



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Code: ARI-C

### Introduction

The landlord's application filed on July 7, 2022, is seeking a rent increase for capital expenditures, pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act ("Act") and section 23.1 of the Residential Tenancy Regulation, B.C. Reg. 477/2003. Residential Tenancy Policy Guideline 37: Rent Increases.

At the prehearing conference held on December 2, 2022, and a prehearing decision made on December 7, 2022, I had declined to hear a portion of the landlord's application to claim the cost for appliances and for the cost for preparations and filings for the Landowner Transparency Act and Regulation 2020 documents. These are not considered capital expenditures as defined. The prehearing decision should be read in conjunction with this Decision.

On April 17, 2023, the hearing proceeded for the allotted time and was unable to complete due to insufficient time. The interim decision should be read in conjunction with this Decision.

On July 21, 2023, the reconvene hearing proceeded. The landlord and tenants appeared as noted on the covering page of this Decision.

I was informed that the tenant RW has vacated the rental. Therefore, I have removed RW from the style of cause as they are no longer a tenant and not subject to any future rent increase.

### Issue to be Decided

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

### Background and Evidence

The property consist of 53 units (dwelling units) although the landlord has only applied against 13 units as they were not consenting to the rent increase. The capital expenditure must be divided by the dwelling units to equally share. The application process will only calculate the amount against the named respondent's Not against the dwelling units. Therefore recalculating the expenditure could be required.

The landlord is seeking to impose an additional rent increase for a capital expenditure (ADI) incurred to pay for a work done to the residential property.

The capital expenditure (the "Work") incurred as follows:

Item	Description	Amount
a.	Flood event December 28th, 2021, repairing all equipment, annunciator and fire watch.	\$45,168.09
	Total expenditure	\$45,168.09

The landlord testified that on December 28, 2021, there was a flood in the office setting off all the fire alarms. The landlord stated that they discovered that an outside fire sprinkler line, which had been protected by an insulated box as per the building code; however, it had frozen due to such cold temperatures and when it thawed it caused water to rush in, causing a flood, kicking off the water valves and fire system, which impacted all units because they are connected by a podium and an share an annunciator and fire panel system.

The landlord stated that all equipment had to be repaired which included the annunciator, which is a device that warns the fire department and unlocks all the doors. The landlord stated that the annunciator was destroyed and was fairly new. The landlord stated that fire system is a major component of the property.

The landlord stated that they had to purchase tools, dehumidifiers and a locking device to shut off the waterline, and the drywall had to be removed and they had to purchase ice melt as there was a lot of frozen water that made it unsafe.

The landlord stated that they had to hire Ace Fire Protection to make the required repairs to the fire system. Filed in evidence are receipts.

The landlord stated that they had to hire JVB security to make repairs to the fire system. Filed in evidence are receipts.

The landlord stated that they had to hire a general labourer to open areas of the ceilings and walls to prepare it for the work necessary and then to repair the ceilings and walls and other related labour for the flood. Filed in evidence are receipts.

The landlord stated that because the fire system was down they had to hire fire watch personnel to watch the property 24/7, which was expensive as this was a requirement to protect the building while the repairs were made to the fire system. Filed in evidence are receipts.

The tenants advocate argued that the landlord is interpreting the legislation in a liberal way and not in line with the spirit or the intent of the Act. The advocate stated that everyone agrees and knew the fire system had to be repaired for safety issues. The issue of the intent of the legislation is for landlord to make repairs.

The tenant's advocate argued that this is not intended to be a catch all for everything, which the tenants did not have any input or how the money was spent and then turns into an unlimited liability for the tenants and then when does the landlord ever incur any costs.

The tenant's advocate argued that the landlord could have claimed this on their insurance to avoid a financial loss. The advocate stated that the landlord has a strong incentive not to make such a claim, because there have been a number of public stories about how insurance companies have been exiting this type of commercial insurance or because their insurance would significantly be increased. This is not intended to be an alternate way to capture future rent increases.

The advocate argued that the landlord had to hire security for a number of weeks at great expense and then to install cameras to help to reduce cost. The advocate stated this is not a capital expenditure for work, rather a cost of doing business.

The landlord argued that they did not use their insurance because the Work that was performed for the repairs would be less than the cost of their insurance deductible as they would be responsible for the first \$50,000.00. The landlord stated even if they had claimed through their insurance company, and they did the work at an inflated rate they would still be able to recover the first \$50,000.00 for the capital expenditure. The

landlord stated that they also did not want to make an unnecessary claim as they were warned that if they did that they would be at risk of being uninsurable.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application.

Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution

### 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:
  - 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;

- 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.

In this matter, there have been no prior application for an additional rent increase within the last 18 months before the application was filed. There are 53 specified dwelling units to be used for calculation of the additional rent increase. The landlord is claiming the total amount of **\$45,168.09** as outlined in the above table for capital expenditures.

#### 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.

In this case, I accept the Work to the fire system was necessary to repair a major system because it was inoperable due to a line in the fire system freezing due to cold weather, and when thawed caused flood damage and damage to the fire system. I find this is a major component of a major system that was inoperative and had to be repaired.

I find the landlords position logical and reasonable that they did not make an unnecessary claim through their insurance company. The landlord has the right to avoid an insurance claim if they can have the work done at a lower cost. I do not accept that the landlord would have been entitled to be paid any of these costs from their insurance company because the total amount claimed is less than the insurance deductible. In other words, the landlord would have had to exceed \$50,000.00 to be entitled to receive any amount from their insurance company.

I have allowed the landlord to recover all invoices from Ace Fire Protection, JVB Security, for repainting and installing drywall, carpet restoration, a fitting cap, cover replacement and labour for LM, while I note some invoices do state that LM was also doing fire watch; however, this was during the day and while they were making repairs, so I have not made any deductions. This was Work for the repair the flood damage. This amount totals **\$19,841.86**.

Although I accept it was necessary for the landlord to have in place a fire watch system, while the repairs were made and at significant costs; however, this cannot be considered Work to repair the flood and fire system. This could be determined to be a financial loss for an extraordinary increase to the operating expenses; however, that is not the application before me. Therefore, I dismiss this portion of the expenditures totaling **\$24,572.50** to recover fire watch for SK, black bird security and labour for LM to install fire watch cameras.

The landlord is claiming for purchasing tools, and dehumidifiers. Tools purchased by the landlord are not recoverable, only tools rented. The mini wireless cameras were purchased to reduce the operating cost of the fire watch, which was a reasonable to mitigate the cost; however, not for the Work. Ice melt and disinfectant spray may have

been necessary; however, not for the Work. Therefore, I dismiss this portion of the expenditure totaling **\$753.73**

### Outcome

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional 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 are 53 specified dwelling unit on the property and that the amount of the eligible capital expenditures total the amount of **\$19,841.86**.

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$3.11** ( **$\$19,841.86 \div 53 \div 120 = \$3.11$** ).

The parties may refer to RTB Policy Guideline 40, 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 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 **\$19,841.86**. The landlord must impose this increase in accordance with the Act and the Regulation.

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 27, 2023

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Residential Tenancy Branch