



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**     ARI-C

### **Introduction**

This hearing dealt with the landlord's applications 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.

This matter was reconvened from a preliminary hearing on March 1, 2022. On March 4, 2022, I issued an interim decision setting out a number of procedural orders. This decision should be read in conjunction with the interim decision.

The landlord was represented at the hearing by its property manager ("**DM**"), area manager ("**LZ**"), agent ("**AK**"), and vice-president of construction ("**KM**"). Five tenants were present at the hearing:

- from building with the street address of 985 ("**985**")
  - o tenant PG, unit 201
- from building with the street address of 995 ("**995**")
  - o tenant MN, unit 310
  - o tenant WB, unit 106
  - o tenant AP, unit 110
  - o tenant JJ, unit 202
  - o tenant MG, unit 209, speaking on behalf of:
    - himself
    - tenant OM, unit 209
    - tenant JJ, unit 202
    - tenant WB, unit 106

### **Preliminary Issue – Spelling of tenant's surname**

At the outset of the hearing the landlord advised me that tenant GM's surname was incorrectly spelled, with the second to last letter being a "t" instead of a "g". I order the application amended to correct this misspelling. I have changed the style of cause on this decision to reflect this amendment.

### **Preliminary Issue – Service**

In the interim decision, I ordered that the landlord serve the tenants with any documentary evidence not yet served as well as certain documents relating to the repair or maintenance of the buildings' roofs and garage, no later than 30 days prior to the reconvened hearing. I also ordered that the tenants serve the landlord with their documentary evidence and written statements no later than 14 days prior to the reconvened hearing.

At the outset of the hearing, AK stated that the landlord had delivered the outstanding documentary evidence it intended to rely on 14 days prior to the reconvene hearing (as opposed to 30 days). He testified that this was an inadvertent error on his part.

I also noted that a number of tenants submitted written statements after their 14-day deadline.

I increased the deadline to 30 days so as to provide tenants with sufficient time to parse the documentary evidence the landlords provided. In light of the fact that many of them were able to provide copies of their written submissions prior to the start of the hearing, it would seem that they had sufficient time. In light of the late service of the landlord's documentary evidence, I decline to exclude any of the tenants' statements served later than 14 days prior to the hearing.

As a number of the documents the landlord served late were ones that I ordered they provide to the tenants relating to the maintenance of the roof and garage, I do not find it appropriate to exclude these documents from the evidentiary record, as their exclusion may prejudice the tenants.

Additionally, I do not find it appropriate to adjourn this hearing to a later date, due to the number of respondents, the fact that this hearing was scheduled for a full day, and all tenants in attendance agreed to proceed with the hearing, notwithstanding the landlord's late service of evidence.

I note that only one tenant (tenant MS, did not attend the hearing and provided written submissions) requested that the tenants be given more time to review the documentary evidence. Despite the late service, MS was able to provide comprehensive written submissions which have assisted me a great deal in this decision.

As such, I decline to adjourn the hearing to a later date.

Seven tenants provided the Residential Tenancy Branch (the "**RTB**") with written submissions in advance of the hearing, of these, AK testified that the landlord had only received two of them (MS's and MG's). AK consented to those statements the landlord did not receive being read aloud during the hearing to allow these statements to form

part of the evidentiary record. I read these statements into the record at the outset of the hearing, so that landlord could modify its submissions to address them, if necessary.

### **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 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.

The residential property in question has three apartment buildings located on it. Two of these buildings are the subject of these applications (985 and 995). The landlord has not sought to impose any rent increase on the occupants of the third building, which has a street address of 1000 ("**1000**"). 985 has 24 dwelling units. 995 has 35 dwelling units. 1000 has 66 dwelling units.

KM testified that the landlord has neither applied for, nor obtained, an additional rent increase for capital expenditure against any of the tenants prior to this application.

The landlord testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for the following items:

- 1) Roof replacement of 995;
- 2) Repairs of garage located underneath 985 and 995;
- 3) Fire alarm panel upgrade of 985;
- 4) Replacement of fire suppression sprinkler system compressor which services 985, 995, and 1000; and
- 5) Installation of new security cameras for 985, 995, and 1000.

(collectively, the "**Work**")

#### **1. Roof Replacement**

KM testified that the roof area of 995 is approximately 10,000 square feet. He testified that the old roof was roughly 30 years old, that the landlord purchased the residential property in 2017 and conducted an assessment of the roof prior to purchasing. The landlord determined that the roof of 985 had been replaced recently, but that the roof of 995 had not been. It estimated the age of 995's roof as being approximately 30 years old.

The landlord hired contractor to conduct a thorough inspection of 995's roof in early 2018. The result of this inspection was a recommendation that the roof be replaced due to significant pooling water, insufficient drainage, and "extreme negative defects". The landlord then put this job out to tender and received four bids. The landlord selected the

lowest bid. Work on the replacement of 995's roof took place in May and June of 2020. KM testified that following the job being put out to tender, the landlord had to delay the roof's replacement by a year due to budgetary constraints.

He testified that the new roof is an "modified pitching roof" and has a life expectancy of 25 to 30 years period

The cost of the new roof was \$314,107.50. This amount was comprised of the following:

- \$9,660 for project design, tendering, and management services; and
- \$304,447.50 for materials and labour.

The landlord submitted copies of ledger entries supporting this amount.

## 2. Garage Repairs

KM testified that the garage beneath 985 and 995 was built approximately 50 years ago. He testified that only residents of these two buildings could access this garage, as a key fob was required. The residents of 1000 park elsewhere.

KM testified that it engaged a contractor to make a structural evaluation of the garage. He testified that the evaluation showed that the deterioration had gone beyond the point where "patchwork" repairs were sufficient, and that major repairs were required. He testified that the reinforcing steel in the concrete was rusting and expanding which was causing the concrete to fracture. This, in turn, caused a loss of structural integrity in the garage.

The landlord put this job out to tender and, in November 2020, received four bids. The landlord selected the lowest of these bids. The repairs were made between March and August 2021.

KM testified that these repairs are expected to last for several decades.

The cost of the garage repairs was \$384,778.78. This amount was comprised of the following:

- \$43,969.60 for investigation and tendering; and
- \$337,809.18 for materials and labour.

The landlord submitted copies of ledger entries supporting these amounts.

## 3. Fire Alarm Panel

KM testified that the fire alarm panel was installed in 985 in 1991 and services that building only. On the applications, the landlord indicated that it serviced both 985 and 995, and in the written materials, it indicated that the fire alarm panel serviced all three buildings on the residential property. However, KM testified that this was an error, and

that prior to the hearing, the landlord confirmed that the fire alarm panel serviced 985 only. He testified that the panel was outdated and did not work properly. He stated that the new panel should last between 10 and 20 years. He testified that the landlord had a new panel installed at a cost of \$12,351.15. It submitted a ledger entry and invoices confirming this amount.

#### 4. Sprinkler Compressor

KM testified that the sprinkler compression system was original to the residential property, which was built in 1971. He testified that it had become inoperative, which would have caused the sprinkler system not to fully activate in the event of a fire. He testified that the compressor is connected to the sprinkler system, which services all three buildings on the residential property. KM stated that the life expectancy for the new compressor should be more than 25 years.

The landlord spent \$2,745.75 on the new sprinkler compressor. It submitted a ledger entry and an invoice in support of this amount.

#### 5. Security Cameras

KM testified that the landlord upgraded the security system on the residential property by installing a number of new video surveillance cameras in April 2021. He testified this was done in response to increases in theft and vandalism in the underground parking lot. He testified that these cameras would surveil not only the underground parking lot, but also above-ground areas on the residential property where vehicles for all three buildings are parked. He testified that the life expectancy of these cameras is at least 10 years.

The landlord spent \$7,494.63 to have these cameras installed. It submitted a ledger entry and receipts supporting this amount.

#### 6. Summary of the Work

In summary, the landlord stated it incurred the following capital expenditures for the following buildings:

Capital Expenditure	Cost	Buildings Affected		
		985	995	1000
Roof Replacement - labour and materials	\$ 304,447.50	no	yes	no
Roof Replacement - project design, tendering, and management	\$ 9,660.00	no	yes	no
Garage Repairs - labour and materials	\$ 337,809.18	yes	yes	no

Garage Repairs - investigation and tendering	\$ 43,969.60	yes	yes	no
Fire Alarm Panel	\$ 12,351.15	yes	no	no
Sprinkler Compressor	\$ 2,745.75	yes	yes	yes
Surveillance Cameras	\$ 7,494.63	yes	yes	yes

## 7. Tenants' Submissions

Tenant MG made oral submissions at the hearing, which supplemented his written submissions. At the hearing, he stated that he was disappointed that this type of rent increase was permitted by the provincial government, in light of the rising rent prices in British Columbia coupled with the high rate of inflation. He argued that many tenants, himself included, cannot afford to pay these rent increases, whereas the landlord can afford to pay for the cost of the capital expenditures. He stated that he believes some tenants are afraid to speak up against the rent increases due to fear of receiving a retaliatory eviction notice.

In his written submissions, MG argued that the landlord should have done better due diligence when it purchased the residential property and factored in the cost of the needed repairs at that time. He argued that the landlord should have set up a contingency fund to pay for the Work.

MG also stated that the garage was not properly maintained. He stated that the landlord did not provide any maintenance records pertaining to the buildings, as ordered pursuant to the interim decision dated March 4, 2022. KM testified that no such documents exist, as they were not kept by the prior owner of the building (or were not transferred to the current owner), so they could not be produced. The landlord did provide a building condition report for the residential property dated April 17, 2017, a roof inspection report dated March 19, 2018, and a final inspection report (consisting of 10 photographs of the roof) dated August 20, 2020.

MG also argued that the roof replacement and garage repair occurred after end of their useful lives. MG argued that this delay, coupled with the delays between identifying the problems with the roof and garage and when the Work was undertaken, caused these expenses to fall within the 18-month window prior to making the application in which the landlord would be able to impose an additional rent increase to recover their cost. Additionally, he argued that this delay caused unnecessary risk to the tenants, as, on the landlord's own evidence, the damage to the garage was serious.

The written submissions provided by other tenants echoed MG's submissions. They state that this type of rent increase is not fair, as building maintenance should be borne by the landlord and not the tenants. They highlighted the economic challenges that tenants face due to COVID-19, rising rent prices, and inflation. They argued that the landlord should have known these expenses would be required when they purchased

the building, and the tenants should not have to pay for the landlord's failure to identify them or for building maintenance. Some tenants also complained of poor building maintenance generally, and the inconvenience caused them by the roof replacement and the garage repairs.

In his written submissions, tenant MS argued that many of the capital expenditures were incurred earlier than 18 months before the landlord made this application. He wrote:

The landlord made an application for the capital expenditures on or before Jan 26, 2022. The landlord's written submission for the application, under the project description, states "The roof was replaced between May and July 2020". A calculation of the time period between the indicated work completion date of July 1, 2020 and the application date of Jan 26, 2022, shows an elapsed time period of 18 months and 25 days (excluding the end date).

Furthermore, in the landlord's application, under project summary page 1 – L3, the project end date is listed as July 20, 2022. The period between the project end date of July 20, 2022 and the application date, Jan 26, 2022, equates to 18 months and 6 days. As such, I contend that the roof replacement project was completed outside the 18th month eligibility period and therefore all associated costs are ineligible.

In such case that the landlord would argue that the 18th month period would start from the date that costs were actually incurred, then it is my contention the cost were incurred on the date the contractor issued invoices that equate to demand for payment. A detailed review of the invoices, submitted to the landlord, shown on page L-6, issued by Continental Roofing, shows the following dates below:

May 29, 2020	\$141,750.00	[ineligible]	19 months, 28 days
May 29, 2020	\$15,750.00	[ineligible]	19 months, 28 days
June 6, 2020	\$94, 500.00	[ineligible]	19 months, 20 days
June 6, 2020	\$10,500.00	[ineligible]	19 months, 20 days
July 31, 2020	\$37,752.75	[eligible]	17 months, 26 days
July 31, 2020	\$4,194.75	[eligible]	17 months, 26 days
August 8, 2020	\$9,660.00	[eligible]	17 months 18 days

The time periods between the dates that the invoices were issued to the landlord above and the application for a rent increase for capital expenditures (on or before Jan 26, 2022) are greater than 18 months in most cases. As such, any such costs invoiced to the landlord should be excluded from the application made to the Residential Tenancy Board. As such, the cost of \$262,500.00 for the roof replacement at 995 should be excluded from the application for additional rent increases for capital expenditures under file # 310057627.

I must note that, while the initial notice of application for dispute resolution is dated January 26, 2022, the landlord made its application to the RTB on December 16, 2021.

Due to processing times with these sorts of applications and the volume of applications received, there is a regrettably not-insignificant wait time between when a landlord makes an application and when the notice of dispute resolution proceeding form is issued. 18 months prior to December 16, 2021 is June 16, 2020.

Tenant MS also argued that the landlord failed to adequately maintain the garage and the roof. He wrote:

The application made by the landlord, under project description, describes the state of the roof at [995] prior to repairs. The landlord contends the roof to be approximately 30 years old and yet the typical life span is 25 years for the given roof type. In allowing the roof to be kept beyond its recommended lifespan, for an additional period of 5 year, it contributed to additional rot and decay of the underlying wood structure beneath the asphalt roofing. As a result, the costs of the roof replacement were higher than would have been if the roof had been replaced at 25 years. Further, the landlord was aware of the need for a roof replacement in early 2018 as [the roof inspector] indicated a replacement was required at that time.

The landlord did not begin replacement for a period least another 2 years. Under the tender provided by [the contractor who replaced the roof], a quote is listed for the replacement of “damaged wood plank roof decking with 0.5 inch thick layers of plywood” at \$500 per 100 sq ft of roof. The roof is indicated at 9,988 SF. The approximate calculated cost is therefore  $(9,988 / 100) * \$500 = \$49,940.00$  in cost to replace the underlying wood roof structure. This additional expense could have been avoid if the roof was replaced after 25 years rather than 30 years. The additional period of 5 years allowed the asphalt to deteriorate and allowed for water penetration into the wood allowing for rot and decay. The underlying wood repairs and costs would have been significantly less extensive if the roof replacement project had occurred in early 2018 when the landlord was advised to do so.

The application made by the landlord describes the state of the concrete garage, beneath [985 and 995]. The landlord’s own contractor indicated that “serious and significant deterioration occurred in various sections of the concrete garage beneath 985 and 995” (L2, page 2). In the report drafted by WSP Canada (August 6, 2019) it states “that there is on-going water leakage through the garage roof slab, and that recently concrete had begun delaminating from the soffit” (L7, Page 2). Furthermore, “the leakage from above has contributed to the concrete deterioration on the underside of the garage roof slab”. The report also notes that the “do nothing” approach would risk, among other risks, “increased repair and maintenance costs” and “deterioration rates beyond budgets included in your current capital plans” (L7, Page 3). However, the landlord did not begin repairs until at least March 2021 (1 year and 7 months later). Further, WSP Canada recommended a start date of early 2020. In delaying the repairs, the



landlord contributed to unnecessary risks and caused increases in the cost of repair to the concrete garage structure.

MS then suggested that the reason for the landlord's delay in undertaking the Work was to ensure that it would have been incurred after the portions of the Regulation which permitted additional rent increases for capital expenditure be imposed were enacted, so that it could recoup its expenses via such a rent increase.

## **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:
  - o the Work was to repair, replace, or install a major system or a component of a major system (s. 23.1(4));
  - o 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));
  - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
  - o 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 Additional Rent Increase

The parties agree that the landlord has not applied for or imposed an additional rent increase prior to this application.

## 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 undisputed evidence of the landlord, I find that 985 has 24 dwelling units, that 995 has 35 dwelling units, and that 1000 has 66 dwelling units. In total, there are 125 dwelling units located on the residential property.

The roof replacement only affected those dwelling units located in 985. As such, there are 35 "specified dwelling units" for this capital expenditure.

Only tenants of 985 and 995 had access to the garage. Therefore, the garage repair only affected the dwelling units located in those buildings. As such, there are 59 "specified dwelling units" for this capital expenditure.

KM testified that the sprinkler compressor is part of the sprinkler system, which services all three buildings. As such, this capital expenditure affected all 125 units located on the

residential property and all 125 are “specified dwelling units” for the purposes of this capital expenditure.

KM testified that the fire alarm panel only services 985. As such, there are 24 “specified dwelling units” for this capital expenditure.

KM testified that the security cameras surveil both the underground garage and above-ground areas on the residential property where vehicles for all three buildings are parked. As such, all 125 dwelling units are “specified dwelling units” for the purposes of this capital expenditure.

In summary, I find that the following capital expenditure have the following number of specified dwelling units:

<b>Capital Expenditure</b>	<b>Buildings Affected</b>			<b># of Specified Dwelling Units</b>
	<b>985 (24 units)</b>	<b>995 (35 units)</b>	<b>1000 (66 units)</b>	
Roof Replacement	no	yes	no	35
Garage Repairs	yes	yes	no	59
Fire Alarm Panel	yes	no	no	24
Sprinkler Compressor	yes	yes	yes	125
Surveillance Cameras	yes	yes	yes	125

#### 4. Amount of Capital Expenditure

The tenants did not dispute the amounts of the capital expenditures. Rather, they disputed whether these amounts were “eligible”. I will address those arguments shortly.

However, based on the undisputed evidence of the landlord, supported by ledger entries and invoices, I find that the landlord incurred the following capital expenditures:

<b>Capital Expenditure</b>	<b>Cost</b>
Roof Replacement - labour and materials	\$ 304,447.50
Roof Replacement – investigation, project design, tendering, and management	\$ 9,660.00
Garage Repairs - labour and materials	\$ 337,809.18
Garage Repairs - investigation and tendering	\$ 43,969.60
Fire Alarm Panel	\$ 12,351.15
Sprinkler Compressor	\$ 2,745.75
Surveillance Cameras	\$ 7,494.63

## 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

RTB Policy Guideline 37 states:

Major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. 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.

As they are explicitly listed in the policy guideline, I find that the roof and the security cameras are major systems or major components. Additionally, as the garage walls are load bearing elements and the pavement is explicitly listed, I find that the garage is a major system or a major component.

The sprinkler compressor is a major component of the residential property's plumbing system and of a system that is critical to the function of the residential property (the fire suppression system). Similarly, the fire alarm panel is a major component of the fire suppressions system for 985.

b. Reason for Capital Expenditure

In order for a capital expenditure to be “eligible”, it must have been incurred to repair, replace, or install a major system or a major component. I find that all capital expenditures associated with the security cameras, sprinkler compressor, and fire alarm panel meet this requirement. They are associated with the purchase of hardware and materials and with the cost of installation.

However, not all capital expenditures associated with the roof or the garage meet this requirement. The landlord expended a not-insignificant amount of money investigating and assessing the state of the garage and roof, preparing tender documents, and managing the tendering process. Such costs not recoverable pursuant to the Regulation, as they do not directly contribute to the cost of repairs or replacement. They are ancillary costs which must be borne by the landlord alone.

I am satisfied that the cost for materials and labour for the repairs to the garage and replacement of the roof fits within the requirements of the Regulation.

As such, \$9,660 of the amount claimed for roof replacement and \$43,969.60 of the amount claimed for the garage repairs are not “eligible” capital expenditures.

I should note that MG’s submissions that the roof was replaced after its useful life had passed is not without merit. However, on the evidence presented, the roof required was significantly damaged. As such, while the landlord may not be able to rely on the fact that the roof was “close to the end of its useful life” to establish that it was eligible, the landlord would be able to rely on the fact that the roof “had failed, was malfunctioning, or was inoperative” to establish its eligibility. The landlord does not need to satisfy both these requirements; it need satisfy only one.

c. Timing of Capital Expenditure

RTB Policy Guideline 40 states:

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

As such, I do not find that tenant MS’s contention that “the costs were incurred on the date the contractor issued invoices that equate to demand for payment” is correct.

As stated above, 18 months prior to this application being made was June 16, 2020.

Based on the invoices and ledger entries submitted into evidence, I find that the landlord incurred all expenses for the roof replacement, garage repairs (labour and materials), sprinkler compressor, and security camera were incurred before this date.

However, based on the ledger entries provided, I find that the first two payments for the fire alarm panel were made on May 15, 2020 (for \$7,410.69) and June 15, 2020 (for \$2,470.23) respectively. These payments are outside the 18-month window and are therefore not eligible capital expenditures.

d. Life expectancy of the Capital Expenditure

I accept the landlords undisputed evidence that the useful life of all components replaced, or repairs made, will exceed five years. For this reason, I find that the capital expenditures to replace or repair them cannot reasonably be expected to reoccur within five years.

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.

Many of the tenants made submissions regarding their financial circumstances, the pressures they face in this challenging economic climate, and rising costs of rent and other necessities. I have no doubt that the many of the tenants are facing economic challenges, and that any increase to their monthly rent will represent a further financial burden. However, the Regulation does not contain a "hardship" provision which would prevent an additional rent increase from being imposed due to the financial circumstances of a tenant. The Regulation only allows tenants to dispute such this type of increase on the two grounds set out above. As such, I have no authority to set aside or deny an application for an additional rent increase based on any tenant's financial circumstances.

Similarly, the Regulation explicitly allows for a landlord to make this type of application. It does not make such an application conditional on the landlord's inability to pay for eligible capital expenditures and does not set out any basis on which such an application could be denied based on the positive financial performance of the landlord, or the income generated by the residential property. Additionally, there is no requirement that, when purchasing a residential property, the landlord factor in the cost of needed repairs or upgrades in future years or create a contingency fund.

The Regulation permits any landlord to make this type of application if they can establish, they have incurred eligible capital expenditures within the last 18 months. There are no additional caveats to this. Accordingly, I decline to dismiss the landlord's

application on the basis of its positive financial circumstance or what it knew or ought to have known at the time of purchase the residential property.

There is no requirement in the Regulation that a landlord undertake repairs or replacements of major systems or major components immediately upon the discovery of their necessity. There is nothing in the Regulation which would cause an application for additional rent increase to fail because a landlord delayed in undertaking the repairs or replacement so that it would incur the costs within 18 months of being able to make an application for additional rent increase. Accordingly, it is not necessary for me to determine the reason for the landlord's delay in replacing the roof and repairing the garage. Even if the reason was as some of the tenants' claim (that it delayed so it could recoup the capital expenditure from the tenants), this would not cause the landlord's application to fail.

Tenant MS made extensive submissions on whether the roof replacement and the garage repairs were necessitated, in whole or in part, by the lack of proper maintenance. I should note that I do not draw any adverse inference from the fact that the landlord did not produce maintenance records for the residential property from before it acquired it. I do not think it unreasonable that such documents would be lost in the transition.

With regard to the roof replacement, MS argued that the underlying wood repairs and costs would have been significantly less extensive if the roof replacement project had occurred in early 2018 when the landlord was advised to do so. MS argued that the failure to replace the roof at the end of its useful life (25 years) rather than when it did (over 30 years) caused the cost of the replacement to increase by \$49,940, due to the need to replace wood plank decking it would not have otherwise needed to replace.

I do not see any basis in the evidence provided to support the claim that the wood plank decking was damaged in the final five years of the roof's life. However, I note that the reports provided by the landlord on the roof's condition made in January 2018 set the estimated cost of replacing the roof at \$282,900 and classified the urgency for this work as "high". Despite this classification, work on the roof did not start until May 2021.

I think it likely that this delay starting work on the roof caused the roof to deteriorate further. I cannot say for certain if this deterioration would have caused the cost of the roof's replacement to increase (that is, caused damages to additional elements which would otherwise not have needed to be replaced). However, I note that the amount of the eligible capital expenditure claimed by the landlord for the materials and labour for the roof replacement (\$304,447.50) is \$21,547.50 greater than the estimated cost of repairs. I find it more likely than not that the delay in the landlord making the needed repairs caused the cost of the repairs to rise. In the circumstances, I find it is reasonable to reduce the amount of eligible capital expenditure for the roof replacement by this amount to reflect that rise in cost.

MS made similar arguments with regards to the garage repairs. He cited a report commissioned by the landlord dated August 6, 2019, in which the contractor wrote that a “do nothing approach” posed the risk of “ongoing and accelerated deterioration”, “increase repair and maintenance costs” and “deterioration rates beyond budgets included in [the landlord’s] current capital plans”. I cannot say what the landlord’s “current capital plans” were in 2019.

This report estimated the cost to repair the garage at between \$450,000 and \$500,000. The amount of eligible capital expenditure incurred by the landlord in connection with the garage repairs was \$337,809.18.

As such, I cannot say that the landlord’s delay in repairing the garage caused the ultimate cost of the repairs to increase. The report stated a *risk* of doing nothing would be increased repair costs. It does not say that this was a certainty. Additionally, it did not set out a time frame in which this risk might manifest.

I do not find that the tenants have established on a balance of probabilities that the cost of repairing the garage increased due to the landlord’s delay in undertaking the repairs. As such, I decline to reduce the eligible portion of the garage repair costs by any amount.

## 7. Outcome

The landlord has been mostly successful. It 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 for the following portions of the Work, against the following buildings, in the following amounts:

		Building Affected		
Capital Expenditure	Cost	985	995	1000
Roof Replacement	\$ 282,900.00	no	yes	no
Garage Repairs	\$ 337,809.18	yes	yes	no
Fire Alarm Panel	\$ 2,470.23	yes	no	no
Sprinkler Compressor	\$ 2,745.75	yes	yes	yes
Surveillance Cameras	\$ 7,494.63	yes	yes	yes

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.

Each eligible capital expenditure requires its own calculation, as the number of specified dwelling units varies between each. Additionally, I should note that, despite the landlord not applying for an additional rent increase against tenants in building 1000, the specified dwelling units located in that building are counted for the purposes of



calculating the amount of the permitted additional rent increase for each eligible capital expenditure.

Based on the evidence before me, and for the reasons stated above, I find that the landlord may impose additional rent increases on the tenants of 985 in the amount of \$49.25 and on the tenants of 995 in the amount of \$115.75, calculated as follows:

				Rent increase Permitted (cost/# of specified dwelling units/120)		
Capital Expenditure	Cost	Buildings Affected	# of Specified Dwelling Units	985	995	1000
Roof Replacement	\$ 282,900.00	995	35	n/a	\$ 67.36	n/a
Garage Repairs	\$ 337,809.18	985 and 995	59	\$ 47.71	\$ 47.71	n/a
Fire Alarm Panel	\$ 2,470.23	985	24	\$ 0.86	n/a	n/a
Sprinkler Compressor	\$ 2,745.75	985, 995, 1000	125	\$ 0.18	\$ 0.18	n/a
Surveillance Cameras	\$ 7,494.63	985, 995, 1000	125	\$ 0.50	\$ 0.50	n/a
<b>Total</b>				<b>\$ 49.25</b>	<b>\$ 115.75</b>	<b>n/a</b>

If the amount of additional rent increase authorized exceeds 3% of a tenant's monthly rent, the landlord is 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 mostly successful. I grant the applications for an additional rent increase for capital expenditure in the amounts indicated above. 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: June 22, 2022

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Residential Tenancy Branch