



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SURFSIDE HOLDINGS LTD.  
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 section 43(3) of the *Residential Tenancy Act* (the "Act") and section 23.1 of the *Residential Tenancy Regulation* (the "Regulation").

An agent appeared for the corporate landlord and the agent was affirmed. No one appeared for the tenants.

### Preliminary and Procedural Matters

The landlord's agent testified that all of the tenants were given the proceeding package and evidence by attaching the materials to each of the rental unit doors on July 24, 2023. This was done by the building manager and witnessed by the landlord's agent in attendance at the hearing. I accepted the evidence before me that the tenants were duly served. Having been satisfied the landlord duly served its tenants I proceeded to hear from the landlord's agent and review the landlord's evidence.

None of the tenants had uploaded any written submissions or evidence prior to the hearing.

During the hearing, I noted I was provided a copy of the front and back of a cheque that was issued to the roofing contractor. I ordered the landlord to produce a copy of the invoice received from the roofing contractor so that I could verify the roof work was performed at the subject property. The landlord provided the invoice as ordered and I have considered it in making this decision.

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 landlord submitted that the residential property is an older apartment style building constructed in the 1970's approximately, with 43 specified dwelling units.

The landlord has made an application to the Director for authorization to increase the monthly rent by an additional \$21.48 for capital expenditures incurred to replace the roof on the building in April 2023 at a cost of \$110,847.47.

The landlord submitted that the roof that they replaced was in place when they bought the building 15 years prior. A roofing contractor inspected the roof on November 3, 2022. The roof was found to have water ponding issues, blisters in the roof membrane, a condition called "alligator", and decay around the roof vents. In January 2023, the roof leaked and the roof was replaced when the weather was favourable for a roof replacement.

The landlord confirmed that the new roof is expected to last 20 to 30 years and that the landlord did not receive any refund or rebate for any portion of the expenditure.

The landlord provided evidence that included: photographs of the old roof; photographs of the new roof; a letter from the roofing contractor dated November 22, 2022 recommending roof replacement; an invoice for the installation of the new roof; the front and back of the cheque issued for payment to the roofing contractor.

The invoice for the new roof is dated April 25, 2023 and reflects a charge of \$105,569.00 plus GST for a total of \$110,847.45 for replacement of the roof at the subject property address. The invoice indicates a cheque for the full amount was issued on May 9, 2023 and the back side of the cheque issued to the roofing contractor shows that the cheque cleared the bank on June 9, 2023.

## Analysis

Section 43 of the Act provides for the amount that rent may be increased by a landlord. Where a landlord seeks to increase the rent by more than the annual allowable amount and if the tenant has not agreed to a greater increase in writing, section 43(3) 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.

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 July 2023 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 July 2023.

### 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 has 43 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 submission that there are 43 specified dwelling units in the building that had the new windows and flooring installed.

### Amount of Capital Expenditure

The landlord has based the amount of the rent increase sought on an expenditure of \$110,847.45. I find this amount is supported by the invoice and the cleared cheque. Therefore, I accept the landlord expended \$110,847.45 to replace the roof on the subject property.

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 a roof. As such, I find that the replacement of the roof 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 landlord submitted evidence, including photographs and a letter from the roofing contractor, that the old roof was failing and needed to be replaced due to blisters and the “alligator” condition. Therefore, I accept that the old roof was at the end of its useful life and was failing at the time of replacement.

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 due or made. In this case, the roofing contractor issued an invoice to the landlord on April 25, 2023 requiring full payment be made. Therefore, 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. Considering Residential Tenancy Policy Guideline 40 provides for an average useful life of 20 years for a flat roof, and the landlord’s agent submitted that the new roof is expected to last 20 to 30

years, I accept that the roof is not expected to need replacement again within the next five years.

### Outcome

In light of all of the above, I find the landlord has established that it made eligible capital expenditures and I find the **Total ARI is \$21.48**, calculated as follows:

$$\text{Total ARI} = \frac{(\text{eligible capital expenditures}) \div (\text{number of specified dwelling units})}{120}$$

$$\text{Total ARI} = [\$110,847.45 / 43 \text{ units}] = \$2,577.85 / 120 = \$21.48$$

Therefore, I grant the landlord's application for an additional rent increase due to capital expenditures, as requested.

As provided under the Regulations, the Director provides the Total ARI in the decision issued in response to the landlord's application for an additional rent increase for capital expenditures.

Sections 23.2 through 23.3 of the Regulations set out the formula for the landlord to use to calculate the amount of the additional rent increase that may be imposed upon the individual 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.

I refer the landlord to policy guideline 37C and the calculators on the Residential Tenancy Branch website to determine the timing, notice requirements, and 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: November 22, 2023

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Residential Tenancy Branch