



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      ARI-C

### **Introduction**

On July 6, 2022 (the “Application date”), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase for a capital expenditure pursuant to s. 23.1 of the *Regulation*.

The Landlord and the sole Tenant attended the hearing at the scheduled hearing time.

### **Preliminary Matter – timeline for this decision**

While the *Act* s. 77(1)(d) sets a 30-day time limit for a decision of the delegated decision-maker, ss. (2) does not invalidate a decision that is given past the 30-day period. I reached this decision through review and evaluation of the Landlord’s evidence, and the parties’ statements in the hearing. The parties’ right of due process, for a thorough consideration of the legal issue involved, and my deliberation of the applicability of the law, outweigh the need for a 30-day time limit. Also, this was a matter of the Landlord’s right to compensation for capital expenditures and did not concern an eviction or end of tenancy that matters of human consequence.

### **Preliminary Issue – service and disclosure of evidence**

In the hearing, the Landlord reviewed how they served the Notice of Dispute Resolution in this matter. This was by email on July 28, 2022, along with the evidence they prepared and submitted to the Residential Tenancy Branch for this matter. After this, the Landlord sent registered mail.

In the hearing the Tenant confirmed they received the notice of this matter from the Landlord. From this, I am satisfied the Landlord completed service in a timely manner as required.

The Tenant provided no document evidence for this matter. At the outset of the hearing, I instructed the parties that oral testimony – affirmed under oath -- is a form of evidence, and I recorded all information as stated in the hearing for that purpose.

### **Issue(s) to be Decided**

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

### **Background and Evidence**

The rental property in this matter is a single rental unit. The Landlord obtained ownership approximately one year prior to this scheduled hearing date.

The Landlord found out about a rental property – *i.e.*, the whole building – project to upgrade through strata council communications. As shown in their submitted “Exterior Project Update” dated June 16, 2022, the “exterior envelope project” would commence in the week of June 20, 2022. The first phase of the project would end on October 31, 2022.

After this replacement of all rental property windows and panels would start. As of the date of June 16, 2022 letter, the second phase was “yet to be scheduled”. As of the date of the hearing this work had not commenced, and the Landlord did not have more information from either the strata or contractors on progress or the timing of windows’ and panels’ replacement.

The Landlord described the windows in the rental unit as old, and single-pane, meaning they need to be replaced in this 37-year-old building. That is the rationale for the work as presented to the Landlord by the strata. The Landlord presented in their evidence a copy of the special levy stemming from the strata meeting on May 5, 2022 where a quorum of the strata established the need and approval for this project.

The Landlord made their payment for \$49,115.16 on July 5, 2022. This is shown in a bank record in their evidence that shows the transaction as completed on that date.

The Landlord also disclosed that this capital expenditure equates to a calculated rent increase amount of \$409 per month to the Tenant. The Landlord conceded that they were not allowed to increase the monthly rent over 3%.

The Tenant stated their surprise about the prospect of a rent increase. They stated that they always pay the rent on time, and will be subject to a different rent increase in February 2023, which is a 1.5% rent increase. The Tenant also stated their understanding of no allowable rent increase over 3%.

## **Analysis**

The *Residential Tenancy Regulation* (the “*Regulation*”), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

### **Statutory Framework**

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
  - to repair, replace, or install a major system or a component of a major system; and
  - undertaken:
    - to comply with health, safety, and housing standards;
    - because the system/component was either:
      - close to the end of its’ useful life, or
      - failed, malfunctioning, or inoperative
    - to achieve either:
      - a reduction in energy use or greenhouse gas emissions; or
      - an improvement in security at the residential property

and

- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;
- or
- the landlord was paid, or entitled to be paid, from another source.

*Prior Application for Additional Rent Increase*

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase for capital expenditures within the previous 18 months.

*Number of specified dwelling units*

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

"dwelling unit" means:

- (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.

I find the rental unit in question in this Landlord's Application is not a "specified dwelling unit." The Landlord in the hearing stated the work was not completed. Moreover, the work of installation/repair/replacement had not started, with no prospective start date in

place. The definition outlined above specifies a dwelling unit “*in which an installation was made, or repairs or a replacement was carried out*”.

Though the Landlord presented evidence that the capital expenditure to them was “incurred” as is otherwise required as per the *Regulation*, I find the individual rental unit here does not qualify as a “specified dwelling unit” where the work has not yet been completed.

I find the rental unit in this Application is not a “specified dwelling unit”; therefore, s. 23.1(4) does not apply. I find this expenditure is not eligible, and dismiss the Landlord’s Application for this reason. I grant the Landlord leave to re-apply.

### **Conclusion**

I dismiss the Landlord’s Application for an additional rent increase for the capital expenditure in question.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 9, 2023

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Residential Tenancy Branch