



# 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 expenditure pursuant to section 23.1 of the Regulation.

V.P. and A.C. appeared as agents for the Landlord. V.T. and E.A. appeared as the Tenants. H.G., one of the named tenants, briefly appeared but disconnected without providing submissions.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

V.P. advised that the notice for the reconvened hearing was served on all the named tenants via registered mail on September 14, 2022 and provided proof of service of the same. This matter had been originally scheduled for January 16, 2023, but was adjourned to January 20, 2023. V.P. further advised that the notice for the January 20, 2023 hearing date was posted to all the tenants' doors on January 16, 2023. In my interim reasons, I permitted the Landlord to do so. Those tenants that attended acknowledged receipt of the various notices. I find that the Landlord has served the tenants with the notice for the reconvened hearings in accordance with the *Act*.

As mentioned in my interim reasons, I have found the Landlord's evidence was served via registered mail. V.P. advised no further evidence was served by the Landlord. During the hearing, E.A. raised issue with service of the evidence and says she cannot recall receiving it. V.P. directed me to the registered mail sent to E.A. in May 2022 as proof of service. I am satisfied that the Landlord has demonstrated service of the evidence and nothing at the hearing has displaced my previous finding as none of the other tenants that have attended raised issue with service of the evidence.

### Issue to be Decided

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

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

V.P. testifies that the Landlord replaced the transformers for the property as per the recommendations of an electrical engineering firm it retained. I am directed to a letter from the electrical engineering firm retained by the Landlord dated April 29, 2022 summarizing the transformer and fuse replacement for the property. The letter details how the firm was retained on March 14, 2019 to investigate the condition of the transformers and found that they were past their expected 40 year life expectancy. The firm recommended they be replaced. The letter further details how the transformers were replaced on June 15, 2021. The company that undertook the transformer replacement noted issues with the fuses, which were replaced in early 2022. A letter from the company that replaced the fuses indicate that the work was completed on March 11, 2022. The letter from the engineering firm concludes by stating that the transformers and fuse replacements were completed and in operation as at the date the letter was authored.

The total cost for the work completed, as evidenced in invoices provided to me by the Landlord, was \$71,116.24. Invoices provided by the Landlord for the engineering firm, the last of which is dated June 30, 2021, total \$19,687.50. Invoices provided by the Landlord for the company that replaced the transformers, the last of which is dated July 28, 2021, totals \$40,367.25. Finally, invoices provided by the Landlord for the company that replaced the fuses, the last of which is dated March 31, 2022, totals \$11,061.49.

V.P. advises that the property in question is a building with a mix of commercial and residential rental units. The electrical work conducted affected the whole building. V.P. submitted on behalf of the Landlord that the capital expenditure be divided between the commercial and residential units on a ratio of the square footage for both areas of the building. V.P. submits that the commercial units comprise 5,971 ft<sup>2</sup> and the residential units comprise 55,426 ft<sup>2</sup>. The Landlord has provided a summary table attributing \$64,196.66 to the residential units, though the table does not specify the square footage for each portion of the building.

V.P. testified that the building has 80 dwelling units and confirmed that this number comprised all residential units vacant or otherwise including the building manager's suite. V.P. further confirmed that the Landlord has not previously obtained an order for an additional rent increase for a capital expenditure under s. 23.1 of the Regulations.

V.T. took issue that he was not permitted access to the electrical room to inspect the work completed and further argued that it was an old building such that the expenditures claimed should not fall onto the tenants. V.T. further argued that it was

unfair for the Landlord, which he says is a big company, to push these costs onto the tenants. V.P. advised that no one has requested access to the electrical room and that the room is locked for safety reasons. I am told by V.P. that not even the building manager on site has keys to access the room where the transformers are located.

E.A. advised she did not take issue with the amount claimed but that she does not recall receiving notice or the Landlord's evidence. As mentioned at the beginning of the decision, I am satisfied the Landlord did serve E.A. with the notice and the evidence as demonstrated in the proof of service provided.

### Analysis

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. Landlords seeking an additional rent increase under s. 23.1 of the Regulations must prove, on a balance of probabilities, the following:

- The landlord has not successfully applied for an additional rent increase against the tenants within 18 months of their application.
- The capital expenditure was incurred for the repair, replacement, or installation of a major component or major system for the property.
- The capital expenditure was incurred for one of the following reasons:
  - to comply with health, safety, and housing standards required by law in accordance with the landlord's obligation to repair the property under s. 32(1) of the *Act*;
  - the major component or system has failed, is malfunctioning or inoperative, or is close to the end of its useful life; or
  - the major component or system achieves one or more of either reducing greenhouse gas emissions and/or improves security at the residential property.
- The capital expenditures were incurred in the 18-month period preceding the date on which the landlord applies.
- The capital expenditures are not expected to be incurred again for at least 5 years.

As per s. 23.1(5) of the Regulations, tenants may defeat a landlord's application for additional rent increases for capital expenditures if they can prove on a balance of probabilities that:

- the repairs or replacements were required because of 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.

Once the threshold question has been met, the Landlord must also demonstrate how many dwelling units are present in the residential property and the total cost of the capital expenditures are incurred.

Section 21.1(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;

[...]

**"major component"**, in relation to a residential property, means

- a. a component of the residential property that is integral to the residential property, or
- b. a significant component of a major system;

**"major system"**, in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

- a. to the residential property, or
- b. to providing services to the tenants and occupants of the residential property;

**"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 accept that the electrical transformer and fuses are major components of the building as they are integral to the provision of electrical services to the rental units. I further accept the Landlord's evidence in the form of the letter from the electrical engineer that the transformer was beyond its useful life of 40 years and needed to be replaced. I further accept that the upon replacement of the transformers, it was discovered the fuses also needed to be replaced as they were damaged and needed to be repaired. I accept that both the transformers and the fuses are expenditures that are not expected to be incurred again within the next 5 years by reference to the expected 40 year life span as noted in the letter from the electrical engineer.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed its application on April 29, 2022. I find that it is appropriate to use the last invoice provided for the various expenses to determine when the expenses were incurred given the length of time often involved in larger projects. I accept that the costs were incurred, as demonstrated in the invoices provided, within 18-months of filing the application. I further accept the undisputed testimony of the Landlord's agent that the Landlord has not previously obtained an additional rent increase under s. 23.1 of the Regulations within the past 18-months.

I find that the Landlord has demonstrated that these are eligible capital expenditures.

With respect to the apportionment of the expenses between the commercial and residential portions of the property, I accept that it is fair and reasonable to divide the expense on a square footage basis. Based on the numbers for the respective square footage provided to me by V.P. during the hearing, I accept that 5,971 ft<sup>2</sup> is attributable to the commercial units and 55,426 ft<sup>2</sup> is attributable to the residential units. Given this, the proportion attributable to the residential units is 89.23% ( $1 - (5,971/55,426)$ ).

The invoices provided demonstrate the total expenditures is \$71,116.24. The Landlord provides a summary table indicating the amount attributable to the residential units is \$64,196.66. However, this does not correspond with the square footage ratio provided to me by the Landlord's agent at the hearing. Given the summary table does not explain its methodology or the square footage for the respective portions of the building, I prefer the undisputed testimony of the Landlord's agent as stated at the hearing. Accordingly, I find that the amount attributable to the residential units \$63,457.02 ( $\$71,116.24 \times 0.8923$ ). I accept that based on the undisputed evidence of the Landlord that there are 80 dwelling units at the building.

I will briefly address the arguments raised by V.T.. As is clear based on the explanation above, the Landlord is permitted to seek an additional rent increase under s. 23.1 of the Regulations provided the aspects explained have been met. I find that they have. Questions of fairness to the tenants or the landlord being a large company are not relevant to the analysis. As mentioned above, tenants may only defeat the claim by showing the circumstances specified under s. 23.1(5) of the Regulations exist, which in this case has not been done.

Further, V.T. raised issue with being unable to access the electrical room for the building. It is difficult to understand what would be gained by physically inspecting the electrical room as the Landlord's documentary evidence clearly demonstrates the basis for the claim and the expenses incurred. It is with good reason the room is locked as it would be extraordinarily dangerous to leave a room with high voltage service open the whomever wished to access it.

I find that the Landlord has established the basis for an additional rent increase for capital expenditures of \$6.61 ( $\$63,457.02 \div 80 \text{ units} \div 120$ ). 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 Policy Guideline #40, s. 23.3 of the Regulation, s. 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 RTB website for further guidance regarding how this rent increase made be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$6.61. The landlord must impose this increase in accordance with the *Act* and the Regulation.

I order the landlord to serve the tenants with a copy of this decision in accordance with section 88 of the *Act*.

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 25, 2023

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Residential Tenancy Branch