



# 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, under section 23.1 of the Regulation.

I left the teleconference connection open until 11:24 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. Landlord DB (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord represented landlord RG. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenant was served with the notice of hearing and evidence (the materials) in person on February 07, 2022 at 12:05 P.M. The landlord submitted a proof of service signed by the tenant confirming receipt of the materials. I find the landlord served the tenant the materials in accordance with section 89(1)(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started in 2003. Monthly rent is \$950.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$275.00 was collected and the landlord holds it in trust.

The landlord stated the rental unit is a single dwelling house occupied by the tenant.

The landlord submitted this application on January 14, 2022 and did not submit an application for an additional rent increase prior to this application. The last rent increase was in January 2020.

The landlord testified the original roof was 23 years old. The landlord said that a roof specialist inspected the original roof in January 2021 and concluded that it had to be replaced because it was beyond its useful life.

The landlord affirmed that the rental unit's roof was replaced from January 31 to February 04, 2021. The landlord paid the amount of \$7,300.00 for replacing the roof on February 04, 2021. The invoice dated February 04, 2021 states: "Sold to: [landlord] Address [rental unit's address]. Re-roofed house. Materials warranted for 30 years. Labour warranted for 10 years." The landlord did not need a permit to replace the roof.

The landlord stated he did all the required maintenance in the original roof, but it had wear and tear. The new roof is expected to last 30 years. The landlord testified he is not entitled to be paid from any specific source for the roof replacement.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 23.1 of the Regulation sets out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures:

(1) Subject to subsection (2), a landlord may apply under section 43 (3) [additional rent increase] of the Act 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.

(2) If the landlord made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.

(3) If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.

(4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:

(a) the capital expenditures were incurred for one of the following:

- (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;
- (b)the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
- (c)the capital expenditures are not expected to be incurred again for at least 5 years.

Per section 23.1(5) of the Regulation, the tenant may defeat an application for an additional rent increase for capital expenditure if the tenant can prove, on a balance of probabilities, that the capital expenditure was incurred:

- (5)The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred
  - (a)for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
  - (b)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 in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

I will address each of the legal requirements.

#### Prior application for additional rent increase

Based on the landlord's undisputed convincing testimony, I find that the landlord has not imposed an additional rent increase in the 18 months preceding the date on which the landlord submitted the application.

Number of specified dwelling units

Per section 21.1(1):

“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 landlord's undisputed convincing testimony, I find the residential property has one specified dwelling unit.

Amount of capital expenditure

Based on the landlord's undisputed convincing testimony and the invoice, I find that the cost the landlord incurred to replace the roof was \$7,300.00.

Type and reason for the capital expenditure

Residential Tenancy Branch (RTB) Policy Guideline 37 identifies a residential property's roof as a “major system”. Policy Guideline 40 states the useful life of a roof is 20 years.

Based on the landlord's undisputed convincing testimony and the invoice, I find that the work amounted to replacing the entire roof of the rental unit and that the original roof was past its useful life, as it was 23 years old when it was replaced.

Thus, I find that the work was undertaken to replace a “major system” of the rental unit (the roof) and that the original roof was past its useful life.

Timing of capital expenditure

RTB Policy Guideline 37 states: “capital expenditure is considered ‘incurred’ when payment for it is made.”

Based on the landlord's undisputed convincing testimony and the invoice, I find that the landlord paid for the expenditure on February 04, 2021. The landlord submitted this application on January 14, 2022.

Thus, I find the landlord incurred the capital expenditure in the 18-month period preceding the date on which the landlord submitted this application.

#### Life expectancy of the capital expenditure

Based on the landlord's undisputed convincing testimony and the invoice, I find that the life expectancy of the new roof is 30 years.

Thus, I find that the capital expenditure incurred is an eligible capital expenditure, as defined by Regulation 23.1(4).

#### Outcome

The landlord has been successful in this application, as the landlord proved, on a balance of probabilities, all 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 specified dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there is one specified dwelling unit and that the amount of the eligible capital expenditure is \$7,300.00.

So, the landlord has established that the basis for an additional rent increase for capital expenditure of \$60.83 ( $\$7,300.00 / 1 \text{ unit} / 120$ ). This amount represents an increase of more than 3% per year, as monthly rent is \$950.00. As such, the additional rent increase must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 40, section 23.2 and 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 may be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$60.83. The landlord must impose this increase in accordance with the Act and the Regulation.

The landlord must serve the tenant 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: April 29, 2022

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Residential Tenancy Branch