



# 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* (*Act*) and the *Residential Tenancy Regulation* (*Regulation*), for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The Landlord stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in July and August of 2022 were sent to the Tenant, via email, sometime in the summer of 2022. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 28, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on November 30, 2022. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 05, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on December 05, 2022. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Preliminary Matter #1

I was unable to open two of the documents submitted in evidence by the Tenant, although that evidence had been served to the Landlord.

In my interim decision of December 16, 2022, I granted the Tenant authority to re-submit those documents to the Residential Tenancy Branch.

I subsequently learned that the interim decision of December 16, 2022 was not sent to the parties by the Residential Tenancy Branch, either due to a technical error or due to human error. I therefore issued a second interim decision on January 09, 2023 in which I extended the deadline for submitting documents to the Residential Tenancy Branch.

Those documents were received on January 23, 2023 and were considered during this adjudication.

### Preliminary Matter #2

Section 77(1) of the *Act* requires that I provide a written decision to the parties within 30 days after the proceedings conclude. I have been unable to meet this timeline for reasons identified in preliminary matter #1.

Section 77(2) of the *Act* stipulates that I do not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the aforementioned 30 day period.

As such, I retain the authority to render a decision in this matter.

### Issues to be Decided

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

### Background and Evidence

The parties agree this is the only unit the Landlord owns in this multi-unit residential complex.

The Landlord and the Tenant agree that the Landlord has not applied for an additional rent increase for capital expenditure against this Tenant. The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months. The parties further agree that the rent was last increased in 2018.

The Landlord testified that the Landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for work done to the balcony of the rental unit.

The "Work done includes:

- Removing the glass enclosure around the balcony;
- Repairing the concrete of the balcony;
- Installing a short railing on the top of the concrete siding of the balcony;
- Resurfacing the floor of the balcony;
- Installing drains; and
- Painting the balcony

The Tenant agrees that the aforementioned repairs were completed.

The Landlord testified the "Work" was done because the aluminum frame of the glass enclosure was failing; the pads between the concrete and the aluminum frame deteriorated and could not be replaced; and the glass enclosure could not be repaired so she decided to remove it and replace it with a railing. The Landlord testified that the glass enclosure was leaking, which damaged the concrete and contributed to mould accumulation reported by the Tenant.

The Landlord stated that the enclosure was installed in 1971. The Tenant stated that she does not know when the enclosure was installed.

The Tenant submits that the "Work" would not have been necessary if the Landlord had properly maintained the balcony enclosure. She submits that the enclosure has been leaking for many years, as evidenced by the accumulation of mould. She submits that if the Landlord had sealed the leaking windows the damage to the balcony itself would not have occurred.

The Tenant stated mould was present when she first moved into the unit in 2014 and that the Landlord was aware of the presence of mould. The Landlord agrees that she was aware that mould was accumulating on the balcony. She stated that the balcony was painted at least once since 2014 and that it was annually cleaned by a window

cleaner between 2015 and 2019. The Tenant stated that the mould was annually cleaned by a window cleaner between 2015 and 2018.

The Landlord submitted a copy of an invoice from a glass company, in the amount of \$1,238.01, dated May 27, 2021. The Landlord also submitted a copy of a receipt from that company, in the amount of \$500.00. The Landlord stated that the \$500.00 was paid on January 20, 2021. She stated that both of these expenses were for removing the glass enclosure.

The Landlord submitted copies of invoices from the company which installed the balcony railing. One was dated May 31, 2021, in the amount of \$1,884.75. One was dated February 19, 2021, in the amount of \$1,548.75.

The Landlord submitted copies of receipts from a popular home improvement company, which the Landlord stated was for supplies used to paint the balcony. One was dated October 08, 2021, in the amount of \$220.74. One was dated September 09, 2021, in the amount of \$65.39.

The Landlord submitted a copy of an invoice from a rental company, dated August 31, 2021, in the amount of \$329.44. The Landlord stated that this was for a grinder rental, used to refinish the balcony floor.

The Agent for the Landlord stated that he thought he also submitted an invoice from the company which repaired the concrete on the balcony. The parties were advised that I could not locate that document in the evidence before me. The Tenant stated that a copy of the invoice, in the amount of \$10,342.50, was served to her as evidence for these proceedings.

The Tenant does not dispute that any of these costs were incurred.

### Analysis

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:
  - o the Work was to repair, replace, or install a major system or a component of a major system
  - o 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
      - because it 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;
  - o the capital expenditure was incurred less than 18 months prior to the making of the application
  - o the capital expenditure is not expected to be incurred again within five years.

A tenant 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.

#### 1. Prior Application for Additional Rent Increase

On the basis of the undisputed evidence, I find that the Landlord has not applied for an additional rent increase for capital expenditure against this Tenant.

#### 2. 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.

On the basis of the undisputed evidence, I find that this capital expenditure applies to one rental unit in the multi-unit residential complex.

### 3. Amount of Capital Expenditure

On the basis of the testimony of the parties and the documents submitted in evidence, I find that the Landlord incurred expenses of \$16,129.58 to remove the glass balcony enclosure and to repair the balcony.

### 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
    - because it 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 find that the capital expenditure incurred for the "Work" is an eligible capital expenditure, as defined by the *Regulation*, for reasons that are explained below.

a. Type of Capital Expenditure

The *Regulation* defines a “major component”, in relation to a residential property, as a component of the residential property that is integral to the residential property or a significant component of a major system. I find that a balcony is a component of a building envelope and that a building envelope is integral to the residential complex.

As such, I find that the “Work” was undertaken to repair a major component of the residential complex.

b. Reason for Capital Expenditure

On the basis of the undisputed evidence, I find that the aluminum frame of the glass enclosure of the balcony was leaking, which damaged the walls of the balcony.

On the basis of the undisputed testimony of the Landlord, I find that the glass enclosure was installed in 1971.

Residential Tenancy Branch Policy Guideline #40 suggests the useful life of aluminum windows is 20 years. As such, I find that the glass balcony enclosure had exceeded its useful life by approximately 30 years when it was replaced. I therefore find that replacing and/or removing the glass enclosure was necessary because it was failing and it had long exceeded its useful life.

On the basis of the undisputed testimony that the leaking glass enclosure damaged the concrete balcony, I find the concrete repairs were necessary because the integrity of the concrete was failing.

c. Timing of Capital Expenditure

The evidence shows that all of the costs for the “Work” were incurred in 2021. I therefore find that the costs were incurred “within 18 months of the Landlord filing this application.

d. Life expectancy of the Capital Expenditure

Residential Tenancy Branch Policy Guideline #40 suggests that the useful life of a steel railing is 15 years. As the Landlord replaced the glass enclosure with a railing, I find it

reasonable to conclude that the railing will not need to be replaced within the next 5 years.

Although the Residential Tenancy Branch Policy Guideline does not identify the useful life of a concrete balcony, I find it reasonable to conclude that the need to repair the concrete will not re-occur in the next 5 years.

#### 5. Tenants' Rebuttals

As previously stated, the *Regulation* limits the reasons for opposing an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the landlord must prove, 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.

There is no evidence that the Landlord has been paid, or is entitled to be paid, for the "Work" from an alternate source.

Given that the glass balcony enclosure has long exceeded its life expectancy, I find that the need to remove the enclosure and either replace it with a new enclosure or a railing is directly related to the age of the enclosure. I cannot conclude that the need to replace the enclosure is related to inadequate maintenance or repair. I therefore find that the Landlord is entitled to costs associated to removing and replacing the glass enclosure, which include \$1,738.01 for removing the enclosure and \$3,433.50 for installing a railing.

On the basis of the testimony of each party, I find that the damage to the concrete areas of the balcony were directly related to the condition of the glass enclosure. The Landlord acknowledged that mould had been a problem for many years and she testified that the glass enclosure leaked, which damaged the concrete and contributed to mould accumulation. The Tenant stated that the enclosure had been leaking for many years and that if it had been properly sealed, the balcony itself would not have been damaged.

I find, on the balance of probabilities, that the concrete portion of the balcony would not have required significant repairs if the glass enclosure had been repaired in a timelier manner. Specifically, if it had been maintained in a manner that ensured water was not



leaking into the structure. I therefore find that the concrete repairs are an ineligible expenditure, as those repairs could have been prevented if the glass enclosure had been relaced or repaired in a timelier manner. I therefore find that the Landlord is not entitled to costs associated to repairing the concrete structure, which include \$10,342.50 for repairing the concrete, \$286.13 for painting, and \$329.44 for renting a grinder used to repair the floor.

## 6. Outcome

The landlord has been partially successful.

The Landlord has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure, in the amount of \$5,171.51.

Section 23.2 of the *Regulation* sets out the formula to be applied when calculating the amount of the addition rent increase as the number of specific 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 \$5,171.51.

The Landlord has, therefore, established the basis for an additional rent increase for capital expenditures of \$43.09. ( $\$5,171.51 \div 1 \text{ unit} \div 120$ ).

The parties may refer to Residential Tenancy Branch Policy Guideline 43, 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. I grant an additional rent increase for capital expenditure in the amount of \$43.09. This increase may only be imposed in accordance with the *Act* and the *Regulation*.

I order the Landlord to serve the Tenant with a copy of this decision in accordance with section 88 of the *Act*, within 2 weeks of receiving it.

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: January 26, 2023

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Residential Tenancy Branch