



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

File No: [REDACTED]

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

[REDACTED]

Applicant(s)

And

[REDACTED]



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

[Redacted]

Respondent(s)

Regarding a rental unit at: [Redacted]

Date of Hearing: October 12, 2023, by conference call.

Date of Decision: October 27, 2023

Attending:

For the Landlord: [Redacted]

For the Tenant: [Redacted]



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **ARI-C**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") and the *Residential Tenancy Regulation* (the "**Regulation**") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The landlord was represented at the hearing by its counsel and agents. Three tenants also attended this hearing.

At the commencement of the hearing, I confirmed with the landlord that each of the tenants affected by this application were served with the Notice of Dispute Resolution Hearing by posting a copy to each of the tenants' doors on June 21, 2023. The landlord served each of the affected tenants with a letter directing them to a file hosting service to download evidence on September 7, 2023, by posting the letter to each affected tenants' door. I am satisfied the tenants in each of the affected units were served with the Notice of Dispute Resolution Hearing and the landlord's evidence in accordance with sections 88, 89 and 90 of the Act.

Preliminary Issue

The tenant R.C. advised that he did not dispute the landlord's application and disconnected at the commencement of the hearing.

Landlord's counsel advised me that the tenant occupying unit 302 is not affected by the rent increase and that the landlord does not seek an additional rent increase for the current tenant in 302. Counsel advised that although the landlord does not seek to increase 302's rent in this application, the unit will be included in the calculation of affected units, as unit 302 benefitted from the capital expenditure.

The tenant from 302 requested to remain on the line to dispute the landlord's application on behalf of the remaining tenants in the building, however I dismissed this tenant's

request as this tenant did not have written authorization to act as their agent from any of the other tenants.

Issue(s) to be Decided

Is the landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Landlord's counsel gave the following submissions. The building has 65 units, and all units are affected by the capital expenditure. The landlord seeks to impose an additional rent increase for a capital expenditure incurred to pay for work done to the building's rainscreening and envelope, and repair the balconies, parkade and soffits. (collectively, the "Work"). The work was required due to the exterior walls being water damaged caused by wind driven rain over time and the rotten exterior wood elements discovered during an inspection.

The building was built in 1979 and has not had a new rainscreen installed. The landlord has not applied for an additional rent increase for capital expenditure against these tenants in the past 18 months. The total cost of the work was \$543,707.90 and the landlord paid the final transfer for the expenditure on February 1, 2022. The landlord does not expect the capital expenditure to recur within the next 5 years, as the estimated life expectancy of this work is 20 years, as described in Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements.

The landlord submits that the Total Capital Expenditures were incurred due to the total failure or malfunction of a major system or major component. The Total Capital Expenditures were required to be made in order to maintain the building in a state of repair which complies with section 32(1)(a) of the Act.

The tenant K.A. testified that she never saw any repairs done to the window trimmings and that hers don't shut properly. In the winter, there is water buildup and pooling of water when it rains. There are still repairs that need to be done to the building, including holes where the laundry facility is. It is unfair for the landlord to increase her rent when the work is incomplete.

Another tenant who did not attend the hearing, M.M., provided an argument that the capital expenditures were not incurred by the landlord within the 18 months prior to applying for the additional rent increase. I will consider this submission in accordance with rule 11.5 of the Residential Tenancy Branch Rules of procedure.

Analysis

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. I will not reproduce the sections here but 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:
 - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
 - 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 tenants may defeat an application for an additional rent increase for capital expenditure 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 their evidentiary burden and the tenant fails to establish that an 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

None.

3. Number of Specified Dwelling Units

Section 23.1(1) of the Act 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.

I find there are 65 dwelling units and that all of them are eligible for an additional rent increase for capital expenditure with the exception of unit 302, as the landlord specifically excluded unit 302 from the application at the commencement of the hearing.

4. Amount of Capital Expenditure

\$543,707.90

5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order 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.

I will address each of these in turn.

a. Type of Capital Expenditure

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.

The Work amounted to a replacement of the building's roof and replacement of a new rain screen system with Hardie board cladding. I find the building's roof and siding are major systems of a residential property.

b. Reason for Capital Expenditure

Residential Tenancy Branch Policy Guideline PG-40 suggests the useful life of waterproofing membranes is 15 years and stucco siding is 20 years. I find it reasonable that the landlord was required to replace the rainscreening membrane of the building to remedy exterior leaks and ensure the building's structural integrity.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37C states:

A 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.

I accept the landlords uncontroverted evidence that the final payment for was incurred on February 1, 2022. This date is within 18 months of the landlord filing the application for additional rent increase on June 8, 2023.

Life expectancy of the Capital Expenditure

As stated above, the useful life for the roof and siding, the components replaced, exceeds five years. There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40. For this reason, I find that the life expectancy of the component replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

6. Tenants' Rebuttals

The tenants may defeat an application for an additional rent increase for capital expenditure 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 or for which the landlord has been paid, or is entitled to be paid, from another source.

Neither of these arguments were raised by the sole tenant attending this hearing, or via written submissions of any other tenant.

The sole tenant who attended the hearing testified that there are still repairs that require attention, such as holes to be patched. That tenant also raised the argument that she had just received a rent increase and that it would be difficult to accept another rent increase.

The written submissions from the tenant M.M. raised the concern that the capital expenditures were incurred more than 18 months before applying for the rent increase, however I have already found that the final payment was made within the 18 months of the application being filed and the capital expenditure is therefore eligible.

7. Outcome

The landlord has been successful. He has proven, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure. 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 sixty-five specified dwelling unit and that the amount of the eligible capital expenditure is \$543,707.90

So, the landlord has established the basis for an additional rent increase for capital expenditures of **\$69.71** ($\$543,707.90 \div 65 \div 120$). 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 37, 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

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$69.71**. The tenant in unit 302 is to be exempted from this rent increase. 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 *Residential Tenancy Act*.

Dated: October 27, 2023



R. YEE, Arbitrator

Residential Tenancy Branch



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Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply
- How and when to issue a Notice of Additional Rent Increase - Eligible Capital Expenditures:
Visit: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases/additional-rent-increase>

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

