



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

ARI-C

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an additional rent increase, pursuant to section 43(3) of the *Residential Tenancy Act (Act)*.

Legal Counsel for the Landlord stated that on November 18, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on October 04, 2021 was sent to each Tenant named in this Application for Dispute Resolution, via registered mail. The Landlord submitted a Canada Post documentation that corroborates this testimony.

The Tenant of Unit 01 and Unit 03 acknowledged receipt of the aforementioned documents.

In the absence of evidence to the contrary, I find that the aforementioned documents have been served to all of the Respondents in accordance with section 89 of the *Act*, however several of the Respondents did not appear at the hearing. As the documents were properly served to the Respondents, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of many of the Respondents.

On December 20, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to each Respondent, via registered mail, on December 22, 2201. The Tenants from Unit 01 and 03 each acknowledged receipt of this evidence. In the absence of evidence to the contrary, I find that the second package of evidence was served to all of the Respondents in accordance with section 88 of the *Act*, and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant assured me they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Should the application for an additional rent increase be granted?

#### Background and Evidence

In support of the application for an additional rent increase Legal Counsel for the Landlord stated that:

- The Landlord replaced the roof, flashing, and gutters of the residential complex;
- The roof replacement was completed in April of 2020,
- The roof began leaking in 2017, as indicated by invoices submitted in evidence;
- The roof needed to be replaced;
- The Landlord did not receive any rebates or grants for this expenditure, nor is the Landlord eligible for any such grants/rebates;
- The Landlord has not previously imposed a rent increase in relation to this particular expense;
- The Landlord expects the roof will not need to be replaced in the next five years;

- A new roof qualifies as a capital expenditure and meets the requirements for a rent increase as a result of that capital expenditure; and
- There are 8 rental units in the residential complex.

The Agent for the Landlord stated that she does not know when the roof was last replaced, although it has not been replaced since the Landlord purchased the building in 2007.

The Tenants do not dispute any of the aforementioned testimony, nor do they dispute that the Landlord paid to replace the roof.

The Tenant of Unit 01 stated that:

- Although she agrees a new roof is a capital expenditure, she does not believe the tenants should be obligated to pay for the cost of replacing the roof;
- The Landlord has an obligation to maintain the residential complex, including replacing the roof;
- She thinks the Landlord should have provided a history of roof repairs at the residential complex;
- She is not aware that the Landlord is undergoing any financial hardship that would warrant the rent increase;
- She would like to know if the Landlord budgeted for this expense; and
- The value of the residential complex has increased significantly.

The Tenant of Unit 03 submits that it is possible the need to replace the roof is related to earlier renovations that were not completed properly. She understands that shiplap was used on the roof, which may have resulted in the need for a new roof, although she does not know when it was installed.

Legal Counsel for the Landlord stated that she is not aware of any improper renovations or lack of repair that contributed to the need to replace the roof.

In response to a question asked by the Tenant of Unit 03, the Agent for the Landlord stated that the Landlord is not planning on increasing the rent in Unit 02 because that occupant just moved into the building on January 01, 2022.

The Landlord submitted an invoice from a roofing company, in the amount of \$30,835.00. The invoice shows \$23,500.00 was for replacing the roof, \$5,500.00 was

for other items typically associated with a roof, such as gutters and flashing, and the remainder was for taxes.

### Analysis

Section 43(1) of the *Act* permits a landlord to impose a rent increase only up to the amount calculated in the regulations. In 2022 the allowable rent increase is 1.5%.

Section 43(3) of the *Act* permits a Landlord to apply for a rent increase that is greater than the amount permitted by 43(1)(a) of the *Act*.

Section 23.1(1) of the *Residential Tenancy Regulation (Regulation)* permits a Landlord to apply for an additional rent increase in respect of a rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.

Section 23.1(4) of the *Regulation* requires me to grant an application made pursuant to section 23.1(1) if the Landlord establishes that:

- The capital expenditures were incurred for 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) of the *Act*; or 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; or the installation, repair or replacement of a major system or major component that achieves a reduction in energy use or greenhouse gas emissions or is an improvement in the security of the residential property;
- the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application; and
- the capital expenditures are not expected to be incurred again for at least 5 years.

On the basis of the undisputed evidence, I find that the Landlord installed a new roof, flashing, and gutters; and that the total replacement cost was \$30,835.00.

Residential Tenancy Branch Guideline #37, with which I concur, describes major systems and major components as things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. The guideline provides many examples of major systems or major components, including replacing a roof. I therefore find that replacing a roof should be considered a major system or component.

I find that replacing the roof/gutters was a capital expenditure that was necessary to maintain the residential property in a state of repair that complies with the health, safety and housing standards. I am satisfied that the roof began leaking in 2017, which is indicative of a roof reaching the end of its useful life, and that it was reasonable and responsible of the Landlord to replace the roof.

Residential Tenancy Branch records show that the Landlord filed this Application for Dispute Resolution on October 04, 2021. To qualify for a rent increase pursuant to section 23.1(1), the cost of replacing the roof needs to have been incurred in the 18 month-period preceding October 04, 2021, which in these circumstances would be anytime after April 04, 2020.

Residential Tenancy Branch Policy Guideline #37 stipulates that a capital expenditure is considered "incurred" when payment for it is made. On the basis of a cheque made payable to the roofing company, which was submitted in evidence, I find that the roofing company was paid \$23,345.00 on April 06, 2020. The invoice indicates that a deposit of \$7,490.00 was paid sometime prior the invoice date, which was March 26, 2020. I therefore find that the roof expenditure of \$23,345.00 was incurred in the 18 month-period preceding October 04, 2021.

Section 23.1(5) of the *Regulation* prevents me from granting an application made pursuant to section 23.1(1) if the any portion of capital expenditures in respect of which a tenant establishes 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. No evidence has been submitted to suggest that the Landlord has been, or is entitled to be paid, from another source.

Although there has been speculation that the need for a new roof may be related to improper maintenance or an inadequate renovation, no evidence was submitted to support that speculation. Even if I accepted the submission that the shiplap was used on the roof and shiplap is not intended for roof construction, that would have occurred prior to the Landlord purchasing the building and does not establish that the need for a new roof is the result of poor maintenance or inadequate repair on the part of this Landlord.

In considering this application I have placed no weight on the submission that the Landlord should have provided a history of roof repairs at the residential complex. Section 23.1(5) clearly places the burden of proving inadequate repair/maintenance on the Tenant, rather than the Landlord. I therefore find that the Landlord was not obligated to submit a history of roof repairs to support this application for a rent increase.

I find no evidence that the Landlord has previously imposed a rent increase in relation to this particular expense.

I find it reasonable to conclude that the roof will not need to be replaced in the next five years, as the life expectancy of a roof is typically much longer than five years.

When considering this application for a rent increase, I have not considered the submission that the Tenant of Unit 01 is not aware that the Landlord is undergoing any financial hardship that would warrant the rent increase. There is nothing in the legislation that specifies that a landlord is only entitled to a rent increase for capital expenditures if the landlord is experiencing financial hardship.

When considering this application for a rent increase, I have not considered whether or not the Landlord has budgeted for this expenses. There is nothing in the legislation that requires a landlord to budget for such expenses prior to applying for a rent increase for capital expenditures.

When considering this application for a rent increase, I have placed no weight on the submission that replacing the roof is an obligation of the landlord and tenants should not be required to pay for the cost of a roof replacement. Clearly section 23.1(1) of the *Residential Tenancy Regulation* permits a landlord to apply for a rent increase for the purpose of replacing a roof.

When considering this application for a rent increase, I have placed no weight on the submission that the value of the residential complex has increased significantly. The right to apply for a rent increase on the basis of the cost of re-roofing is entirely unrelated to property values.

When considering this application for a rent increase, I have placed no weight on the submission that the Landlord is not increasing the rent for Unit 02. As the evidence shows that a new tenant moved into the Unit 02 on January 01, 2022, the Landlord would does not have the right to increase the rent for that tenant rent until January 01, 2023.

After considering all of the aforementioned factors, I grant the Landlord's application for an additional rent increase in relation to the roof expense of \$23,345.00, pursuant to section 23(1) of the *Regulation*.

Section 23.2(2) of the *Regulation* requires me to determine the amount of the additional rent increase that may be imposed for the eligible capital expenditures by dividing the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and by dividing that amount calculated under paragraph by 120.

Section 21.1 of the *Regulation* defines "specified dwelling units" as 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 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. On the basis of the undisputed evidence, I find there are 8 specified dwelling units in this residential complex that were affected by the new roof.

Pursuant to section 23.2(2), I calculate the amount of the additional rent increase to be \$24.32. The calculations are:

\$23,345.00 (eligible capital expenditure) divided by 8 (number of specified dwelling units) =  
\$2,918.13 divided by 120 = \$24.32

Section 23.2(3) of the *Regulation* requires the landlord to multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43 (1) (a) of the *Act* in that year by 3%.

Section 23.2(4) of the *Regulation* authorizes the landlord to impose a rent increase of the lower amount of the two amounts calculated under section 23.2(2) or 23.3(3) of the *Regulation*.

Section 23.3(3) of the *Regulation* stipulates that if the amount calculated under section 23.2(2) is higher than the amount that the landlord may impose under section 23.2(4), the additional rent increase for eligible capital expenditures may only be imposed in up to 3 phases as follows:

- (a) the landlord may impose the amount determined under section 23.2 (4) as an additional rent increase in phase 1;
- (b) the landlord may impose the amount calculated in accordance with subsection (4) of this section as an additional rent increase in phase 2;
- (c) the landlord may impose the amount calculated in accordance with subsection (5) as an additional rent increase in phase 3.

Section 23.3(4) of the *Regulation* stipulates that the additional rent increase that the landlord may impose in phase 2 is the lower of the 2 following amounts:

- (a) the amount calculated under section 23.2 (2) minus the amount the landlord was permitted to impose under section 23.2 (4);
- (b) the sum of the following multiplied by 3%:
  - (i) the rent payable in phase 2;
  - (ii) the amount of the annual rent increase permitted to be imposed under section 43(1)(a) of the *Act* at the time the additional rent increase for eligible capital



expenditures for phase 2 is imposed.

Section 23.3(5) of the *Regulation* stipulates that the additional rent increase that the landlord may impose in phase 3 is the lower of the 2 following amounts:

- (a) the amount calculated under section 23.2 (2) minus the sum of the following:
  - (i) the amount the landlord was permitted to impose under section 23.2 (4);
  - (ii) the amount calculated under subsection (4) (b) of this section;
- (b) the sum of the following multiplied by 3%:
  - (i) the rent payable in phase 3;
  - (ii) the amount of the annual rent increase permitted to be imposed under section 43(1)(a) of the *Act* at the time the additional rent increase for eligible capital expenditures for phase 3 is imposed.

Section 23.3(6) of the *Regulation* stipulates that if the amount of the additional rent increase approved under section 23.1 is not imposed in accordance with subsection (2) or (3) of this section, as applicable, the landlord must not carry forward the unused portion or add it to any future rent increase.

Section 23.3(1) of the *Regulation* defines:

**"phase 1"** as the first 12 months in which the additional rent increase may be imposed to comply with the timing and notice requirements set out in section 42 [*timing and notice of rent increases*] of the *Act*;

**"phase 2"** as the next 12 months after phase 1 in which the additional rent increase may be imposed to comply with the timing and notice requirements set out in section 42 of the *Act*;

**"phase 3"** as the next 12 months after phase 2 in which the additional rent increase may be imposed to comply with the timing and notice requirements set out in section 42 of the *Act*.

Section 23.3(2) of the *Regulation* stipulates that subject to subsection (3), an additional rent increase for eligible capital expenditures may only be imposed in the first 12

months in which it may be imposed to comply with the timing and notice requirements set out in section 42 of the *Act*.

Section 42 of the *Act* reads:

*42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

*(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;*

*(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.*

*(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*

*(3) A notice of a rent increase must be in the approved form.*

*(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.*

## Conclusion

Pursuant to section 23.2(2), I authorize the Landlord to collect a total additional rent increase of \$24.32. This rent increase applies only to the Tenants named in this Application for Dispute Resolution.

The Landlord may only impose this additional rent increase in accordance with the legislation, as summarized in my analysis. In the event my summary is unclear, the parties should refer to the Regulation and/or Residential Tenancy Branch Policy Guideline # 37.

Any of the Tenants may apply for dispute resolution if they believe the Landlord has imposed the additional rent increase incorrectly and the Landlord does not change their calculation after the Tenant raises it with them.

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: January 06, 2022

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Residential Tenancy Branch