# 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 Application pursuant to the *Residential Tenancy Act* (the "*Act*") and the *Residential Tenancy Regulation* (the "*Regulation*") for an additional rent increase for capital expenditures pursuant to Section 23.1 of the *Regulation*.

The Landlord attended the hearing. Tenants J.J. and A.B. attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Landlord testified, under solemn affirmation, that she served the Notice of Dispute Resolution Proceeding and evidence packages on all six Tenants by placing these packages in the front hall of the property on March 17, 2022. While she could not adequately explain why she served the packages in this manner, she referenced the emails submitted into evidence from the Tenants confirming that they received these packages. J.J. and A.B. confirmed that they received these packages, and they did not have any position with respect to how these packages were served.

It is unclear why the Landlord elected to serve these packages in the manner that she did. Despite these packages being served by the Landlord in a method not permitted by the *Act*, as there were no objections, and as there was documentary evidence that

these packages were received by the Tenants, it is my finding based on this evidence that the Tenants were sufficiently served with the appropriate documentation necessary for them to participate in the Dispute Resolution process.

In addition, the Landlord named a Tenant on the Application with an identical first name and surname. When she was asked if this name was correct, she advised that she did not even know the last name of this individual, so she simply listed this person's first name as their last name as well. She also indicated that this person had vacated the rental unit. Given that the Landlord did not even know the name of this individual, and given that this person has allegedly vacated a rental unit, this Tenant has been removed as a Respondent from the Style of Cause on the first page of this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

## 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/or arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this Decision. Only relevant oral and documentary evidence needed to resolve the issue of this Application, and to explain the Decision, is reproduced below.

The Landlord gave the following oral and documentary evidence:

1. This is the Landlord's first Application for a rent increase under subsection 23.1(1) of the *Regulation*;

2. The capital expenditures were in the amount of $104,516.74;
3. The 11 capital expenditures were incurred for the replacement of what the Landlord alleged were major components of the residential property;
4. The capital expenditures were made between October 19, 2020 to February 25, 2022, and thus incurred within the 18-month period preceding the date on which the Landlord made this Application (the Application was made on March 6, 2022); and,
5. The capital expenditures are not expected to be incurred again for at least 5 years.

Submitted into documentary evidence were proof of the capital expenditures, proof of installations and replacement, and proof that the work was completed.

The Landlord advised that the residential property is a 112-year old, single-detached house that she has owned since 1984. It has three floors and contains three separate rental units. All three units are occupied, and all the Tenants, with the exception of what is noted above, are named as Respondents to this Application. A copy of the tenancy agreements for each unit was not submitted into evidence.

The Landlord testified that she has not imposed an additional rent increase pursuant to Sections 23 or 23.1 of the *Regulation* in the last 18 months, and she was seeking to impose an additional rent increase for what she deemed to be capital expenditures incurred to pay for 11 items (collectively, the “Work”).

1. **Old chimney removal with scaffolding.**
2. **New roof shingles, extensive repair to rafter tails, repairs to roof deck, new fascia boards.**
3. **Painting of new fascia boards.**
4. **Removal and replacement of all gutters and down spouts.**
5. **Deposit to roofing company to secure contract for new shingles on roof.**

The Landlord testified that the house needed a new roof, but the companies would not complete the repair without fixing the chimney because the bricks were loose and could have fallen at any time. She submitted that the roof was the major component of the residential property. She advised that the roof was very old, and that water was leaking through it. She stated that the gutter completely failed, that water was pooling on the property, and that water was pouring into the basement suite.

She referenced the pictures submitted as documentary evidence of the pooling water, the condition of the ceiling, and the rotten wood. As well, she cited the email from the roofers regarding problems with the roof and chimney. She claimed that all of these items are related to the roof repair and are supposed to last 15 to 20 years.

The Landlord submitted five invoices into evidence relating to these items:

A) An invoice dated November 22, 2021, for the removal of the chimney at a cost of $5,250.00.
B) An invoice dated January 25, 2022, for the roof repairs and replacement at a cost of $33,558.00.
C) An invoice dated October 19, 2021, for the painting of new fascia at a cost of $1,014.00.
D) An invoice dated January 7, 2022, for the removal and replacement of gutters at a cost of $3,012.28.
E) An invoice dated October 4, 2021, for the deposit paid to the roofing company at a cost of $2,000.00.

The Tenants did not make any submissions with respect to these items.

6. **Removal of tree roots from sewer line.**

The Landlord advised that this affected the sewer line on the city side, that caused water to back up into the basement bathroom, filling up the bathtub and/or toilet. She submitted that this was a major component as it was part of the drainage system, and if not corrected, water would go back into the house. She stated that this repair “should last a long time” and will “hopefully” have a 10-year life expectancy.

The Landlord submitted one invoice into evidence relating to this item:

A) An invoice dated February 25, 2022, for the removal of tree roots and other related issues at a cost of $1,9950.00.

The Tenants did not make any submissions with respect to this item.

7. **New high efficiency tankless water heater. New exhaust and fresh air from basement to roof, through chimney.**

8. **Emergency replacement of hot water tank.**

The Landlord testified that she received a message about the hot water tank failing, and as it was 10-years old, she replaced this. Moreover, as the chimney required replacing, she believed it made sense to install a tankless hot water system, which would also reduce greenhouse gas emissions. This system has a life expectancy of 15 years.

The Landlord submitted two invoices into evidence relating to these items:

A) An invoice dated February 8, 2021, for the installation of the tankless water heater at a cost of $5,139.75.
B) An invoice dated October 1, 2021, for the installation of a hot water tank at a cost of $2,476.38.

The Tenants did not make any submissions with respect to these items.

9. **New drain tile around entire house, removal of old drain tile, repairs to foundation, new sump and sump pump.**

The Landlord testified that when it rained, water would pool on the property. The water did not drain and there were signs of drain tiles cracking. She stated that the clay tiles were 100 years old, and that they failed due to their age. She advised that she spoke with drainage professionals who recommended to have a new drainage system installed. She referenced pictures submitted as documentary evidence to demonstrate the pooling of water and the work that was completed.

The Landlord submitted three invoices into evidence relating to these items:

A) An invoice dated October 18, 2021, an invoice dated November 1, 2021, and an invoice dated March 5, 2022, for the repair work at a total cost of $16,800.00.

The Tenants did not make any submissions with respect to these items.

10. **Replacement of gas range and hood fan.**

The Landlord testified that she replaced the gas range and hood fan in the basement unit, and that this claim only pertains to that unit specifically. She stated that the old appliance failed, and it was her belief that this was necessary for the health and safety

of the unit. Thus, this was a capital expenditure. She referenced the photos submitted as documentary evidence, as well as the email from Tenant A.B. regarding the appliance not working anymore.

The Landlord submitted two invoices into evidence relating to these items:

A) An invoice dated February 5, 2021, and an invoice dated January 27, 2021, for the replacement of these items at a total cost of $1,744.23.

The Tenants did not make any submissions with respect to these items.

**11. Financing cost for money borrowed to complete necessary repairs.**

Finally, the Landlord testified that she could not afford the true cost of these repairs out of her pocket, so this claim reflects the cost of the unsecured loan she took out to complete the repairs.

The Landlord submitted a screenshot into evidence relating to this item:

A) A screenshot of a Line of Credit and Loan Payment at a total cost of $31,527.05.

The Tenants did not make any submissions with respect to this item.

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:
    - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
    - 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));
    - the capital expenditure was incurred less than 18 months prior to the making of the Application (s. 23.1(4)(b)); and
    - 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 expenditures 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 Tenants fail 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

I accept the Landlord's testimony that she has not imposed a prior rent increase for capital expenditures in the last 18 months.

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 Landlord's solemnly affirmed and undisputed testimony, I find that there are three specified dwelling units in the residential property.

4. 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

Residential Tenancy Branch Policy Guideline # 37 states the following:

> 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.

With respect to items 1 through 5, I accept that these were all part of the overall roof repair and replacement, which would qualify as a “major system” as defined by the *Regulation*.

I also accept that items 6 and 9 were for the repair of “major systems” as defined by the *Regulation*.

With respect to items 7 and 8, I accept that the installation of a tankless hot water heater would qualify as a replacement of a “major system” as defined by the *Regulation*. However, I reject that the replacement of a hot water tank would qualify under the *Regulation* as that item, in my view, is an appliance and not a major component.

Regarding item 10, as this also pertains to replacement of an appliance in a rental unit, I do not accept that this would meet the definition of a “major system” as defined by the *Regulation*. This claim is rejected.

Finally, with respect to item 11, this clearly does not meet the definition of a “major system” as defined by the *Regulation*, and is summarily rejected.

Accordingly, I find that some of the Work was undertaken to repair, replace, and/or install a “major system” and to replace a “major component” of the residential property.

b. Reason for Capital Expenditure

For items 1 through 5, I accept the Landlord’s testimony that the roof had deteriorated and was in need of replacement to protect the residential property.

For items 6 and 9, I accept the Landlord’s testimony that the removal of tree roots and the replacement of the drainage system were required to protect the residential property.

Finally, for item 7, I accept the Landlord’s testimony that the installation of a tankless hot water heater replaced a system that was beyond its useful life.

Such reasons are consistent with the *Regulation’s* requirements for an eligible capital expenditure.

c. Timing of Capital Expenditure

The Landlord made this Application on March 6, 2022. 18 months prior to that date was September 6, 2020. As such, any capital expenditures incurred prior to this date are ineligible to be recovered by an additional rent increase.

Residential Tenancy Branch Policy Guideline # 37 states:

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

In this Application, based on the evidence before me, it is my finding that the accepted capital expenditures were incurred in the 18-month period preceding the date on which the Landlord made this Application

d. Life expectancy of the Capital Expenditure

I allow the Landlord's testimony that the life expectancy of the accepted capital expenditures is more than five years. Additionally, 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

(if noted). For this reason, I find that the life expectancy of the components replaced will exceed five years and that the accepted capital expenditures to replace them cannot reasonably be expected to reoccur within five years. For the above-stated reasons, I find that the accepted capital expenditures incurred to undertake the Work are eligible capital expenditures, as defined by the *Regulation*.

5. Amount of Capital Expenditure?

Given the above, I grant the Landlord's Application for the rent increase based on capital expenditures calculated as illustrated below, and it is so Ordered, pursuant to Section 43(1)(b) of the Act.

| | |
|---|---|
| Old chimney removal | $5,250.00 |
| New roof replacement | $33,558.00 |
| Painting of fascia | $1,014.00 |
| Removal and replacement of gutters and down spouts | $3,012.38 |
| Deposit to roofing company | $2,000.00 |
| Removal of tree roots | $1,995.00 |
| Tankless water heater | $5,139.75 |
| New drain tile around property | $16,800.00 |
| **TOTAL** | **$68,769.13** |

6. Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a Tenant may raise to oppose an additional rent increase for capital expenditures. 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 none of the Tenants made any submissions to refute the Landlord's testimony, I am satisfied that they have failed to discharge their evidentiary burden to prove either of these points.

7. Outcome

Based on a review of the evidence before me, I find that the Landlord has been partially successful and has proven, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for the accepted capital expenditures. Section 23.2 of the *Regulation* sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of specific dwelling units, divided by 120. In this case, I have found that there are three specified dwelling units, and that the amount of the eligible capital expenditure is **$68,769.13**.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of $191.02 ($68,769.13 ÷ 3 units ÷ 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 Residential Tenancy Branch 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 Residential Tenancy Branch website for further guidance regarding how this rent increase made be imposed.

Conclusion

The Landlord has been partially successful, and the Landlord's Application is hereby granted in part. I grant the Application for an additional rent increase for capital expenditures of $191.02. The Landlord must impose this increase in accordance with the *Act* and the *Regulation*.

A copy of this Decision must be served by the Landlord upon each affected Tenant within 2 weeks of the Landlord receiving a copy of this Decision from the Residential Tenancy Branch. I **Order** that this Decision be served by the Landlord in a manner in accordance with Section 88 of the *Act*.

This Decision is final and binding on the parties, and it is made on delegated authority under Section 9.1(1) of the *Act*. A party's right to appeal this Decision is limited to

grounds provided under Section 79 of the *Act* or by way of an Application for Judicial Review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: June 27, 2022

Residential Tenancy Branch