17,010.00 (paid in full by March 1, 2024)

The residential rental property was constructed in 1960, and has a total of 14 rental units, one of which is used by the Landlord as an office. The Landlord stated the capital expenditures were incurred in relation to the projects within 18 months preceding the application. Documentation of invoices and payments made by the Landlord were provided in evidence. The Landlord further confirmed the capital expenditures in the application were not anticipated to occur again within a five-year period and there were no other sources of payment for these repairs. The Landlord also testified there have been no prior applications for additional rent increase for capital expenditures in the prior 18 months.

The Landlord explained the roof had been replaced approximately 15 years ago but a leak had developed on the east side of the building affecting units 2 and 4. A plumber opened the walls but found no leaks from plumbing pipes. The Landlord stated he retained a building environmental specialist who opined that the wind was pushing rain against that side of the building. To test this hypothesis, tarps were hung along the east side of the building, but this did not stop the leaks. The Landlord stated he then had three roofing companies come and check the roof. He stated the roof was repaired when needed. The roofing contractors noticed significant pooling of water – approximately 4 inches after one heavy rain. A contractor recommended sump drains, which entailed cutting into the middle of the roof and providing a slope to the roof for drainage. This capital expenditure was \$9,766.88. The Landlord stated that down-piping work was also done for the roof, but he elected not to include this cost as part of the application.

A contractor also recommended the building be sealed to stop water infiltration into units 2 and 4. The Landlord testified the building is stucco and estimated the stucco to be at least 20 years old. The Landlord stated all the windows in the building were tested to determine if these were the source of the leaks. However, the windows were found not to be the cause of water leaks. The building was sealed with two coats of breathable vinyl and windows on the east side of the building received additional caulking. The cost for this work was \$22,050.00.

Finally, the Landlord's application includes the capital expenditure related to the replacement of sewer pipes damaged by roots from trees planted by the City on the City's property. The Landlord stated over time the roots infiltrated the sewer pipes. In 2019, the Landlord recounted there was a sewer back-up in unit 1 and roto-rooter informed the Landlord the tree roots were the problem. That section of sewer line damaged by the tree roots on the Landlord's property was replaced. In 2023, a sewer back-up occurred in unit 2. The Landlord provided photographs of the bathtub in that unit with sewer water backed up into it. The Landlord stated the sewer water spread throughout the unit and into the hallway. Therefore, the sewer connection pipes for the residential property were replaced with PVC pipes which tree roots cannot infiltrate and damage. The Landlord stated he contacted the City for reimbursement, but the City

stated it was not at fault. The cost for the replacement of the sewer lines was \$17,010.00. The Landlord stated the flooring in unit 2 was replaced as well as repairs to the flooring in the hallway that had been damaged by the sewer back-up, but these costs were not included in this application.

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 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.

Although the Landlord uses one unit as an office, pursuant to the Regulation I find there are 14 specified dwelling units to be used for calculation of the additional rent increase.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **\$48,826.88** as detailed in the Landlord's itemized capital expenditure set forth above, there being no other source of payment for these expenditures.

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 – Roof Sump Drains for Drainage

I find the roof is a major component of the building. I find the repair work consisting of the installation of sump drains was necessary for the roof to function properly as the roof was failing resulting in water infiltration into the rental units. I find this is sufficient to satisfy the requirements of the Regulation.

I accept the Landlords evidence that the final payment for the Work was made May 29, 2023, within 18 months of the Landlord making this application on October 28, 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. I find it is reasonable to conclude that this capital expenditure will not be expected to occur again within five years as the Landlord testified. I further accept the Landlord’s testimony there was no other source of payment (such as insurance proceeds or rebates) to pay for this capital expenditure.

Weatherproofing of Building

I find the exterior envelope of the building is a major system or component as defined by the Regulation. I further find the repair of the building by application of breathable vinyl that is expected to last more than 5 years to be an eligible capital expenditure under the Regulation. This capital expenditure was incurred on September 1, 2023, within 18 months of the Landlord’s application. I accept the Landlord’s testimony there was no other source of payment available for this expense.

Sewer Pipe Repairs

I find the sewer pipe repairs meet the criteria for an eligible capital expenditure as this work pertained to the replacement of a major component system in the building, necessary for the health and safety of Tenants. The final payment for the work (March 1, 2024) was made within 18 months of the Landlord’s application. I accept the Landlord’s testimony that there was no other source of payment for this capital expenditure.

Tenant Objections to the Capital Expenditures

As stated above, the Regulation limits 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.

In this case, no Tenant objected to the Landlord's application.

Based on the above, I find the Landlord is entitled to recover for repairs to the roof, the sewer line and the exterior sealing of the building totaling **\$48,826.88**.

Summary

The Landlord has sustained its burden of proof for this application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$48,826.88**, 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 that there are 14 specified dwelling unit and the total amount of the eligible capital expenditures of **\$48,826.88**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$29.06 per month per unit ($\$48,826.88 \div 14 \div 120 = \29.06)**. 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.

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 **\$48,826.88**. The Landlord must impose this additional rent increase in accordance with the Act and the Regulation.

I order the Landlord to serve all Tenants with this Decision, in accordance with section 88 of the Act, within two weeks of the date of this Decision. I authorize the Landlord to serve each by email if the Tenant provided an email address for service.

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

Dated: January 26, 2025

Residential Tenancy Branch