

DECISION

Introduction

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

- An order for a capital expenditure rent increase under section 23.1 of the *Residential Tenancy Act Regulation*, B.C. Reg. 477/2003 (the Regulation).

Landlord D.N., and L.N. attended the hearing for the Landlord.

Tenant L.N.K. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

L.N.K. confirmed receipt of the Proceeding Package through registered mail and that they had enough time to review it. Therefore, I find the package properly served per section 89 of the Act.

The Landlord testified they served the Tenant R.K. their evidence by email.

The Landlord submitted a copy of the tenancy agreement, which was signed by both parties, where both parties provided email addresses for service. The Landlord also provided a copy of the email being sent to the approved email addresses on February 27, 2025.

Based on the Landlord's evidence I find that email was a valid method of service for this tenancy under section 43 of the Regulation. I also find that the Landlord sent R.K. the email on February 27, 2025, based on the copy of the email the Landlord submitted.

Under section 44 of the Regulation, documents served by a pre-agreed email are considered received three days after they are sent.

Therefore, I find R.K. received the Proceeding Package on March 2, 2025.

Service of Evidence

The Landlord testified their evidence was served to R.K in the same package as their Proceeding Package.

Therefore, for the same reasons I found the Proceeding Package deemed received on March 2, 2025, I also deem the Landlord's evidence received on that date per section 43 of the Regulation.

L.N.K. confirmed receipt of the Landlord's evidence through registered mail and that they had enough time to review it. Therefore, I find that it was served per section 88 of the Act.

The Landlord confirmed receipt of L.N.K.'s evidence through registered mail and that they had enough time to review it. Therefore, I find that it was served per section 88 of the Act.

Issues to be Decided

Is the Landlord entitled to an order allowing them a Capital Expenditure Rent Increase?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord testified the residential property has four dwelling units, two of which were empty at the time of the hearing. They also testified that this is their first application for a capital expenditure rent increase.

Paint

The Landlord claimed \$12,539.68 for a full exterior repaint of the residential property.

The Landlord testified that the work involved the complete re-painting of the residential property's exterior. This meant that the following tasks had to be completed:

- Surface preparation,
- Removal of peeling and otherwise compromised existing paint,
- Reglazing windows in the window frames, and
- Filling compromised or rotted wood with filler.

The Landlord provided an invoice for the work. The invoice was issued on August 20, 2023. The Landlord paid for the work in two installments which they made on November 13, 2023, and August 21, 2023. The invoice notes additional labour, and primer was required to prep the houses failing paint.

The Landlord provided an invoice for paint. The invoice is dated September 7, 2023.

The Landlord provided pictures of the residential property. They testified these pictures were of how it looked before and after it was painted.

The Landlord testified that it had been at least 10 years since the exterior of the residential property had last been painted.

The Landlord testified they did not expect to have to redo this work for at least 5 years.

Fence

The Landlord claimed \$2,859.16 for a substantial rebuild of the wooden fence built around the residential property.

The Landlord testified the fence was first added to the residential property some time in the late 1980's.

The Landlord testified that they rebuilt the fence themselves. Everything except the fence posts were completely replaced. The Landlord then examined the remaining fence posts and determined which ones rotted. The rotted posts were replaced with new posts, while those that had not rotted and were functional were kept.

The Landlord provided invoices and receipts for fence materials with the following dates (I note the Landlord made no claims for their personal labour):

Date	Amount
March 14, 2024	\$2,552.79
May 3, 2024	\$187.36
May 6, 2024	\$14.55
May 28, 2024	\$12.31
June 06, 2024	\$3.48
August 22, 2024	\$19.03
August 25, 2024	\$19.03
September 24, 2024	\$14.78
Total	\$2,823.33

The Landlord also testified that they used some materials they already had for the fence project. No list of said materials was provided.

The Landlord provided pictures which they testified were of the fence before and after the rebuild.

Both parties agree the Landlord had previously done maintenance on the fence.

The Landlord testified that prior to the rebuild they had replaced individual fence posts as part of regular maintenance.

The Tenant testified they previously built fences professionally. The Landlord testified they have experience making fence repairs as a property owner.

The Landlord testified they did not expect to have to redo this work for at least 5 years. The Tenant disagreed with the Landlord's statement.

Analysis

Is the Landlord entitled to an order allowing them a Capital Expenditure Rent Increase?

For the Landlord's application for a capital expenditure rent increase to be successful they must prove all of the following on a balance of probabilities:

1. That they have not made a successful application for an additional rent increase for capital expenditure in relation to the same rental units for at least 18 months;
2. That the capital expenditure was made for one of the reasons explained in section 23.1 (4) (1) of the Regulation;
3. That the capital expenditure was made within 18 months of making their application; and
4. That a capital expenditure for the same purpose is not expected to occur again for at least five years

Application

I find the Landlord has never made an application for a capital expenditure rent increase based on their uncontradicted testimony.

Purpose

According to section 23.1 (4) (1) of the Regulation the following are the legally permissible purposes to apply for a capital expenditure rent increase:

“(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;”

Under section 21.1(1) a major system is a system integral to the residential property or is integral to providing services to occupants of the residential property. A major component is a component integral to the residential property or a major system.

Residential Tenancy Policy Guideline 37C also suggests that cosmetic upgrades connected to eligible capital expenditures can be included as part of the expenditure.

Paint

One of the two expenditures the Landlord claims qualify as an eligible capital expenditure is the residential property being repainted.

The Landlord's argument is that the exterior paint of the residential property is necessary to protect the foundation of the building from weather. The Landlord stated that without proper paint protecting the foundation the underlying materials will suffer damage. Furthermore, they claimed the paint on the residential property was more than 10 years old and was no longer serving its purpose of protecting the foundation. Therefore, the Landlord claims that the exterior paint is a major component, part of the residential property's foundation, that was failing to fulfill its purpose.

The Tenant claims that the repainting of the residential property is purely cosmetic, intended to make the property more attractive and profitable.

Residential Tenancy Policy Guideline 37C notes that a building's the foundation is a major system. However, it also notes that routine wall painting, as well as patching of dents or holes in drywall would not be considered capital expenditures. Though, I note that both examples relate to a building's interior, meaning the paint and drywall in those examples did not have to protect the foundation from weather.

Residential Tenancy Policy Guideline 37c states: "A landlord should submit documents that could support their application."

I find the Landlord has not provided sufficient evidence to prove their argument on a balance of probabilities. The Landlord stated their opinion at the hearing while the Tenant gave theirs.. In these circumstances I find the Landlord has failed to provide sufficient evidence that the re-painting of the unit is not simply cosmetic. Further, I find that while PG 40 notes the useful life of exterior paint as being 10 years, PG37C notes, "cosmetic changes are not considered a capital expenditure."

Therefore, I find the Landlord's application to recover funds related to exterior paint has failed.

Fence

The Landlord argued that the fence around the property was necessary to keep people off the residential property.

I find a fence meets the qualifications of being a major system, in that it is similar to a gate, which is something explicitly noted as a major system under Residential Tenancy Policy Guideline 37C. Further, I note, the Policy Guideline states, "If an installation, repair, or replacement of a major system or major component better protects people and property at the residential property, the security of the residential property has been improved. A landlord is not required to establish that additional or better security was necessary for the director to grant an additional rent increase."

Based on the Landlord's testimony, I find that the fence had not been fully replaced in 30 years. Residential Tenancy Policy Guideline 40 gives the useful life of a wooden fence as 15 years.

Therefore, I find the Landlord proved this is the replacement of a major system past its useful life.

Made within 18 months of the Application

Residential Tenancy Policy Guideline 37C suggests what determines if the capital expenditure was made within 18 months of the application, is when the final payment for the capital expenditure was made.

The application was made on February 13, 2025. This means the expenditures must have occurred after August 13, 2023, to be eligible.

Based on the Landlord's testimony and the invoices I find the painting was paid for on August 21, 2023, and the fence was paid September 24, 2024.

Therefore, I find the expenditures were both made within 18 months of the application.

Not required for another 5 Years

I find the Landlord is unlikely to require another capital expenditures for at least five years. I base this partly on how Residential Tenancy Policy Guideline 37 C states the useful life of a wooden fence is 15 years.

The Tenant claimed that the replacement of the fence was inadequate. The replacement and repairs were lacking due to how the Landlord did not use professional labour or sufficient equipment for the repair. There was also a need to repair all the fence posts. Due to this the expenditure may need to be repeated within 5 years.

However, despite this argument I still find on a balance of probabilities that major repairs will likely not be required for at least 5 years. Based on the picture of the fence after the replacement, I find there are no major issues with the fence's craftsmanship. While not all the fence posts were replaced, the Landlord testified that they had replaced many of them as part of this project. Furthermore, I found no reason to doubt their statement that many of the posts did not need to be replaced during this major repair, as they had already been replaced as part of routine maintenance.

Failure to perform repairs or maintenance

If the Tenant proves one of the following to be true, I must dismiss the Landlord's application for an additional rent increase for capital expenditure:

1. The capital expenditure was for a repair or replacement caused by the Landlord not performing adequate repairs or maintenance; or
2. The Landlord has been paid or is entitled to be paid for the capital expenditure through another source.

The Tenant claims the fence required replacement due to inadequate maintenance.

Both parties agree that the Landlord did repair the fence on several occasions previously and that many parts of the fence were beginning to fail. However, I note it was unclear from the Tenant's argument what kind of routine maintenance the Landlord had failed to perform, that would have made this major replacement project unnecessary.

Furthermore, based on the Landlord's uncontradicted testimony I find the fence had existed without major renovations since 1990. The Tenant did not provide a reason to believe that the Landlord's fence was exceptional. Given this I find on a balance of probabilities a fence 19 years after the end of its useful life would require major repairs, even if there had been adequate maintenance.

Therefore, I find the Tenant has not proven the capital expenditure was caused by the Landlord not performing adequate repairs or maintenance.

Granted Rent Increase

Therefore, I find there is a \$2,823.33 eligible capital expenditure. I base this amount on the invoices for the fence.

I note the Landlord put forward a higher number for how much the materials for the fence were. They testified that the additional amount they were claiming for related to materials they already had. However, I find that without giving an account of what these additional materials were and assigning them a value that they have not proven the cost as necessarily connected to the capital expenditure.

The additional rent increase is the *lesser* of 3% of the current rent combined with the yearly permitted rent increase, or $[\text{total eligible capital expenditure} \div \text{the number of specified dwelling units}] \div 120$ under section 23.2 of the Regulation.

A specified dwelling unit, as defined by section 21.1(1) of the Regulation, is a living accommodation (whether or not it is vacant) located in a building (or residential property) that is impacted by the eligible capital expenditure. I find there are 4 specified dwelling units based on the Landlord's uncontradicted testimony.

Therefore, I order the Landlord may raise the rent the *lower* of either \$5.88 [(\$2,823.33 ÷ 4) ÷ 120], or rent 3% of the current rent after the current yearly rent increase is added.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for a capital expenditure in the amount of \$2,823.33, The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to 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 28, 2025

Residential Tenancy Branch