DECISION

Introduction

This hearing dealt with the Landlord's November 21, 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 made this application for a new roof at the residential property (multi-unit apartment building) in the amount of $152,328.75.

The Landlord was represented by their Property Management Firm, who had two employees (C.A. and R.O.) in attendance at the participatory teleconference hearing that occurred on January 29, 2025.

There were also six Tenants in attendance: B.L.B, B.M., K.Z., P.H, S.H.

Both sides had the opportunity to provide sworn testimony and refer to evidence.

The residential property is a 37-unit apartment building, constructed in the late 1970s.

Ownership of this property most recently changed in December 2021.

C.A. advised for the Landlord that the Property Management firm, as the Landlords of record, have been managing the residential property for approximately two (2) years.

C.A. spoke for the Landlord to confirm that all Tenants were served with Notice of this Dispute, and copies of all evidence (a 17-page) evidence package, to their doors on November 27, 2024. The Landlord provided pictures of envelopes left in the doors of the units, and a spreadsheet to identify which units were served in person because the Tenants were home and opened their door when service occurred.

The Tenants confirmed that service occurred as described. However, it was also revealed later in the hearing, that service was only completed to 22 of the 37 units, and not to all 37 units.

The Tenants who were served identified themselves as the "grandfathered tenants".

The Landlord C.A. agreed that only 22 units were served because tenants in the other dwelling units were under newer tenancy agreements and so the costs of this roof replacement project have otherwise been accounted for in the higher rate of rent that is charged to these other newer tenants.

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 named in this dispute with copies of relevant maintenance records that were in their possession as part of this application.

I therefore find that the Landlords sufficiently served the Tenants named in this dispute, with the Notice of Dispute Resolution Proceeding and evidence package as required by the Act and Rules of Procedure.

Issues to be Decided

Is the Landlord entitled to impose an additional rent increase for capital expenditures in the amount claimed of $152,328.75 for a new roof project at the residential property?

Background and Evidence

The Landlord C.A. reviewed their evidence package to confirm that the Landlord had the building inspected in October 2021 and the following was documented about the roof condition at that time:

> On average, tar and gravel roofs last for 25 years; with exceptional maintenance, they can last as long as 40 years. This roof appears to be the original roof and is approximately 43 years old. Extensive previous repairs evident. The roof is showing signs of deterioration/failure commensurate with its age.
>
> Recommend budgeting for roof replacement in consultation with your roofing contractor (likely *modified bitumen replacement)*
>
> *A modified bitumen roof will generally cost between $6 and $10 per square foot. Detailed Quote Required.*
>
> *(Associated costs for roof removal and sheathing replacement may apply)*

The Landlord C.A. referred to proof of prior payment receipts related to $8,974.00 in maintenance that was previously completed at the residential property in Jun 2022.

The Landlord C.A. referred to two roof replacement invoices from the roofing contractor and referred to evidence of proof of payment in support of their financial claim:

Invoice	Date	Amount	Paid
11164	May 7, 2023	$72,537.50	April 11, 2023
11304	April 25, 2023	$79,791.25	May 23, 2023
		152,328.75	

The Landlord C.A. stated that:

- The roof was completed because it was at the end of its serviceable life,

- The Landlord did not receive any other funding for this project,
- The Landlord has not applied for any other ARI-Cs within 18 months,
- The work was completed within the last 18 months,
- The new roof will far exceed the 5-year requirement of the RTB.

The Tenants asked multiple questions during the hearing and so I reviewed the legal framework that I am bound by for processing this application type.

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:
    - 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)).

A 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.

The Tenants in this dispute were universally opposed to this application despite agreeing that the roof was replaced and it needed to be replaced.

Because the Tenants served Notice of this dispute were all long-term tenants, they spoke to how they are grandfathered, which as they described, means their rent is a lot lower than their neighbours who have moved into renovated apartments at the residential property. It was suggested by one Tenant that these new tenants pay double the rate charged to the grandfathered tenants.

Multiple Tenants expressed concern with their understanding of the Landlord's expectation that the Tenants pay to maintain the residential property, and expressed fear that the Landlord may bring them back to the RTB for future projects such as window replacement and or parking lot repair.

Multiple Tenants also expressed confusion with the roof related documentation provided as evidence by the Landlords because the Landlords' proof of prior maintenance costs, includes records of maintenance costs for other residential properties managed by the Landlord. The Tenants were concerned that they were being asked to pay for repairs and replacement at other buildings in addition to their own.

The Tenant S.H. stated that they received legal advice which indicated that landlords who purchase a residential property knowing that it needs a new roof, are not found to be eligible for additional rent increases for capital expenditure.

The Landlord C.A. confirmed in response to questioning, that the current Landlord had the property inspected in October 2021, as part of due diligence before purchasing the property in December 2021.

The Tenant S.H. stated that they live on the top floor of the residential property and that there was a major leak in 2022 before the roof replacement was properly completed in 2022.

The Landlord C.A. confirmed that the Landlord paid for the roofing replacement project when they were charged for the roofing replacement project in 2023.

2. 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.

The Landlord provided inconsistent testimony regarding this portion of the application.

They stated that there are 37 specified dwelling units, however, they also agreed when the Tenants pushed back, that only 22 units at the residential property had been served with Notice of this claim.

I find that procedural fairness requires that any calculations based on 37 dwelling units would require the Landlord to properly name and serve the Tenants of all 37 dwelling units with Notice of their application for additional rent increase for capital expenditure.

They Landlord C.A. stated that they have identified 37 dwelling units so that the Landlord could lower the overall financial contribution required by the Tenants for this project explaining, in accordance with the calculation required in 23.2(2) of the Regulations, that they are only seeking a maximum monthly increase of $34.31:

$152,328.75/37/120 = $34.31 vs. $152,328.75/22/120 = $57.70

3. Decision Making at the RTB

As seen in RTB Rule of Procedure 6.6 (The Standard of Proof and Onus of Proof):

> “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy."

This is to say, as seen in the legal framework outlined in section 1 of the Analysis portion of this Decision, the landlord is responsible for establishing on the balance of probabilities that they submitted an eligible request for an additional rent increase.

The onus then shifts to the tenants under 23.1(5) of the Regulations where it is written that:

> (5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred
>
> (a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
>
> (b) for which the landlord has been paid, or is entitled to be paid, from another source.

4. Outcome

As seen in 23.1(4) of the Regulations, the Director MUST grant applications that are found to satisfy the requirements documented above, unless the tenants establish on the balance of probabilities that the expense was incurred as the result of inadequate repair or maintenance, or the repair was paid for by another source.

Specific to the application in front of me, I accept that the residential property previously had an original flat roof, and it now has a replaced flat roof.

However, I find that the Landlord failed to satisfy the requirements of 23.1(4) of the Regulations and successfully establish on the balance of probabilities that they completed an eligible roof replacement at the residential property that cost the claimed $152,328.75 and that this full amount represented the total costs of the capital expenditure required incurred by the Landlord when they replaced the roof at the residential property.

I make this finding because:

- The Landlords' evidence of roof repairs at other buildings, in additional to the residential property that was the subject of the dispute in front of me, was provided as maintenance record which confused the Tenants in attendance at the participatory teleconference hearing.
- I find that the invoice for roof replacement provided by the Landlord, refers to a project involving at least three total buildings and so I find that this could explain why the Landlords' costs related to replacing the roof for this residential property

were all incurred in 2023 well after the roof was replaced at the residential property in 2022.

- I mention this discrepancy in billing because it is common practice that contractors require at least %50 payment prior to starting a project.
- It would be unusual if the Landlords in this dispute were able to pay for a roof replacement AFTER it was completed as say a standalone project, but the reasonable person may find it possible for the contractor assigned a much larger project that involved the replacement of roofs at multiple residential properties, to provide specific invoicing that satisfies client requirements so long as the contractor receives at least %50 of the total project cost prior to starting.
- The Tenant S.H. stated that the roof replacement occurred in 2022 for an application that was made in November 2024.
- The Landlord made this application a few days short of the 18-month deadline (23.1(4)(b) of the regulations).

Also relevant to the merits of this application, was the Landlords' confirmation that the owner of the property purchased it in 2021 having previously documented that a new roof was required because the original roof was found by appropriate professionals to be an original (40+ year old) roof that had far exceeded its expected serviceable life and was needing replacement.

I therefore find that the new owners of the residential property made a business choice when they chose to purchase this residential property with a significant population (22 units out of 37) of long-term tenants who have the benefit of lower rents due annual increase caps here in BC.

Consistent with the case law guidance provided in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257 ("Berry")* I find that Landlords as recent owners of a property primarily occupied by long-term tenants creates ambiguity regarding the legislative intent of this regulatory framework for additional rent increases for capital expenditure.

I therefore interpret this ambiguity in the Tenant's favour as required by *Berry* and dismiss this application for the reasons outlined above.

I do not give leave to reapply for this roof replacement project.

Conclusion

The Landlord was not successful in this application.

I do not give leave to reapply.

I order the Landlord serve the Tenants with a copy of this decision in accordance with section 88 of the Act.

This 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 31, 2025

Residential Tenancy Branch