

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 parties listed on the cover page attended the hearing on January 21, 2025.

The Landlord's representative confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord to each Tenant either by email to those Tenants who had previously provided their email address to the Landlord for purposes of service or by posting to the rental unit door. The Landlord provided copies of form RTB-51 to establish a Tenant's authorization of service by email. The Landlord submitted a completed proof of service form detailing service to each Tenant on either November 8 or November 9, 2024. I find the Tenants were served with the required materials in accordance with the Act.

Tenant P.M. submitted a letter to the RTB objecting to the ability of the Landlord to shift the cost of the capital improvement to the Landlord and lack of notice to Tenants at the time the roof replacement was undertaken that Tenants may be liable for the cost through an additional rent increase. It was uncertain whether Tenant P.M. had served the Landlord with a copy of his letter.

By Interim Decision dated January 21, 2025, the Landlord was required to produce to each Tenant copies of any and all documents pertaining to prior inspections, notes, reports and maintenance records concerning the subject roof. The Landlord submitted additional evidence of maintenance conducted on the roof on January 22, 2025. Proof of service of this evidence to the Tenants on January 22, 2025, by email or posting to the rental unit door was submitted by the Landlord. Tenants thereafter were provided an opportunity to provide further written submissions, including expert opinions on the roof replacement, with service of any further written submissions to the Landlord. No additional Tenant submissions were provided for consideration. The time for additional written submissions has concluded as of the date of this Decision.

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 together with the supplemental information provided by the Landlord. 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 to replace one-half of the residential rental unit's roof. The capital expenditure was \$146,514.12, with final payment made on March 11, 2024. The Landlord's property manager explained the other area of the roof had been replaced prior to the enactment of legislation for an additional rent increase for capital expenditure.

The residential rental property was constructed in 1981 and has a total of 51 rental units. The Landlord's representative stated the capital expenditure was incurred in relation to the projects within 18 months preceding the application and these are not expected to recur for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The representative further confirmed the roof replacement is expected to last for at least 5 years (the representative testified he anticipated the roof replacement would last 20 years as a warranty for this period was provided) and there was no other source of payment for this expenditure. The Landlord's representative also testified there have been no prior applications for additional rent increase for capital expenditures in the prior 18 months.

The Landlord submitted a report stating the portion of the roof that was replaced was estimated to be 25 years old, had been patched in several areas, was damaged in several areas with pooling of water. The report, prepared by the roofing company that engaged in the work, further noted areas of heat loss through the roof and the roof membrane had been damaged. The Landlord's representative testified the building has a flat roof and when replacement occurred the pitch of the roof was altered to provide some drainage. He further explained the plywood underlay to the roof was determined to be of insufficient thickness and in several areas had rotted through and contributed to leaks in the building.

The Landlord's representative testified regular maintenance and inspection of the roof was accomplished by a roofing company approximately twice a year. He stated the drains were cleared out each fall and caulking were done as needed. The representative testified that there were Tenant complaints of leaking in 2023 following a snowstorm.

Tenant R.R.'s legal counsel raised the issue whether the Landlord's preventative maintenance had been sufficient. Tenant R.R. testified that in the winter of 2017 there had been water leaking into his unit and his next door neighbor had also complained of frequent leaks in her unit as well. Tenant R.R. stated he had contacted the building manager regarding the leaks and some repairs had been made at the time.

Tenant D.C. questioned the Landlord's ability to increase rent annually since 2018 and then make this application. It was her opinion that the Landlord should have budgeted for this expense.

Tenant T.W. agreed with D.C.'s opinion and further recalled that her move-in to her unit in 2017 was delayed due to roof repairs. She stated she has not had leaking into her unit, but noted that the building is older and the maintenance consists mainly of patch work.

Tenant G.B. stated he had resided in the rental property for 16 years and noted that approximately 10 or 12 years ago the Landlord had replaced one-half of the roof. He stated he had been on the roof with the prior building manager and noted that where the roof had been replaced, it was in poor condition. Tenant G.B. also inquired as to the maintenance done on the roof.

Tenant A.C. stated she has resided in her third-floor unit for 14 years. She noted that there are other maintenance issues (such as a delapidated patio banister) that the Landlord has not fixed in her unit and other repairs she has requested that, in her opinion, establish a pattern of neglect of the building by the Landlord. She further stated the Landlord's repairs are "off the cuff," and not always done by professionals. The Landlord's representative stated he was surprised by Tenant A.C.'s testimony and considered the repair and maintenance of the building to be professional.

Tenant M.M. objected to the cost-shifting of the capital expenditure from the Landlord to the Tenants, noting that Tenants receive a rent increase every year, and an additional rent increase amounted to "price-gouging."

Tenant L.N. testified she has resided in her unit since June 2022 and has noted water intrusion in the building and the development of mold.

In compliance with the Interim Decision, on January 24, 2025, the Landlord submitted copies of invoices from a roofing company the Landlord had from 2019, 2022 and two from 2023 to establish the Landlord's maintenance efforts. The invoices dated 2019 and 2023 provide that the roofing company was required to address leaks due to water pooling on the flat roof, requiring removal of the pooled water. The Landlord's property manager submitted a written statement with these invoices explaining the pooling of water on the roof was a result of extreme weather occurrences. He further explains the 2022 invoice concerned the roofing company finding the firewall membrane had been compromised and although there had been no resulting leaks, the Landlord undertook the preventative measure of replacing the firewall membrane at that time.

The Landlord's property manager further states that a review was done for tenant complaints regarding roof leaks and no documents were found. He explains that typically any reported leaks made to the building manager would be dealt with on an emergency basis by the roofing contractor. He further stated that some leaks are small and may not be readily noticed by a tenant. The property manager recounts an occurrence when he was inspecting the roof and found a small leak that a tenant was otherwise unaware existed.

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 relates to the Landlord's application for an additional rent increase based upon an eligible capital expenditure, 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));

- 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)).

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.

There are 51 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 **\$146,514.12** as detailed in the Landlord's itemized capital expenditure set forth above, there being no other source of payment for this work.

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.

The 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 Replacement

I find the roof is a major system or component in a residential building and is necessary for health and safety reasons for occupants and is designated as such in Policy Guideline 37. The Landlord provided evidence that the replaced portion of the roof was estimated to be at least 25 years and beyond its useful life. Policy Guideline 40 provides that the useful life for a flat roof is 20 years. I accept the Landlord’s evidence the replaced portion of the roof was at or exceeded its useful life and required replacement. The final payment for the roof replacement was made March 11, 2024. I find each payment made by the Landlord are within the 18-month period prior to the Landlord making this application. I further accept the representative’s testimony the replaced roof has a useful life of approximately 20 years (demonstrated by the warranty) and there was no collateral source of payment for this 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.

I find the Tenants have not provided sufficient evidence to support a dismissal of the Landlord’s application for an additional rent increase for capital expenditure. I do not find there is sufficient evidence to establish the capital expenditure is the result of the Landlord failing to maintain or properly repair or maintain the roof. Rather, the useful life of the roof had expired. I do not find evidence the Landlord was paid or entitled to be paid from another source for this work.

Based on the above, I find the Landlord is entitled to recover for the roof replacement in the amount of **\$146,514.12**

Summary

The Landlord has been successful with its application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$146,514.12**, for the major component 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 51 specified dwelling units and the total amount of the eligible capital expenditure is **\$146,514.12**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$23.94 ($\$146,514.12 \div 51 \text{ units} \div 120 \text{ months} = \23.94)**. 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 **\$146,514.12**. The Landlord must impose this 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 a Tenant by email if the Tenant provided an email address for service and to provide any Tenant with a printed copy if requested by the Tenant.

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

Dated: March 6, 2025

Residential Tenancy Branch