



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding HIGHLAND KAMLOOPS GP LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ARI-C

### Introduction

The hearing dealt with the Landlord's application (Application) under the *Residential Tenancy Act* (the Act) and the *Residential Tenancy Regulation* (the Regulation) for an additional rent increase for capital expenditure under section 23.1 of the Regulation.

The Landlord was represented at the hearing by counsel and three of the Landlord's Agents. Two of Tenants, AP2 and BB, attended the hearing.

A preliminary hearing took place on May 26, 2023 which dealt with a request for summons from Tenant AP2, and an Interim Decision dated June 7, 2023 was rendered. This Decision should be read in conjunction with the Interim Decision.

Counsel for the Landlord submitted the Interim Decision and additional disclosure from the Landlord per the Interim Decision were served to the Tenants. Documentary evidence regarding service was provided by the Landlord.

### Preliminary Issue: Amendment

The Landlord's Agent confirmed the Tenant in unit 26 had vacated their rental unit since the Application was made. As such, their name was removed from the front page of this Decision.

They also confirmed another Tenant may be vacating their rental unit by the end of June 2023, though it was not known for certain if this would happen. Given this, I have not removed their name from the front page of the decision.

Issue to be Decided

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.

The Landlord's Agent confirmed no previous applications for an additional rent increase for capital expenditure had been made against any of the Tenants before this Application was made.

The parties agreed that the residential property is a low-rise, semi-attached group of units. There are 6 buildings containing 60 residential units in total, though the number of units within each building varies.

Counsel for the Landlord submitted as follows. The residential property was constructed in 1965. The Landlord took beneficial ownership of the residential property in February 2022 and shortly after, obtained the services of a contractor to replace the roof of all the buildings. The previous roof was a built-up tar and gravel roof, original to the buildings, and it was replaced with a modified bitumen roof.

The type of original roof had a typical life span of 20-25 years. The new roof will also have an expected life span of 20-25 years.

The Landlord only seeks to apply the rental increase to 55 of the 60 units as 5 of the tenancies came into effect after the work was completed and so the rent was set at market rate, taking into account the cost of the roof replacement.

Payment was made via 6 invoices which were entered into evidence. The payments were made through an initial deposit, three further installments and a holdback payment. There was also a change order for additional work required. The Landlord's Agent confirmed that when the work was being carried out, it came to light that some of the plywood material below the roof had degraded so had to be replaced, resulting in additional costs which applied to all buildings in the residential property apart from building number 1.

Counsel for the Landlord submitted the Landlord determined the roof of all buildings were in need of repair and they had gone well beyond their useful life span, being present since construction of the residential property in 1965. The work was also done to comply with obligations under section 32(1) of the Act. The materials beneath the surface of the roof would also have needed to have been replaced anyway due to their age.

The Landlord's Agent submitted that given the age of the building, there could have been leaks had the roof not been upgraded.

Tenant AP2 argued the Landlord did not produce a report regarding the condition of the roof before the work was carried out or that they explored cheaper options and asserted that the roof was not failing prior to the work. The Tenant also argued the Landlord could have replaced the roof at an earlier time at a lower cost.

The Tenant requested I deny the Landlord's Application on the grounds of inadequate maintenance on the part of the Landlord as the roof was over twice as old when it should have been replaced, so costs of replacing the roof are substantially higher now. The Tenant also argued the additional work on the change order was an indication of poor maintenance.

Counsel for the Landlord submitted that no report was obtained prior to the work being carried out was because it was clear that after 57 years in existence, the roof would have inevitably needed replacement.

The change order was for unforeseen additional work replacing plywood that was required to allow the project as a whole to continue.

### Analysis

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 set out per sections 22 and 22.1 of the Regulation by making an application for dispute resolution.

Sections 21 and 23.1 of the Regulation sets out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. To be successful in their application, a landlord must prove, on a balance of probabilities:

- that the landlord has not made an application for an additional rent increase against the 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 before the application was made;
  - the capital expenditure is not expected to be incurred again within five years.

However, 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 either:

- 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.

*18 Month Requirement*

In this case, there was no evidence before me that the Landlord had made a prior application for an additional rent increase for the work done within the prior 18 months.

*Number of Specified Dwelling Units*

Based on the evidence before me, I find there are 60 dwelling units in the residential property and the evidence supports that all of the dwelling units are eligible. Though the Landlord applied for the rent increase in relation to 55 of the units, the calculation must be based on 60 units, rather than 55.

Policy Guideline 37C confirms 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, though the Landlord has chosen not to in this case.

*Amount of Capital Expenditure*

The Landlord submitted invoices for all claimed expenditures. I find the invoices for items numbered 1 to 5 below are related, as they all stem from the work carried out on the roofs of all the buildings, and the invoices are for various installments of the payments due for the same work.

I find the invoice for item number 6 relates to work carried out on only 5 of the 6 buildings. The capital expenditure is summarized as follows:

<b>Item No.</b>	<b>Description</b>	<b>Invoice Date</b>	<b>Amount</b>
1	Deposit	March 31, 2022	\$81,504.83
2	Second installment	May 10, 2022	\$146,708.70
3	Holdback payment	May 10, 2022	\$46,186.07
4	Third installment	May 31, 2022	\$146,708.70
5	Fourth installment	June 21, 2022	\$122,257.25
6	Change order	July 13, 2022	\$11,105.48
<b>Total</b>			<b>\$554,471.03</b>

### *Eligibility of the Capital Expenditure*

I find that as the capital expenditures were incurred for the replacement of the roof of the residential property, which is a major system or component, as defined in Policy Guideline 37C.

Considering the evidence of the Landlord, I find the reason the capital expenses were incurred was because the roof was close to the end of its useful life. I accept the undisputed submissions of Landlord's counsel that the roof was 57 years old at the time of replacement. Given that Policy Guideline 40 - Useful Life of Building Elements states that the useful life of a flat roof is 20 years and the email from a technical advisor at the Roofing Contractors Association of British Columbia (RCABC) entered into evidence by the Landlord echoes this sentiment, I find the work was undertaken for a valid reason as set out in section 23.1(4)(a)(iii) of the Regulation.

After review of the invoices submitted into evidence by the Landlord, I find that the capital expenditures were incurred in the 18 month period preceding the date the Landlord made their Application.

Counsel for the Landlord submitted the new roofs are expected to last for 20-25 years. I find the email from the RCABC corroborates this. I also note the invoices for the work include a 10 year workmanship warranty, which lead me to conclude that the capital expenditure is not expected to be incurred again within five years.

### *Inadequate Maintenance*

Tenant AP2 requested I deny the Landlord's Application on the basis of inadequate maintenance on the part of the Landlord. For the purposes of this request, I will apply the broad definition of "landlord" set out in section 1(d) of the Act which includes a former landlord.

As evidenced by the roof reaching a life span of 57 years, I find it more likely than not, that it was sufficiently maintained, thus allowing it to reach over and above the expected age by a significant margin. Additionally, following the request for summons, the Landlord submitted records from the previous landlord which I find show repairs were carried out to in 2006 and 2008, indicating to me that maintenance was carried out when required.

Considering the evidence and submissions, I find on a balance of probabilities that neither the current Landlord, or previous landlord inadequately maintained the rental property, and the Tenants have not established a reason for me to dismiss the Application under section 23.1(5) of the Regulation.

### *Outcome*

I find the Landlord has submitted sufficient evidence to support their claim for capital expenditures of \$543,365.55 which are covered by the items 1 to 5.

I find the claim for expenditures relating to the change order of \$11,105.48, item number 6, is not supported as this does not relate to all specified dwellings within the residential property. Though I accept that the amount relates to the work in general, given that the buildings are semi-attached, I find that as the change order did not relate to the roof of building 1, this building was not affected by the work on the change order, so the expenditure is not eligible.

For these reasons, I grant the Landlord's Application for the additional rent increase, in part, based on eligible capital expenditures of \$543,365.55, per section 43(1(b) of the Act and 23.1(4) of the Regulation.

Section 23.2 of the Regulation provides the formula for calculating 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 60 specified dwelling units and that the amount of the eligible capital expenditure is \$543,365.55 in total.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of \$75.46 per affected tenancy ( $\$543,365.55 \div 60 \div 120$ ). This amount may not exceed 3% of a Tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

The Landlord is directed to Policy Guideline 37, page 16 to properly calculate the rent increase in accordance with the Regulation, as this is the Landlord's responsibility.

Conclusion

The Landlord's Application for an additional rent increase for eligible capital expenditures is granted, in part, for a total of \$75.46 per affected tenancy.

The Landlord is directed to serve this Decision on each affected Tenant, individually, within two weeks 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 Act.

Dated: August 14, 2023

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Residential Tenancy Branch