



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding P CORP HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## 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.

The Landlord (agent of) attended the hearing. Also, two Tenants were present at the hearing. All parties provided affirmed testimony. The Tenants confirmed receipt of the Landlord's application, Notice of Dispute Resolution Proceeding, and evidence package. The Landlord explained that they served most of the Tenants in person on May 3 and 4<sup>th</sup>, and 5 Tenants were served by registered mail. Pursuant to section 90 of the Act, I find the Tenants are deemed served with these packages the same day they were served in person, and for those packages sent by registered mail, 5 days after they were sent by mail.

The Landlord provided a proof of service document showing that they served the relevant documents and evidence, noted above.

The Tenants did not provide any documentary evidence.

I find the Landlord sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

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

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

As noted on this application, this rental building consists of 31 rental units, all of which are occupied by Tenants.

The Landlord further explained that this rental building was built around 60 years ago, and many of the building components are many decades old and are starting to break down.

There is no evidence to show that the Landlord has applied for an additional rent increase for capital expenditure against any of the tenants, for this building, prior to this application.

The Landlord applied for permission to impose an additional rent increase for capital expenditures that were incurred to pay for 5 different items, totaling \$348,424.56, as follows:

- 1) \$239,578.38 – Roof replacement
- 2) \$32,093.88 – Stucco Repair
- 3) \$57,209.15 – Hallway carpets
- 4) \$17,303.50 – Electric Vehicle Chargers
- 5) \$2,239.65 – Low voltage cable coverings

The Landlord and Tenants spoke to each of the above noted items, as follows:

- 1) \$239,578.38 – Roof replacement

The Landlord stated that the roof is approximately 25-30 years old, and is nearly at the end of its useful life expectancy. The Landlord further stated that his insurer has

threatened to increase the premiums if the roof is not replaced soon. The Landlord explained that he hired a roofing consultant to manage the project and oversee the related expenses, which were noted on the worksheet he provided. The expenses include management/inspection fees, fascia repairs, rebuilding of the entire roofing membrane, and attached rooftop decks and railings. More specifically, the Landlord stated that there were a couple different rooftop decks (with railings) that are open to use by anyone in the building, and these also double as emergency exits/egress. The Landlord stated that all of these items (deck/railings) needed to be removed and replaced once the roof was replaced.

The work was completed on February 22, 2023, and copies of invoices were provided.

One of the Tenants took issue with rooftop deck and railings, as he feels that cost should be born by the Tenants who abut that space and use it most frequently. The Landlord asserted that the rooftop balcony and railings are accessible to all in the building, and are part of an emergency escape route.

## 2) \$32,093.88 – Stucco Repair

The Landlord explained that this expense was incurred to replace aging and failing portions of the stucco exterior. The Landlord explained that there was a portion of the stucco that was cracking, and was delaminating from the building, which was a hazard. The Landlord also stated that the stucco contained asbestos, and required remediation, prior to being able to repair the building membrane. Receipts were provided, and the work was completed on or around August 9, 2022. The Landlord provided a detailed breakdown of the costs in his worksheet as well as invoices.

The Tenants did not take issue with this item.

## 3) \$57,209.15 – Hallway carpets

The Landlord stated that this expense was incurred to replace the carpets in the common stairwells and hallways of the rental building. The Landlord explained that the carpets were several decades old, and were falling apart. The Landlord also stated that the subfloors were upgraded to reduce noise, and new baseboards were put in. The Landlord provided a detailed breakdown of the costs in his worksheet as well as invoices. This work was completed on April 7, 2022.

The Tenants did not take issue with this item.

4) \$17,303.50 – Electric Vehicle Chargers

The Landlord explained that he installed 2 electric car charging stations in the common parking area for the building. The Landlord stated that these spots are accessible by any of the Tenants in the building, should they wish to use them. The Landlord provided a detailed breakdown of the costs in his worksheet as well as invoices. The Landlord received a \$10,000.00 rebate from the government, and he deducted this from his overall costs.

The Landlord completed this work on October 21, 2022.

One of the Tenant's argued that since this improvement doesn't reduce the greenhouse gases of the building itself, that this expense should not qualify. Further, he stated that this expense does not benefit most people in the building, since most do not own electric vehicles.

5) \$2,239.65 – Low voltage cable coverings

The Landlord explained that this was purely a cosmetic upgrade to help hide some of the cablevision and internet cables attached to the exterior of the building.

Analysis

1. Statutory Framework

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. 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 successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- 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 (S. 23.1(4));
  - o the Work was undertaken for one of the following reasons:

- to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
- because the system or component:
  - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
  - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
- to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
- to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

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 (s. 23.1(5)(a)); or
- for which the Landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

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.

## 2. Prior Application for Additional Rent Increase

I am satisfied that the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months. This was not in dispute.

## 3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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.

I accept the undisputed evidence that there are 31 separate rental units, currently occupied by Tenants. I find these units are both dwelling units, and specified dwelling units.

#### 4. Amount of Capital Expenditure

The Landlord applied for permission to impose an additional rent increase for capital expenditures that were incurred to pay for 5 different items, totaling \$348,424.56, as follows:

- 1) \$239,578.38 – Roof replacement
- 2) \$32,093.88 – Stucco Repair
- 3) \$57,209.15 – Hallway carpets
- 4) \$17,303.50 – Electric Vehicle Chargers
- 5) \$2,239.65 – Low voltage cable coverings

#### 5. 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
    - 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.

I will address each of these in turn.

a. Type of Capital Expenditure

Section 21.1 of the Regulation defines “major system” and “major component”:

"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;

"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;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

I will address each of the items in the same order they were laid out above:

- 1) \$239,578.38 – Roof replacement

I am satisfied the roof and deck work completed is a considered a repair to a “major component”, of a “major system” as it is part of the building envelope/roof, and it services the whole building.

I note the Tenants did not take issue with most of the costs related to the roof repair, but instead suggested that the costs of the upper deck and railing that were replaced ought to be absorbed by the Landlord or the Tenants who abut the rooftop deck. The Tenants stated that the deck seems to only be used by those units directly abutting the rooftop deck area. However, the Landlord provided a detailed explanation about the purpose and nature of the rooftop deck area, and that it is accessible and may be used by anyone living in the building. It appears these decks and railings on the roof are also part of an emergency egress, which I find benefits all those in the building. I find all of these related items are eligible expenses related to the roof, which is a major system.

The Landlord may wish to further discuss and bring clarity to the issue of access to the rooftop, to ensure all Tenants in the building are aware that this is a shared space, not a private patio area for abutting units.

2) \$32,093.88 – Stucco Repair

I am satisfied that the work completed on the stucco was to remediate and repair a “major component” of a “major system” (siding) and this qualifies as an eligible capital expense.

The Tenants did not dispute this item.

3) \$57,209.15 – Hallway carpets

I am satisfied this work counts as work on a “major component” of a “major system” in the building, and it is clearly defined as an eligible capital expense in the Policy Guideline (flooring for common areas). I note these carpets were beyond their useful life expectancy and were failing. I find this work qualifies as an eligible capital expense.

4) \$17,303.50 – Electric Vehicle Chargers

I note the Landlord installed two electric vehicle chargers in the building parking lot, which are available to use by any of the Tenants. Although I accept not all Tenants will be able to utilize this upgrade, since many don't own electric vehicles at this time, I am satisfied it is an option available to be used by all Tenants. Also, I note the Tenant at the



hearing argued that it does not reduce the greenhouse gas emissions of the building, so it should not be allowed as an eligible capital expenditure. I have considered this position. However, I turn to Policy Guideline #37C, which states the following:

*A landlord may apply an order approving an additional rent increase if they have incurred eligible capital expenditures. A capital expenditure is eligible for an additional rent increase if it was incurred for one or more of the following reasons:*

- to install, repair, replace a major system, or major component in order to:*
  - ☐ *reduce energy use or greenhouse gas emissions;* or
  - ☐ *improve the security of the residential property.*

*[...]*

*An installation, repair, or replacement of a major system or major component that was not described above will be eligible for an additional rent increase if it reduces energy use or greenhouse gas emissions or improves the security of the residential property.*

*Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and any other substance prescribed in the regulations to the Climate Change Accountability Act.*

*Any reduction in energy use or greenhouse gas emissions established by a landlord will qualify the installation, repair, or replacement for an additional rent increase.*

[my emphasis added]

Provided the work completed was for an installation, repair, or replacement of a major system or major component, I note the Policy Guideline does not further elaborate on what is meant by a reduction of energy use or greenhouse gas emissions, and whether it has to mean greenhouse gas emissions directly tied to items such as furnaces and boilers etc. In this case, I find it is reasonable to consider a slightly broader context, which includes a reduction in greenhouse gases for activities of daily living for some Tenants (driving) on and around the property. Further, I find the electric work that was done is a major component of the electrical system. I find this expense qualifies as an eligible capital expenditure.

5) \$2,239.65 – Low voltage cable coverings

The Landlord explained that this was purely a cosmetic upgrade to help hide some of the cablevision and internet cables attached to the exterior of the building. Based on the photos, I agree that it is largely a cosmetic issue. I find the Landlord failed to establish that this is a major component or a major system as defined above. The Policy Guideline #37C clearly states that:

*“...cosmetic changed are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or component.”*

I am not satisfied that this component of the building is sufficiently integral to a major system or component and the work completed on this item is largely for aesthetics. I find this item is not eligible.

b. Reason for Capital Expenditure

I am satisfied that the work for the first 3 items was completed to repair, remediate and replace aging building components that were at the end of their useful life expectancy. With respect to the 4<sup>th</sup> item, I find it qualifies as it was for work completed on a major system and was done to help reduce greenhouse gas emissions.

c. Timing of Capital Expenditure

I note the Landlord made the application on April 20, 2023, and I am satisfied that all work was completed and paid within the 18-month period preceding this application.

d. Life expectancy of the Capital Expenditure

Policy Guidelines #40 sets out the useful life expectancy for typical building components. Roofing, siding, and carpets all last longer than 5 years, and I find it likely that the electric chargers would as well.

I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

### Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the Landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to 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.

I find the Tenants did not present any evidence to demonstrate that the capital expenditures were incurred due to inadequate repairs or maintenance, or that the Landlord was entitled to be paid from another source.

### Outcome

I find the Landlord is successful on the first 4 items, and the 5<sup>th</sup> item is ineligible. These 4 items total \$346,184.91. He has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure. 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 31 specified dwelling units and that the amount of the eligible capital expenditure is \$346,184.91.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$93.06 ( $\$346,184.91 \div 31 \text{ units} \div 120$ ). 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 RTB Policy Guideline 37, 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

I grant the application for an additional rent increase for capital expenditure of \$346,184.91. 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: August 16, 2023

---

Residential Tenancy Branch