



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding MAYFAIR PROPERTIES LTD DBA BALMORAL  
PARK and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ARI - C

### Introduction

This hearing dealt with the landlord's application for an additional rent increase for capital expenditures made under the *Residential Tenancy Act* (the "Act") and section 23.1 of the *Residential Tenancy Regulation* (the "Regulation").

A pre-hearing conference call was held on March 3, 2023 to deal with any preliminary or procedural matters and an Interim Decision was issued on March 22, 2023. The Interim Decision should be read in conjunction with this decision.

The landlord was represented by a property manager and the building manager. One tenant appeared at the pre-hearing conference call and two co-tenants appeared at the hearing of July 11 2023.

At the hearing of July 11, 2023, the landlord's agents testified that an Amendment was submitted to correct the spelling of one of the tenant's names and the Amendment was served upon that tenant by email and by posting it to the door of that person's rental unit on March 15, 2023. The landlord's application has been amended to correct the spelling of that tenant's name.

At the hearing of July 11, 2023, the landlord's agents testified that all of the tenants have been notified of this hearing date by serving them with the Notice of Hearing in one of two ways: by email to tenants for whom the landlord has an email address and by posting to the rental unit door where the landlord did not serve by email. As seen in the Interim Decision, I had deemed service by posting to the rental unit doors to be sufficient.

In addition to testimony, the landlord provided signed and witnessed Proof of Service forms and an affidavit with respect to service of hearing materials to the tenants.

Having been satisfied the landlord duly served its tenants I proceeded to hear from the landlord's agents with respect to this application and review its evidence.

None of the tenants had uploaded any written submissions or evidence prior to the hearing. However, after the landlord's agents presented the landlord's basis for seeking an additional rent increase for capital expenditure, I heard oral submissions from the tenants who were in attendance at the hearing.

#### Issue(s) to be Decided

Has the landlord established an entitlement for an additional rent increase for capital expenditures in the amount requested?

#### Background and Evidence

The current landlord purchased the building in approximately 2019. In approximately 2020 the landlord started receiving oral complaints from tenants about water leaks. The landlord commissioned an engineer to assess the roof's condition and the engineer provided a report to the landlord on May 22, 2020.

The landlord continued to receive complaints of water leaking from the ceiling of a rental unit, as seen in email received from tenants in April 2021, and in August 2021 the landlord executed a contract with a roofing contractor to replace the building's roof. Further complaints of ceiling leaks were received, via emails in October 2021, and in January 2022 the roofing contractor commenced the roof replacement project.

The roof was completed on February 22, 2022 and the landlord's agents testified that the landlord expects the new roof to last many years, well in excess of 10 years, as the last roof was approximately 50 years old.

The landlord submits that the eligible capital expenditure was the replacement cost of the building's roof at a cost of \$157,619.57.

The landlord's agents confirmed they used the online calculator found on the Residential Tenancy Branch website to calculate the amount of the Additional Rent Increase it seeks. Based on a roof replacement cost of \$157,619.57 and 44 specified

dwelling units in the building, the additional rent increase sought is \$29.85 per month for each unit. [ $\$157,619.57 / 44 \text{ dwelling units} / 120 \text{ months} = \$29.85$ ].

In making this application, the landlord provided evidence that included: emails from tenants complaining of leaks; the report prepared by the engineer; photographs taken of the roof after the roof was replaced; and the roof replacement invoice.

The engineer's report indicates the purpose of the engineer's evaluation was as follows:

*The intent of this evaluation was to review and assess the present condition of the roof, identify defects, and provide recommendations for replacement or maintenance. Opinions of Probable Costs (OPCs) have been provided for recommendations made in this report.*

The engineer's report is several pages with numerous photographs, descriptions, and findings. In the conclusion, the engineer states that the roof is likely the original roof from construction of the building in 1968. The engineer stated that well built roofs of this type have a life expectancy of 30 to 35 years and that the roof was at the end of its functional life and the roof should be replaced.

The invoice for the roof replacement is dated February 22, 2022 and reflects that the landlord gave the contractor a 25% deposit of \$35,732.05 at the time of signing the contract on August 6, 2021; the landlord gave a further 25% deposit of \$35,732.05 upon delivery of roofing materials on January 25, 2022; and, the landlord was invoiced for the balance owing of \$86,155.47 (plus GST) upon completion of the project on February 22, 2022. These three amounts added together equal: \$157,619.57. The landlord confirmed that it did not include GST in its calculation since the landlord claimed the GST paid as a tax credit in its GST filing.

The tenants appearing at the hearing acknowledged that the landlord has likely calculated its claim correctly; however, the tenants take the position that the Act and the Regulations that pertain to additional rent increases for capital expenditures fail to provide an exemption for tenancy agreements entered into after the capital expenditure was incurred. The tenants point out that their tenancy started on April 15, 2022, after the roof was replaced, and at that time the landlord knew of the cost to replace the roof and the rent was set based on the market and condition of the building when their tenancy agreement was entered into. As such, the tenants are of the view they are already paying the roof replacement in the monthly rent set when their tenancy started and it is unfair to impose this additional rent increase upon them. The tenants submitted that other provinces provide exemptions for tenants in the same circumstance as them.

The landlord's agent responded that the roof replacement will last several years and all of its tenants will benefit from that for years to come and it is fair to impose the additional rent increase upon all of the tenants.

### Analysis

Section 43 of the Act provides for the amount rent may be increased by a landlord. Where a landlord seeks to increase the rent more than the annual allowable amount and if the tenant has not agreed to a greater increase in writing, section 43 of the Act provides that the landlord may make an application for an additional rent increase to the Director of the Residential Tenancy Branch for one of the reasons provided in the Regulations.

Sections 21 and 23.1 of the Regulations sets out the framework for determining if a landlord is entitled to an additional rent increase for capital expenditures. I will not reproduce these 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 18 months preceding this application;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the work performed was an *eligible* capital expenditure, specifically that:
  - the work was to repair, replace, or install a "major system" or a "major 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.

Section 23.1(5) provides that 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:

- because of inadequate repair or maintenance on the part of the landlord, or
- the landlord has been repaid, or is entitled to be repaid, some or all of the cost from another source.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be granted (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.

Below, I analyze each of the criteria for granting an additional rent increase for capital expenditure:

#### Prior Application for Additional Rent Increase

The application before me was filed in November 2022 and upon review of the Residential Tenancy Branch records, I am satisfied the landlord had not made an application for an additional rent increase in the 18 months that preceded November 2022.

#### 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.

The landlord submitted that the building for which the roof was replaced has 44 specified dwelling units. This number was on the application served to the tenants and none of the tenants refuted that number. Therefore, I accept the landlord's undisputed submissions that there are 44 specified dwelling units in the building that had a new roof installed.

#### Amount of Capital Expenditure

The landlord submitted that the roof replacement cost a total of \$157,619.57. I find that figure is supported by the invoice provided. I am also satisfied that the landlord did not include the GST paid for the roof replacement as the GST was recoverable in its GST filings. Therefore, I find the amount of \$157,619.57 is the amount of the capital expenditure.

#### 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 that the work was done for an eligible purpose. One of those purposes is that the work was to repair, replace, or install a major system or a major component of a major system.

The Regulation defines a "major system" as an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants. A "major component" is a component of the residential property that is integral to the property or a significant component of a major system.

As seen in Residential Tenancy Branch policy guideline 37C, examples of a major system or major component include the roof. As such, I find that the roof replacement was undertaken to replace or install a "major system" or "major component" of the residential property.

To be an eligible capital expenditure, the major system or major component had to be repaired or installed because the former system or component had failed or was near the end of its useful life. The engineer who prepared the condition assessment report for the roof opined that the old roof was likely original to the construction of the building

in 1968, was failing, that a roof of that construction had an expected life span of 30 to 35 years, and the old roof was at the end of its useful life. Therefore, I accept that the roof replacement was needed due to the old roof failing and being at the end of its life.

To be an eligible capital expenditure it must have been incurred in the 18-month period preceding the date the landlord submits their application. A “capital expenditure” refers to the entire project of installing, repairing, or replacing a major system or major component. As such, the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure is made. In this case, the roofing contractor issued an invoice on February 22, 2022 requiring the final payment be made. Since the landlord made this application in November 2022, I am satisfied the capital expenditure was incurred within the 18 months preceding the filing of the application.

Finally, to be an eligible capital expenditure, the capital expenditure must not be expected to be incurred again within the next five years. The landlord’s agents submitted the new roof is expected to last a number of decades and I note that on the roofing contractor’s invoice there is a warranty period of 10 years. Therefore, I accept that the roof is not expected to be replaced against within the next five years.

#### Tenant’s position

As for the tenants’ argument that their tenancy started after the capital expenditure was incurred and their monthly rent reflected market rent and the condition of the building after the roof was replaced, I acknowledge the Act and the Regulations, as they are currently written, do not provide an exemption to tenants in such a circumstance.

Rather, the Regulations provide that the landlord may make an application for an additional rent increase for capital expenditures for any rental unit it seeks to impose the additional rent increase [section 23.1(3)] and the Director MUST grant the application where the criteria have been established [section 23.1(4)]. In other words, I have no discretion to decide that some units will be subject to the additional rent increase and others will not based on when their tenancy started or the amount of rent the tenant currently pays.

Residential Tenancy Policy Guideline 37C, section E., addresses the issue raised by the tenant. The policy guideline states:

*A landlord cannot make more than one application for an additional rent increase for the same capital expenditure.... A landlord may apply for an additional rent increase against a tenant, even if that tenant moved into the rental unit after an eligible capital expenditure was incurred.*

[My emphasis underlined]

Section 23.1(4) of the Regulations provides that a tenant may succeed in defeating a landlord's application under section 23.1(5) where the tenants demonstrate the work had to be done as a result of inadequate repair or maintenance of the system on part of the landlord. Also, a tenant may defeat an application where it is demonstrated the landlord was paid, or entitled to payment, by another source for the capital expenditure. In this case, the engineer opined the roof was at the end of its useful life due to its age and not inadequate maintenance on part of the landlord. The landlord had excluded the GST component of the roof invoice as it would recover that amount in its GST filing and there was no other evidence to suggest the landlord was reimbursed from another source. Therefore, I find section 23.1(5) does not apply and the landlord remains entitled to the additional rent increase that was requested.

Sections 23.2 through 23.3 of the Regulations sets out the formula to be applied when calculating the amount of the additional rent increase that may be imposed upon the tenants in a given year, including a maximum amount. The Residential Tenancy Branch website provides a calculator for parties to use to calculate or verify the amount of the rent increase imposed by the landlord is lawful. Accordingly, the landlord must ensure that the amount of the rent increase imposed in a year is compliant with sections 23.2 and 23.3 of the Regulations.

### Outcome

In light of all of the above, I find the landlord has established that it made an eligible capital expenditure and I find the **Total ARI is \$29.85**. Therefore, I grant the landlord's application for an additional rent increase due to capital expenditure(s).

I refer the landlord to policy guideline 37C and the calculators on the Residential Tenancy Branch website to determine the timing, notice requirements, amount limitations for imposing the additional rent increase.



Conclusion

The landlord's application for an additional rent increase for capital expenditures is granted.

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 13, 2023

---

Residential Tenancy Branch