



## **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 expenditures under section 43 of the Act and section 23.1 of the Regulation.

The parties noted on the cover page of this decision were in attendance.

The Landlord's counsel confirmed service of the Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord to each Tenant by posting on the rental unit door on February 7, 2025, and again on March 26, 2025, for additional evidence submitted by the Landlord. Landlord's counsel stated the proceeding package served to each Tenant included a cover letter, instructions on accessing and downloading the Landlord's evidence or requesting a hard copy, as well as the Notice of Hearing with respondent instructions provided by the RTB. Counsel further stated five Tenants downloaded the Landlord's evidence. I find the Tenants were served with the required materials in accordance with the Act.

The Landlord submitted statements from its representatives attesting to their service of the proceeding package to each Tenant on the dates indicated.

### **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 capital expenditures it incurred for the replacement of the hot water boiler and domestic hot water system into a unified energy-efficient system. The cost of replacement was \$273,078.75, which includes the receipt of a rebate incentive from the gas utility company in the amount of \$14,364.00. The Landlord provided documentation regarding its receipt of the gas utility rebate program and proceeds it received.

The residential rental property was constructed in 1969 and has a total of 75 units. The Landlord's counsel states the capital expenditures were incurred in relation to the projects within 18 months preceding the application and these are not expected to re-occur for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The last payment for the capital improvement was paid by the Landlord on September 4, 2023.

The Landlord provided a property inspection report dated May 13, 2021. The inspector determined at that time the boiler, which provides heat for the building, was original to the residential property and thus approximately 50 years old. The report notes the boiler was refurbished in 2017 and maintained thereafter. However, as noted by Landlord's counsel, it was not replaced. The report further states the domestic hot water tank was manufactured in 2013 and thus, at the time of the report, was 8 years old. At the time of replacement in 2023, the tank was 10 years old. The report recommended replacing the three hot water storage tanks as these were estimated to be 25 years old.

The Landlord's counsel stated the boiler and hot water system were replaced by the Landlord with a unified system. Photographs of the prior water system and the newly installed energy-efficient system were provided in evidence. Counsel stated the domestic hot water system is not an "on-demand system," and new storage tanks were installed. The heat exchanger for the hot water boiler has a 10-year warranty for the unit. The Landlord's representative director of energy services stated it was his understanding the domestic hot water heater had a manufacturer's warranty of 5 years. The Landlord states the system is expected to last beyond 5 years. Counsel noted the plumbing company's quote for the capital improvement work (a copy submitted in evidence) provides that the estimated life for the system is 25 years.

The Landlord submitted copies of its maintenance contracts with a plumbing company to conduct quarterly maintenance of the domestic hot water system. The contracts submitted are for the periods November 1, 2021 to October 31, 2023 and March 1, 2024 to February 28, 2025.

The Landlord also provided a hazardous s report it commissioned for the residential building. Counsel stated the report was provided for background information and no additional cost associated with the report or hazardous material removal, if any, was included in the cost of the replacement of the boiler and hot water system. A copy of the plumbing company's proposal and estimate were provided in evidence by the Landlord.

Landlord's counsel stated the Landlord will apply the additional rent increase to those Tenants who occupied a unit on or before September 4, 2023 (the date of the last payment for the capital improvement). Counsel explained the Landlord has elected to proceed in this manner as for those Tenants who moved in after September 4, 2023,

the rental rate for the unit would be adjusted to include the unit's cost for the capital improvement.

Tenant objections included that the Landlord had not established the work was necessary or the cost was reasonable. It was noted that the boiler had been refurbished or upgraded in 2017. Additionally, the Landlord was aware at the time it purchased the building that the property was 50 years old, and the Landlord would expect repairs and replacements that would reduce its purchase price.

Tenant objections also included concern that only long-term Tenants (or those occupying units before the work was last paid for by the Landlord) will be assessed an additional rent increase. Another objection concerned the level of construction in the building, with water and heat often shut down to permit for the installation, as well as the inconvenience associated with construction projects. Further inquiry was made to the Landlord's counsel of any other available rebates and whether there was insurance that covered the expense. Counsel stated there were no other rebates available for the work and there was no insurance coverage.

## 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 through submission of 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, based upon the evidence, 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 75 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 **\$273,078.75** which includes the utility rebate it received for installation of an energy efficient system in the amount of \$14,364.00 (the total cost of the work was \$287,442.75), as detailed in the Landlord's itemized capital expenditure described herein and set forth in the Landlord's evidence.

#### 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.”

#### *Installation of Domestic Hot Water and Boiler System*

I find the domestic hot water system and boiler which provides heating to the rental units are major components and systems of the residential rental property. I find that both the boiler and the domestic hot water system were beyond their useful life. The boiler was approximately 50 years old and original to the building. The domestic hot water tank was 10 years old at the time of replacement and the three storage tanks were estimated to be at least 25 years old with replacement was recommended by the property inspector in 2021.

I further find the capital expenditure was incurred for the installation of an energy-efficient unit as evidenced by the financial rebate incentive received by the Landlord from the gas utility company.

The Landlord provided the receipts for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application. I find it is reasonable to conclude this capital expenditure is not be expected to re-occur again within five years.

#### 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.

The Tenants have not provided sufficient evidence to establish the capital expenditures were incurred as a result of the Landlord failing to adequately maintain or repair the hot water system or the boiler. The Landlord did provide a copy of its maintenance contracts from November 2021, for quarterly inspection and repair of the system.

Furthermore, the Landlord's counsel represented the Landlord received all rebates available for the work completed and I accept there was no other source of payment.

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.

Based on the above, I find the Landlord is entitled to recover the amount of \$273,078.75 for the replacement of the boiler and domestic hot water system due to end of useful life of these systems as well as the installation of energy-efficient components.

## Summary

The Landlord is successful in this application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$273,078.75**, for those major components and systems 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 75 specified dwelling units and the total amount of the eligible capital expenditures is **\$273,078.75**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures in the sum of **\$30.34 ( $\$273,078.75 \div 75 \div 120 = \$30.34$ )**. 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 **\$273,078.75**. The Landlord must impose this increase in accordance with the Act and the Regulation for those Tenants who, pursuant to the Landlord's statement at the hearing, were occupying a rental unit on or before September 4, 2023.

I order the Landlord to serve the 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 Act.

Dated: April 16, 2025

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Residential Tenancy Branch