



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Code: ARI-C

### **Introduction**

In this application, the landlord seeks a rent increase pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the “Act”) and section 23.1 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 (the “Regulation”).

The landlord filed their application on January 18, 2022 and a preliminary hearing was held on May 19, 2022. An Interim Decision was issued on May 19, 2022 and this matter was adjourned to a written submission “hearing” scheduled on September 29, 2022.

### **Issue to be Decided**

Is the applicant landlord entitled to a rent increase pursuant to subsections 43(1)(b) and 43(3) of the Act and section 23.1 of the Regulation?

### **Background and Evidence**

As noted on the cover page of this Decision and explained in detail in the Interim Decision, the format of the hearing was “in writing” pursuant to subsection 74(2)(b) of the Act. Both parties were given full opportunity to submit written submissions and documentary evidence in advance of the landlord’s application being considered. The applicant provided a written submission on August 25, 2022. No written submissions were made by the respondents.

The landlord’s written submission is reproduced as follows (minor formatting for brevity and readability):

In order to maintain the residential property in a good state of repair, major system and/or components were necessary to comply with health, safety and housing standards.

The roof was at end of its useful life. The fire alarm system was inoperable due to failure of obsolete parts.

Cyclone holdings AKA Skyline Apartments is seeking modest additional rent increases to be awarded effective 2023.

The capital expenditures incurred within the 18 months and are not expected to be incurred again for at least five years.

Documentary evidence submitted in support of the landlord's application included the following: (1) roofing invoice dated December 11, 2020 from Patch's Surrey Dome Roofing in the amount of \$43,627.50 for work completed on August 20, 2020; (2) an invoice from Otis Fire Protection Inc. dated September 10, 2020 in the amount of \$4,202.10 for fire alarm and smoke detector work completed; (3) an inspection report regarding the roof and the condition thereof, including a note that the roof "should last for 22 more years"; (4) correspondence from the fire protection company confirming that they replaced the fire alarm panel on September 10, 2020, and further confirmations payment.

In total, the landlord's capital expenditures comprise \$87,255.00 for "New roof – installation of torch on roof with upstands and flashings" and \$3,654.00 for "replacement of fire alarm panel, extension cards, annunciator + backbox, fire alarm batteries, city electrical permit fee, electrical work, fire alarm verification."

### Analysis

The landlord must establish on a balance of probabilities that the capital expenditures meet the requirements to be eligible for an additional rent increase.

Subsection 43(1)(b) of the Act states that a landlord may impose a rent increase only up to the amount "ordered by the director on an application under subsection (3) of the Act. Subsection 43(3) of the Act, to which the above section refers, states that

In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

Section 23.1 of the Regulation sets out the criteria by which this application is considered. I have also considered *Residential Tenancy Policy Guideline 37: Rent Increases* in reviewing this application. The relevant sections of section 23.1 of the Regulation are reproduced as follows:

- (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; [...]
  - (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.
- (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.

In this application, based on the evidence before me, it is my finding on a balance of probabilities that the capital expenditures were incurred for the replacement of a major component and system—namely, a roof and an alarm system—in order to maintain the residential property, of which the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law.

It is my finding that the capital expenditures were incurred in the 18-month period preceding the date on which the landlord made its application. I find that all of the capital expenditures are substantive and not minor. Nor do I find that any of the work completed is purely for aesthetic or cosmetic purposes.

Further, based on the evidence before me, I conclude that the capital expenditures are not expected to be incurred again for at least five years.

No submissions were made by the respondents opposing the application and as such I need not consider or apply section 23.1(5) of the Regulation.

Given the above, the landlord's application for an additional rent increase for eligible capital expenditures in the amount of \$90,909.00 pursuant to section 23.1 of the Regulation and section 43(1)(b) of the Act is hereby granted.

Section 23.2 of the Regulation sets out the formula to be applied when determining the amount of the additional rent increase.

- (1) If the director grants an application under section 23.1, the amount of the additional rent increase that the landlord may impose for the eligible capital expenditures is determined in accordance with this section.

- (2) The director must
  - (a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and
  - (b) divide the amount calculated under paragraph (a) by 120.
- (3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43(1)(a) of the Act in that year by 3%.
- (4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

In this application, the calculation is thus:  $(90,909 \div 62 \text{ units}) \div 120 = \$12.22$ . From there, the landlord must then apply subsections 23.2(3) and (4) of the Regulation.

It is the landlord's responsibility to make the required calculations. The landlord may wish to refer to *Residential Tenancy Policy Guideline 37*, section 23.3 of the Regulation, section 42 of the Act, and the additional rent increase calculator on the Residential Tenancy Branch website for guidance on how this rent increase made be imposed.

### Conclusion

**The landlord's application is granted.**

A copy of this Decision must be served by the landlord upon each tenant within two weeks of the landlord receiving this Decision from the Residential Tenancy Branch.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 29, 2022

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Residential Tenancy Branch