



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Application Code ARI-C

Introduction

Cyclone Holdings Ltd. applied for an additional rent increase for capital expenditures, under section 43 of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

Cyclone Holdings Ltd., represented by agent KTE (the Landlord), and the tenants named on the cover page of this decision attended the hearing. All the parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Service

The Landlord affirmed that she served the notices of dispute resolution proceeding and the evidence (the materials) on January 24, 2024 by attaching individual packages to the rental unit's front doors of all the named respondents and registered mailed the materials to units 202 and 211.

The attending Tenants confirmed receipt of the materials.

The Landlord confirmed receipt of the response evidence and that she had time to review it.

Based on the convincing testimony of the parties, I find the Landlord served the materials in accordance with section 89(1) of the Act and that Tenant GMC served the response evidence in accordance with section 88 of the Act. Thus, I accept service of the materials and the response evidence.

Application for Additional Rent Increase

The Landlord is seeking an additional rent increase for replacing the roof in the amount of \$157,309.95.

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.

Regulation 23.1 sets out the framework for determining if a landlord is entitled to impose an additional rent increase for expenditures.

Regulation 23.1(1) and (3) require the landlord to submit a single application for an additional rent increase for eligible expenditures “incurred in the 18-month period preceding the date on which the landlord makes the application”.

Per Regulation 23.1(2), if the landlord “made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.”

Regulation 23.1(4) states the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all the following:

- (a) the capital expenditures were incurred for one of the following:
 - (i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [landlord and tenant obligations to repair and maintain] of the Act;
 - (ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
 - (iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:
 - (A) a reduction in energy use or greenhouse gas emissions;
 - (B) an improvement in the security of the residential property;
- (b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
- (c) the capital expenditures are not expected to be incurred again for at least 5 years.

Per Regulation 23.1(5), tenants may defeat an application for an additional rent increase for expenditure if the tenant can prove, on a balance of probabilities, that the 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.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed for the reasons set out in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

Regulation 21.1 defines major component and major system:

- "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;

I will address each of the legal requirements.

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claim and my findings are set out below.

Number of specified dwelling units and benefited units

The Landlord stated the expenditures benefit all 34 rental units located in the building completed in 1969.

Based on the Landlord's undisputed testimony, I find the rental building has 34 rental units and that they all benefit from the expenditures, in accordance with section 21.1(1) of the Regulation.

Prior application for an additional rent increase and application for all the tenants

The Landlord testified she did not submit a prior application for an additional rent increase and that the Landlord is seeking an additional rent increase only for the respondent Tenants.

Based on the Landlord's undisputed and convincing testimony, I find that the Landlord has not submitted a prior application for an additional rent increase in the 18 months preceding the date on which the landlord submitted this application, per Regulation 23.1(2).

Based on the Landlord's convincing testimony, I find the Landlord submitted this application against all the rental units on which the Landlord intends to impose the rent increase, per Regulation 23.1(3).

Expenditures incurred in the 18-month prior to the application

Regulation 23.1(1) states the Landlord may seek an additional rent increase for expenditures incurred in the 18-month period preceding the date on which the landlord applied.

The Landlord submitted this application on January 16, 2025. Thus, the 18-month period is between July 15, 2023 and January 15, 2025.

The Landlord said the roof renovation was completed in December 2024. The Landlord submitted 3 invoices for the roof (dated between August 9 and 28, 2024) and affirmed she paid the last one by October 28. The Landlord also submitted the cheque for the payment of the last invoice on October 28.

Policy Guideline 37-A states: "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.

Based on the Landlord's convincing and undisputed testimony, the invoices and the cheque, I find the Landlord incurred the expenditure in the 18-month period, per

Regulations 23.1(1) and 23.1(4)(b), as the invoices, including the last one, were paid within that 18-month period.

Expenditure not expected to occur again for at least 5 years

The Landlord stated the expenditure is not expected to occur again for at least 10 years, as the new roof has a decade-long warranty.

Based on the Landlord's convincing and undisputed testimony, I find that the life expectancy of the expenditure is at least 5 years, and the expenditure is not expected to occur again for this period of time. Thus, I find that the capital expenditure incurred is an eligible expenditure, per Regulation 23.1(4)(c).

Expenditures because of inadequate repair or maintenance

The Landlord testified the expenditure was not necessary because of inadequate repair or maintenance because she properly maintained the prior roof.

Based on the Landlord's convincing and undisputed testimony, I find the expenditure was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Payment from another source

The Landlord said that she is not entitled to be paid from another source for the expenditure claimed.

Based on the Landlord's convincing and undisputed testimony, I find the Landlord is not entitled to be paid from another source for the expenditure, per Regulation 23.1(5)(b).

Roof

The Landlord affirmed the prior roof was installed between 2002 and 2007 and was at the end of its useful life.

The Landlord submitted a roof report dated October 13, 2022 from a roof contractor (the Report). It states:

On October 13th we went to [rental building] to look at the condition of the roof on the apartment building. I noted that it still had a tar & gravel roof on it. It looked to be anywhere from 15 years – 20 years old. The roof had two big repairs that have been done in the past as well as a few smaller repairs. All the roofing vents have been re sealed in the past. A roofing drain has been added to help drainage. Some of the pipe flashings are starting to rot and show holes. The roof is nearing the end stages of its life and each year more roof leaks will show up. I would say the roof will have to be replaced with in the next 3 to 5 years.

The Landlord submitted 8 photos of the prior roof with cracked membranes and 12 photos of the renovated roof.

Based on the Landlord's convincing testimony, the invoices, Report and photos, I find the Landlord replaced the 17-year-old roof in 2024 and paid the amount claimed for this expenditure.

Policy Guideline 40, published in 2012, states the useful life of a roof is between 15 and 20 years. This policy guideline was updated in February 2025 and the updated version states that a tar and gravel roof's useful life is 20 years.

Policy Guideline 37C states: "Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. Examples of major systems or major components include,

but are not limited to, the foundation; load-bearing elements (e.g., walls, beams, and columns); the roof; siding; entry doors; windows; primary flooring in common areas...”

I find the roof is a major component of the rental building, as it is integral to the rental building, per regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$157,309.95 to replace the roof is in accordance with Regulation 23.1(4)(a)(ii), as the Landlord replaced the roof that was close to the end of its useful life and the roof is a major component.

Tenants' submissions

Tenant AAN stated that replacing the roof is the Landlord's obligation.

Tenant ICO said she does not own the building and wants a receipt for the additional rent increase if this application is granted.

As explained in this decision, the Landlord is allowed to seek an additional rent increase due to a roof replacement, and there is no legal obligation to provide a receipt for this additional rent, as the increase becomes part of the rent.

Tenant KMI inquired if the Landlord was aware of the roof replacement when he purchased the building. The Landlord testified she knew the roof would have to be replaced when the building was purchased, but she did not know exactly when the replacement would be required.

Foreseeability of the capital expenditure is not relevant under section 23.1 of the Regulation.

Tenant GMC's written submissions indicate he is not an owner, replacing the roof is the Landlord's obligation, he faces financial difficulties, and he was not informed about this rent increase before the renovation.

I am sympathetic to the Tenants' alleged financial difficulties. However, this is not a reason to deny the claim for an additional rent increase.

Outcome

The Landlord has been successful in this application, as the Landlord proved that all the elements required to impose an additional rent increase for expenditure and the Tenants failed to prove the conditions of Regulation 23.1(5).

In summary, the Landlord is entitled to impose an additional rent increase for the roof replacement in the amount of \$157,309.95.

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 specified dwelling units divided by the amount of the eligible expenditure divided by 120. In this case, I have found that there are 34 specified dwelling units and that the amount of the eligible expenditure is \$157,309.95.

The Landlord has established the basis for an additional rent increase for expenditure of \$38.56 per unit ($\$157,309.95 / 34 \text{ units} / 120$). If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 37C, Regulations 23.2 and 23.3, 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 (<http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1>) for further guidance regarding how this rent increase may be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for expenditures of \$38.56 per unit. The Landlord must impose this increase in accordance with the Act and the Regulation.

The Landlord must 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: April 10, 2025

Residential Tenancy Branch