

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for an additional rent increase for capital expenditure under section 43 of the Act and section 23.1 of the Residential Tenancy Regulation.

Landlord M.E.C. attended the hearing through its representatives B.P., area manager and K.S., administrator.

Tenant T.C., Tenant G.S., Tenant C.G., Tenant E.G., Tenant D.T., Tenant S.T., Tenant S.T.2, Tenant A.R., Tenant G.S.2, Tenant B.M., Tenant D.E., Tenant T.M.2 attended the hearing for the Tenant.

The parties confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. I find the Tenants were served with the required materials in accordance with the Act.

At the start of the hearing, a few Tenants stated they had requested additional information from the Landlord, which the Landlord provided only to these Tenants occupying three rental units on January 17, 2025. Therefore, by interim decision dated January 30, 2025, the Landlord was instructed to serve all Tenants with this additional evidence. The Tenants were permitted an opportunity to submit written statements regarding the additional evidence provided by the Landlord, with the Landlord to have through February 19, 2025, to submit a written reply for consideration. The deadline having passed, this Decision is issued.

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 certain capital expenditures made by it:

- Replacement of the roof totaling \$218,368.50
- Installation of carbon monoxide detectors in the amount of \$2,849.54

It is noted that during the hearing, the Landlord withdrew its request for additional rent increase based upon a capital expenditure for fire system equipment, requesting only reimbursement for the carbon monoxide units installed in 40 rental units (the exceptions were units 101 and 110 which do not have a gas fireplace). The Landlord claims only the cost of the carbon monoxide detectors, and no charge for installation labor.

The residential rental property was constructed in 1991 and consists of 3-storeys with a total of 42 rental units. The Landlord's representative states the capital expenditures were 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 that each capital improvement was expected to last for at least 5 years and there was no other source of payment for these expenditures.

The Landlord's representative explained that the roof required replacement as it was original to the building and had exceeded its useful life. The Landlord submitted an engineer's report from 2016 noting the poor condition of the roof and the necessity to replace it. The Landlord also submitted a roofers' report from November 3, 2021 with a visual inspection of the condition of the roof, and photographs of the roof taken in August 2021 depicting its poor condition. The representative explained the roof consisted of both flat and sloped areas. The flat areas required removal and the replacement with a new membrane. The new roofing material consisted of composite shingles. The representative stated the roof was maintained annually by sweeping debris from it and cleaning the gutters. He stated repairs were done when needed and there had been a few leaks during the years, but at the time of patching it was not determined the roof required replacement. Additionally, he noted that any patching would itself be subject to a useful life. The representative explained the membrane had failed and "bubbling" of it was an issue. The Landlord provided copies of its roof cleaning documents for the period 2020 to 2023. The representative stated final payment for the work was made on October 16, 2023, and the roofing company issued an extended 10-year warranty for the roof. Copies of the invoices and payment were provided by the Landlord in support of its application.

The Landlord also installed in each of the 40 units with a gas fireplace a carbon monoxide detector. The detectors were installed to enhance safety and are hard-wired into the building. The representative stated the detectors are similar to smoke detectors commonly installed in homes. The representative stated the carbon monoxide detectors were expected to last at least 5 years. Final payment for the materials was made on October 12, 2023. The Landlord provided evidence of the cost for these detectors.

Tenant D.E., who has resided in his unit for approximately 8 years, questioned how the smoke detector worked with the carbon monoxide detector. He further stated there had been water leaks in the building. He stated the Landlord was a sophisticated business and when it purchased the rental property it would have known of the need to replace the roof and accounted for this cost when purchasing the building.

Other Tenants in attendance also inquired as to how the carbon monoxide and smoke detector units operated, but neither representative in attendance at the hearing had knowledge of the mechanics of the system.

Tenant T.M. stated she has resided in her unit for approximately 14 years and had not experienced any water intrusion from a roof leak.

Tenant G.N. noted that a rent increase had been noticed with respect to her unit in October 2024, and stated that under the Regulation, the Landlord was only entitled to notice one rent increase per year.

Tenant T.C. questioned why the Landlord waited until 2023 to replace the roof when it was aware of the roofing membrane failure as early as 2016.

Tenant D.T. concurred in questioning why the Landlord waited to replace the roof, noting that generally costs rise over time and had the Landlord replaced the roof years earlier it would have been less costly. She stated she has lived in her unit since August 2010; her residency pre-dating the Landlord's purchase of the building in 2013. Tenant D.T. further stated that the capital expenditures claimed by the Landlord were the costs the Landlord was responsible for as part of its responsibility under the Act to maintain the property.

Tenant C.G. stated the Landlord should be responsible for the capital expenditures as it was in a position to budget for the building's upkeep and costs of maintenance. Tenant G.S. agreed, stating a Tenant's responsibility for maintenance extended only to the unit and the Landlord is responsible for the maintenance of the building.

Tenant S.T. stated that he was the live-in maintenance caretaker for the property from March 2014 through August 2020. He stated that during this time period the Landlord did not maintain cleaning logs for the roof. He testified that in 2015 he was prohibited from accessing the roof because he did not have appropriate safety certification. He stated there was no cleaning of the roof although the gutters were cleaned after the roof was replaced. Tenant S.T. clarified there was no fire suppression system in the building (that is, no sprinkler system in the units in the event of fire).

Tenant A.R. stated the Landlord was responsible for the cost of replacing the roof as it had failed to establish appropriate maintenance of annual inspections by a licensed contractor as recommended by the BC Housing Research Center. Tenant A.R. stated that this procedure is required as of 2018 to obtain a certificate of occupancy and the

Landlord's failure to conduct these inspections precluded it from an additional rent increase. Tenant K.N. submitted a written statement in agreement with Tenant A.R.'s position on the maintenance of the roof, together with a written statement from Tenant A.R.

Landlord representative K.S. stated that annual inspections were done for fire safety. Representative B.P. stated that not all roofing maintenance was done by the Landlord but since he joined the Landlord in April 2022, third-party companies were retained to do the work. He stated that some invoices were retained and not all roof maintenance was done with prior notice given to Tenants. He further stated that a company was retained to clean the gutters in December 2024, noting that invoices for the work had been provided.

Representative K.S. stated the capital expenditure for the roof replacement was premised upon the roof having exceeded its useful life, and any maintenance can only prolong a roof for so long. He stated the 2016 report from the engineer did provide that the life of the roof could be extended and the Landlord had hired a consultant to determine how long the roof's life could be extended.

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));
- 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 42 specified dwelling units to be used for calculation of the additional rent increase for the roof replacement and 40 specified dwelling units for purposes of the carbon monoxide detectors.

4. Amount of Capital Expenditure

The Landlord claims the total amount of **\$221,218.04** as detailed in the Landlord's itemized capital expenditure set forth above, there being no collateral source or rebates to off-set any portion of this cost.

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 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 30 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 roof was at or exceeded its useful life and required replacement. The final payment for the roof replacement was made October 16, 2023 (within 18 months of the application filed by the Landlord on November 13, 2024). I find the payments 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 exceeding 5 years (demonstrated by the warranty issued to the Landlord for materials) and there was no other source of payment for this expenditure.

Installation of Carbon Monoxide Detectors in Units with Gas Fireplace

I find the installation of carbon monoxide detectors in the 40 rental units with gas fireplaces was undertaken for safety reasons (similar to the installation of a security system with a camera). I find the payment for the expenditure occurred on October 12, 2023, within the 18 months prior to the Landlord filing this application. The Landlord's

representative testified the carbon monoxide detectors are expected to last at least 5 years and there was no other source of payment.

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.

With respect to the installation of the carbon monoxide detectors, I find the Tenants have not provided sufficient evidence to establish under the Regulation that the Landlord is not entitled to seek an additional rent increase for the cost of these detectors.

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 **\$221,218.04**, 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 42 specified dwelling units and the total amount of the eligible capital expenditure is **\$218,368.50** for the roof replacement and **\$2,849.54** for the cost of the carbon monoxide detectors for the 40 units with gas fireplaces (units 101 and 110 excepted).

I find the Landlord has established the basis for an additional rent increase for the capital expenditure for the roof replacement in the amount of **\$43.33** (**$\$218,368.50 \div 42 \text{ units} \div 120 \text{ months} = \43.33**). 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.

I further find the Landlord has established the basis for an additional rent increase for the capital expenditure for the carbon monoxide detectors for those units in which these were installed in the amount of **\$0.59 ($\$2,849.54 \div 40 \text{ units} \div 120 \text{ months} = \0.59)**. If this amount together with the additional rent for the roof replacement 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 **\$221,218.04**, as set forth in greater detail above. 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 7, 2025

Residential Tenancy Branch