



# 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.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. The Landlord confirmed receipt of the Tenant's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord initially filed her application for 6 different items, totalling \$29,889.21. After she filed her application, she uploaded a monetary order worksheet, detailing additional items and amounts totalling \$50,522.80. As stated in the hearing, the Landlord's claim is limited to the amount set out in her application, as the additional amounts included in the worksheet were not properly applied for, or amended and were not included in the application. The Landlord's claim is limited to the items and amounts listed on her application and Notice of Dispute Resolution Proceeding. They are laid out below.

### Issues to be Decided

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

### Background and Evidence

The Landlord explained that she bought this property in November of 2020, and took possession on January 10, 2021. The Landlord explained that the property consists of 2 rental units, an upper and a lower rental unit. The upper rental unit is the subject property for this proceeding, and consists of a 4 bedroom rental unit on the upper floor of the building, plus one room on the lower floor.

The Landlord rents out the lower 2-bedroom self contained suite separately. The Landlord only filed this application for an additional rent increase against the upper floor unit, occupied by the respondents.

Both parties agree that monthly rent is set at \$2,500.00 and is due on the first of the month. The parties also agree that the tenancy started on or around February 1, 2021, and the rent has not been increased since the start of the tenancy.

The Landlord testified that she was seeking to impose an additional rent increase for several capital expenditures incurred to pay for a work done to the residential property.

Generally, the Landlord explained that she is having difficulty paying the mortgage and the bills for the property, in part, due to the costs incurred to fix up the rental unit to make it more suitable for re-rental. The Landlord stated that between the time she took over ownership and possession of the house, on January 10, 2021, until the start of this tenancy, February 1, 2021, she did lots of work on the property in order to improve and repair different issues.

The Tenant did not speak to each item on the Landlord's application individually, but generally stated that he does not feel it is fair for the Landlord to ask for an additional rent increase, since all of the work on the property was done before they moved in. The Tenant stated that they agreed to rent the unit and pay \$2,500.00 per month, and he does not feel it is fair for the Landlord to ask for additional amounts beyond this, over a year after the work was done.

On the Landlord's application, she listed that she is seeking the following 6 items. She provided testimony as follows:

1) \$1,100.00 – Fridge and Dishwasher

The Landlord stated that the seller of the house took the fridge and the dishwasher when they moved out. The Landlord stated that she tried to raise this issue with her realtor, but she ended up having to procure replacement appliances for this rental unit, as they were missing when she took possession in January 2021. The Landlord provided copies of e-transfers showing she paid a total of \$1,175.00 for a used fridge and dishwasher.

2) \$4,456.46 – Kitchen Countertop and Sink

The Landlord indicated that the kitchen countertop had a burn mark on it, and it had to be replaced. The Landlord did not provide any photos or further explanation on this matter. The Landlord provided an invoice showing she paid the above noted amounts.

3) \$2,398.25 – Mould in attic

The Landlord stated that the previous owner of the house improperly installed a dryer vent, which caused mould in the wall/ceiling and attic of the rental unit. The Landlord did not elaborate further. The Landlord provided a copy of the invoice she paid to have the mould remediated from the attic space, and to have the vent re-routed in a manner which will not cause further mould. The vent re-routing invoice lists that 3 vents were re-routed, including 1 dryer vent, and 2 bathroom vents, as well as the installation of 1 chimney cap.

4) \$3,727.50 – Plumbing etc.

When asked to explain this item, the Landlord stated that this expense was incurred to install the dishwasher, kitchen faucet, garburator, fridge water supply, sink, hoses, tile in bathroom, shower handle, vanity drain cleaning, thermostat, boiler service, and truck charge. The Landlord did not elaborate on these items any further, other than reading the list of items from the invoice list.

5) \$4,063.50 – Ceiling Pot light replacements

The Landlord stated that she paid this amount to have the old energy inefficient high wattage pot lights replaced with new energy efficient lights. The Landlord stated that she replaced 12-15 pot lights in the rental unit, and she also changed all light bulbs to more efficient bulbs. The Landlord stated that this invoice is only to replace the lights in this rental unit, and not the lower rental unit. The invoice provided into evidence shows the invoice was to “replace all pot lights in the living room and hallways to low power LED”, bathroom vanity light replacement, and “whole house lighting to CFL energy efficient bulbs”.

6) \$14,143.50 – Interior painting

The Landlord stated that the interior of the rental unit needed repainting, and she paid the above noted amount to repaint the entire rental unit. The Landlord noted that the ceiling was the most difficult and time-consuming part of the job. The Landlord stated that this amount is only to repaint this rental unit, not the lower rental unit.

The invoice provided into evidence shows this amount was paid to paint “the whole house, both levels, all bedrooms, living rooms, ceiling, baseboard, door frames, window casing” of the upper and lower suite (with noted square footages).

Analysis

The landlord bears the evidentiary burden of establishing on a balance of probabilities that the capital expenditure(s) meet the requirements to be eligible for an additional rent increase.

First, I note the Tenant does not feel it is fair for the Landlord to request an additional rent increase for work that was completed prior to the start of his tenancy. However, I find it important to note the following portion of the Policy Guideline #37 – Rent Increases:

*A landlord may apply for an additional rent increase in relation to a specific rental unit, even if a tenant moved into that rental unit after an eligible capital expenditure was incurred.*

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.

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 the items in the same order as laid out on the Landlord's application, and as laid out above under the facts and evidence section:

1) \$1,100.00 – Fridge and Dishwasher

I have reviewed the testimony and evidence on this matter. I note the following excerpt from Policy Guideline #37 – Rent Increase:

*The Residential Tenancy Regulation defines a “major system” as an electrical system, mechanical system, structural system or similar system that is integral to the residential property or to providing services to tenants and occupants. The term “major component” means a component of the residential property that is integral to the property or a significant component of a major system.*

[...]

*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.*

I am not satisfied that the fridge or the dishwasher sufficiently qualify as a major system or component of a major system. These items are appliances, and I am not satisfied

that that they sufficiently meet the criteria outlined above, which intended to cover critical building infrastructure. I dismiss the Landlord's application for this item, in full.

2) \$4,456.46 – Kitchen Countertop and Sink

As per the Landlord's application, she stated that this expense was incurred because there was a burn mark on the counter. No photos were provided, and this was not elaborated on any further by the Landlord. The Landlord did not explain whether or not there was a need to replace the kitchen sink, or whether it was simply replaced because the counters were replaced (due to the burn mark).

I have reviewed the testimony and evidence on this matter, and I find the basis for this item appears to be mostly cosmetic, and there is insufficient evidence showing that the nature and extent of the burn mark on the counter was such that it was a substantive repair, rather than a minor/cosmetic issue. Further, it appears the sink may have only been replaced because the counters were replaced. Ultimately, I am not satisfied that the kitchen countertops sufficiently qualify as a major system or major component such that they could be considered an eligible capital expenditure.

3) \$2,398.25 – Mould in attic

I have reviewed the testimony and evidence on this matter, and I accept that the previous owner of the property may have improperly installed the dryer vent, as the Landlord has asserted. However, I also note the Landlord's invoice includes 2 other vents (bathroom) and a chimney cap. The Landlord did not elaborate at all and explain how these other items are relevant or what they are based upon. The Landlord only referred to the one dryer vent which she asserts was improperly installed, and which caused mould to accumulate in the soffit/attic area. Ultimately, I found the Landlord did a poor job explaining this item, and I find she failed to sufficiently demonstrate the value of this potential eligible capital expense, as it includes other items on the invoice that were not explained or addressed. I dismiss this item, in full, as I find the Landlord failed to meet the evidentiary burden.

4) \$3,727.50 – Plumbing etc.

I have reviewed the testimony and evidence on this matter. I note the Landlord put on her application the following: "had to address the issues in the inspection report plus,

removing and installing the sink for countertop installation and more". During the hearing, I found the Landlord only generally stated that this expense was incurred to install the dishwasher, kitchen faucet, garburator, fridge water supply, sink, hoses, tile in bathroom, shower handle, vanity drain cleaning, thermostat, boiler service, and truck charge. The Landlord only read off the items on the invoice, and did not speak to or elaborate on any of the items in the hearing. The Landlord did not explain how any of the above noted items qualify as an eligible capital expense and that they were incurred as a result of a repair to a major system or component of a major system. Without further explanation and evidence on this matter, I am not satisfied the Landlord has met the evidentiary burden on her to demonstrate that this is an eligible capital expense.

5) \$4,063.50 – Ceiling Pot light replacements

I note the Landlord replaced several pot lights, and bulbs in the rental unit in order to reduce energy consumption, which satisfies part of the criteria for an eligible capital expense. However, in order for this item to fully qualify as an eligible capital expense, I must also be satisfied that the work was done to install, repair, or replace a major system or major component of a system.

Generally, I note that upgrades that improve the energy efficiency of core electrical systems could be considered to be an eligible capital expense. However, it is not sufficiently clear that the work done to replace the light bulbs was such that it would qualify as work on the core electrical system itself, considering that some types of lighting replacement can be very superficial in nature (not hardwired or integral to the electrical system itself). Generally, I am not satisfied that the simple replacement of light bulbs would qualify. In this case, it is not clear what was done.

It is noteworthy that the Landlord said very little to explain the nature and scope of work, and what was required to install the newer more efficient pot lights and bulbs. I find the Landlord's lack of explanation is problematic as I am not satisfied that the work completed to increase the efficiency of the lights was such that it qualifies as an eligible capital expense, and that the work was done on a major system or component of a major system.

6) \$14,143.50 – Interior painting

I note that Policy Guideline 40: Useful Life of Building Elements establishes general timeframes for the life of various elements, including some major systems and major components. It states that the useful life expectancy of interior painted walls is 4 years, at which point it can be expected that repainting may be needed. I note that in order to qualify



as an eligible capital expense, it should not be expected that the capital expenditure would be incurred again within five years. I do not find the painting of interior walls meets this criteria, as it ought to be expected that this component requires repainting every 4 years. I am not satisfied that this item qualifies as an eligible capital expense.

### Conclusion

I dismiss the Landlord's claim, in its entirety, without leave.

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: July 21, 2022

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Residential Tenancy Branch