



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      ARI-C

### Introduction

The landlord's application filed on April 6, 2023, is seeking a rent increase 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.

The landlord attended as well as three tenants. The parties gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

There were no issues raised on service of documents.

### Issue(s) to be Decided

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

### Background and Evidence

The rental property consists of 4 rental units "Dwelling Units"

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.	Roof replacement, roof drains and venting	\$41,429.89
	Total expenditure	<b>\$41,429.89</b>

The landlord testified that the original asphalt roof had to be replaced as it was at least 20 years old and starting to leak and had draining issues. The landlord stated that they had the roof replaced with a waterproof membrane, had to move some roof drains for better drainage and they had moved some vents on the side of the building to the roof for better venting.

The landlord stated that they expect the new roof to last at least 25 years or more.

The tenants are not disputing the capital expenditure. They were seeking information on how the rent increase would be applied.

### 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:
  - 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.

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 4 specified Dwelling Units to be used for calculation of the additional rent increase. The landlord is claiming the total amount of **\$41,429.89** 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 October 2022, the landlord had the old asphalt roof replaced as it was leaking. The roof, was replaced with a new roof, better drainage and exterior vents were relocated. I find this is a major component of the structure of the building. I find that the Work was done as the roof was nearing its useful lifespan and failing.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years as the expect lifespan expected is at least 25 years. Therefore, I find the landlord is entitled to recover the amount of **\$41,429.89**.

The tenants were not disputing the capital expenditure and it was explained to the tenants at the hearing on how the additional rent increase is applied as this was their primary concern. The tenants were directed to the RTB additional rent calculator on the website and an example of calculation was given at the hearing based on the tenant JL current rent.

### 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 4 specified Dwelling Units and that the amount of the eligible capital expenditures total the amount of **\$41,429.89**.

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$86.31** ( $\$41,429.89 \div 4 \div 120 = \$86.31$ ).

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 **\$41,429.89**. 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 25, 2023

---

Residential Tenancy Branch