

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.S., and B.S. attended the hearing for the Landlord.

Tenant C.K. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant confirmed receipt of the Proceeding Package email and that they had enough time to review it.

Section 71 (2)(c) of the Act allows arbitrators to find a document was sufficiently served.

Due to this confirmation, I find the Proceeding Package sufficiently served under section 71 (2) of the Act.

Service of Evidence

The Tenant confirmed receipt of the [applicant]'s evidence through email and that they had enough time to review it.

Due to this confirmation, I find the Landlord's evidence sufficiently served under section 71 (2) of the Act.

The Tenant testified they did not serve the Landlord their evidence

An applicant is obligated to prove service of their evidence to the satisfaction of an arbitrator, under rule 3.15 of the *Residential Tenancy Branch's Rules of Procedure*. Rule 3.17 allows an arbitrator to disregard evidence if they are not satisfied the respondent has been served.

Given that the Tenant did not serve the Landlord I will disregard the Tenant's evidence.

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 is claiming \$20,397.30 for the installation of a gas furnace.

The Landlord testified the gas furnace was installed because the heat pump was not keeping the residential property warm last winter. The heat pump was more than 15 years old prior to it being replaced.

The Landlord provided:

- an invoice dated January 1, 2025,
- a deposit receipt dated November 25, 2024, and
- an estimate dated October 16, 2024.

for the gas furnace.

The deposit states the Landlord had to pay 25% of the total estimated amount, which was \$5,099.33. The invoice states it was paid on November 29, 2024.

The final invoice states the Landlord had to pay 75% of the total amount, which was \$15,297.98. The invoice states it was paid on January 6, 2025. The invoice also states the gas furnace came with a 10-year warranty on its parts.

The Landlord testified that they did not believe they would need to make another capital expenditure regarding the gas furniture for at least 5 years.

The Landlord testified they have not successfully applied for a capital expenditure rent increase in the last 18 months.

The Landlord testified there were 2 specified dwelling units in the residential property affected by the capital expenditure.

Analysis

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

Based on the Landlord's uncontradicted testimony, I find that the Landlord did not successfully apply for a capital expenditure rent increase within 18 months of this application.

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 an eligible capital expenditure can be included in it.

Based on the Landlord’s uncontradicted testimony I find the gas furnace was purchased to replace the residential property’s heat pump. Based on the Landlord’s uncontradicted testimony I find the heat pump was failing when the Landlord replaced it.

Residential Tenancy Policy Guideline 37C states a heating system is a major system.

Therefore, I find the capital expenditure was for the replacement of a major system that was malfunctioning.

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.

Based on the invoice the Landlord submitted, I find the final payment was made on January 06, 2025. I find this is less than 18 months before February 8, 2025, which is when the Landlord made their application.

Not required for another 5 Years

Based on the Landlord's uncontradicted testimony and the 10-year warranty mentioned on the invoice, I find the Landlord is likely not to need to make an expenditure for this purpose again for another 5 years.

Granted Rent Increase

Therefore, I find there is a \$20,397.30 eligible capital expenditure.

The additional rent increase is the lesser of 3% of the current rent combined with the yearly permitted rent increase, or the $[(\text{total eligible capital expenditure} \div \text{the number of specified dwelling units}) \div 120]$ 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 2 specified dwelling units, based on the Landlord's uncontradicted testimony.

Therefore, I order the Landlord may raise the rent 3% of the current rent after the current yearly rent increase is added, or \$84.97 $[(\$20,397.30 \div 2) \div 120]$, whichever is less.

Should \$84.97 be more than 3% of the current rent after the current yearly rent increase is added, the Landlord may impose another additional rent increase for up to 2 more phases. During each phase the Landlord must deduct the previous rent increase for the capital expenditure from \$84.97. The Landlord may then impose the lesser amount of either the remainder or 3% of the current rent after the current yearly rent increase is added. Each phase must take place at least 12 months after the previous one. The Landlord must serve the Tenant an RTB-7 Notice of Rent Increase at least 3 months before a new rent increase is imposed. This is all required under section 23.3 of the Regulation.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for a capital expenditure in the amount of \$20,397.30. 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 22, 2025

Residential Tenancy Branch