



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes     ARI-C

This hearing dealt with the landlord's application for an additional rent increase for capital expenditure pursuant to section 43(3) of the *Residential Tenancy Act* (the "**Act**") and section 23.1 of the *Residential Tenancy Regulation* (the "**Regulation**").

This hearing was reconvened from a hearing on November 15, 2021 which in turn was reconvened from a preliminary hearing held on September 23, 2021. Following each of these hearings, I issued an interim decision documenting the reason for the adjournment (the "**September Decision**" and the "**November Decision**", respectively).

The landlord was represented at the hearing by its counsel ("**VR**"). None of tenants attended the hearing.

### Preliminary Issue – Identity of Remaining Respondents

This application originally named 30 occupants of the residential property as respondents. At the September hearing, the landlord withdrew its claim against a number of them, as they had reached settlements. In the November Decision, I documented the withdrawal of the landlord's application against several of named tenants.

At the start of the November hearing, VR confirmed that the landlord has withdrawn its application against all tenants except the following:

Unit Number	Tenant
106	MS
202	SF
203	RB
207	MM
305	LP

At the start of this hearing VR stated that tenant SF had moved out of the residential property, so the landlord was withdrawing its claim against him. Additionally, VR advised me that the landlord had reached settlements with tenants MS and LP. The landlord withdrew their application against these individuals as well.

As such, the landlord only maintains its claim against tenants RB and MM. I have left these two tenants as parties to this application. I have removed all others from the style of cause.

### **Preliminary Issue – Address of MM**

At the November Decision, I wrote:

[...] the tenancy agreement submitted for MM indicates that she rents unit 106 and not unit 207 as the landlord's application suggests. I also noted that the tenancy agreement was entered into in 1985, so it is possible that she moved units at some point after it was entered into. However, none of the landlord's representatives could confirm this, and JP stated that MM had been in unit 207 for at least 27 years. He could not explain why the tenancy agreement would indicate otherwise.

At the start of this hearing, VR advised me that MM had relocated from unit 106 to unit 207 at some point in the past, but the landlord's records do not indicate when. He stated that it occurred prior to the landlord taking control of the residential property. I accept this statement as true.

### **Preliminary Issue – Service of Documents**

The landlord provided signed and witnessed proof of service forms for tenants RB and MM. They indicated that each were served with a copy of the September Decision, the November Decision, and the notice of dispute resolution proceeding package on November 18, 2021 by posting it to the door of each's rental unit.

I find that RB and MM have been served in accordance with the Act.

### **Issues 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 landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The residential property is a four-floor apartment building. The second, third, and fourth floor each have eight dwelling units. The first floor has five dwelling units. The space which otherwise would have been occupied by dwelling units on the first floor was instead occupied by the landlord's site office, a utility room, and a laundry room.

VR stated that the landlord has not applied for an additional rent increase against any of the tenants prior to this application.

The landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's electrical system. The landlord had the building's electrical system inspected and replaced the fuse panels in 23 units (collectively, the "**Work**"). As a condition of having its insurance renewed, the landlord's insurer required that the landlord have the electrical system inspected and the repairs recommended made. The inspection found that the panels needed to be replaced. VR stated that the building was built in 1973, and that the electrical panels were original to the building.

The landlord paid \$16,261.34 to have the Work completed. It submitted an invoice confirming this amount, which was marked "paid" on January 29, 2021.

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

## **Analysis**

### **1. Statutory Framework**

Sections 21 and 23.1 of the Regulations sets 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 made an application for an additional rent increase against these tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- 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
  - 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 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.

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

Based on VR's submissions, I find that the landlord has not imposed a prior additional rent increase on either tenant.

## 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.

Based on the evidence before me, I find that there are 29 specified dwelling units (five on the first floor and eight on each of the second, third, and fourth floors).

## 4. Amount of Capital Expenditure

Based on invoice submitted into evidence, I find that landlord incurred a cost of \$16,261.34 by having the Work completed.

## 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

The Work amounted to upgrades to components of the building's electrical system. The Residential Tenancy Branch Policy Guideline 37 explicitly identifies a residential property's electrical system as a "major system". The landlord replaced electrical panels throughout the residential property. These are to significant components of the electrical system, which cause them to be "major components", as defined by the Regulation.

As such, I find that the Work was undertaken to replace "major components" of a "major system" of the residential property.]

b. Reason for Capital Expenditure

Policy Guideline 40 states that the useful life of electrical panels and wiring is 15 years. The landlord's electrical panels, prior to the Work being completed, were almost 50 years old (having been installed when the building was built in 1973). As such, I find that they were past their useful life expectancy.

I find that this is sufficient to satisfy the requirement that the Work was undertaken because a system or component was close to the end of its useful life. I do not find it is in keeping with the intention of the Regulation to allow a landlord to recover the cost of something that is not yet obsolete, while preventing them from recovering the cost of something that has become obsolete. This would disincentive landlords from replacing or upgrading outdated components and would incentivize landlords to replace items which are not past their point of obsolescence.

As such, I find that the reason for undertaking the Work falls within the scope of eligible capital expenditures.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 40 states:

A capital expenditure is considered “incurred” when payment for it is made.

Based on the invoice submitted into evidence, I find that the landlord paid the cost of undertaking the work on January 29, 2021. This date is within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

As stated above, the useful life for an electrical panel is 15 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 Policy Guideline 40. For this reason, I find that the life expectancy of the components 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

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.

As the tenants did not attend the hearing, I find that they have failed to discharge their evidentiary burden to prove either of these two items.

7. Outcome

The landlord has been successful. It has proved, 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 29 specified dwelling units and that the amount of the eligible capital expenditure is \$16,261.34.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$4.67 ( $\$16,261.34 \div 29 \text{ units} \div 120$ ). 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 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**

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$4.67. 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: March 17, 2022

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Residential Tenancy Branch