



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not submitted any evidence of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

### 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.

This periodic tenancy began in August 2019. The rental unit is a basement suite in a detached house with the landlord occupying the other portion of the property. The current monthly rent is \$1,218.00 payable on the first of each month, increased in accordance with the *Act* as of January 1, 2022 from \$1,200.00.

There have been no prior applications for rent increase for capital expenditure against the tenant.

The landlord submits that they are seeking to impose an additional rent increase for a capital expenditure incurred to pay for work done to replace the residential property's air conditioning system. The landlord gave undisputed evidence that the previous air conditioning system was 19 years old and they were informed by a third-party company that the system would need to be replaced "to avoid major repair costs". The landlord submitted a copy of the recommendation dated August 17, 2021.

The landlord had a new air conditioning system installed for a total cost of \$4,935.00 inclusive of taxes. The landlord says the system is under warranty for 10 years until 2031 and has an expected useful life of 20 years.

The landlord submitted a copy of the invoice for the purchase and installation of the air conditioning unit. The landlord testified that the system is advertised as being high-efficiency allowing one to save on utility bills and provide energy-efficient comfort.

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

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. The landlord must establish, 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
  - because it 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.

If a landlord discharges their evidentiary burden, the landlord may impose an additional rent increase pursuant to sections 23.2 and 23.3 of the Regulation.

In the present case the parties agree 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. The parties also agree that the landlord has imposed a rent increase pursuant to section 42 of the *Act* raising the rent from \$1,200.00 to \$1,218.00 as of January 1, 2022.

The parties gave undisputed evidence that the rental building is a detached home with 2 dwelling units as defined in section 23.1(1) of the *Act*.

The amount of the capital expenditure is \$4,935.00.

The present work was undertaken to replace the air conditioning system of the rental property. The landlord submits that the previous air conditioning system was close to the end of its useful life and the new system provides a reduction in energy use and emissions.

I find that the work amounted to a replacement of the air conditioning system of the residential property. The Regulations provides that major systems includes mechanical systems integral to the residential property or to providing services to the tenants and occupants of the residential property. As such, I find that the work was undertaken to replace the major components of a major system of the residential property.

I accept the landlord's undisputed evidence that the payment for the work was incurred in August 2021, within 18 months of the landlord making this application.

The expected useful life for an air conditioning system is 20 years under Residential Tenancy Policy Guideline 40. There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life of building elements set out in the Guidelines. For this reason, I find that the life expectancy of the system will exceed 5 years and that the capital expenditure for replacement cannot reasonably be expected to recur within that 5 year time.

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.

I find the tenant's submissions opposing the additional rent increase to have no merit. Their submission consists of irrelevant matters, subjective opinions that have no basis in the legislation and do not form a basis to dispute the present application.

I find that the landlord has met their evidentiary onus, on a balance of probabilities, the elements set out above to impose an additional rent increase for capital expenditure. I am satisfied that the work was an eligible capital expenditure for the purposes of replacing a major system occurring within 18 months prior to the application and is not expected to be incurred within 5 years.

Section 23.2 of the Regulate sets out the formula to be applied when calculating the amount of the addition rent increase as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120.

In this case, the rental property consists of 2 specified dwelling units and the amount of the eligible capital expenditure is \$4,935.00. Therefore, the landlord has established the basis for an additional rent increase for capital expenditure of \$20.56 ( $\$4,935.00 \div 2 \text{ units} \div 120$ ).

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 \$20.56. 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 7, 2022

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Residential Tenancy Branch