



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **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 expenditures pursuant to Section 23.1 of the *Regulation*.

This hearing was originally set down to be heard on October 19, 2023, at 11:00 AM, and was subsequently adjourned as per my Interim Decision dated the same day. The final, reconvened hearing was set down for December 1, 2023, at 11:00 AM.

M.S. attended the final, reconvened hearing as an agent for the Landlord, and the Tenant attended the final, reconvened hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

At the original hearing, service of documents was discussed and there were no issues concerning service. As such, both parties' evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence 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/or arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this Decision. Only relevant oral and documentary evidence needed to resolve the issue of this Application, and to explain the Decision, is reproduced below.

The Landlord gave the following oral and documentary evidence:

1. This is the Landlord's first Application for a rent increase under subsection 23.1(1) of the *Regulation*;
2. The capital expenditures were in the amount of \$32,536.50;
3. The 8 capital expenditures were incurred for the replacement of what the Landlord alleged were major components of the residential property;
4. The capital expenditures were made between April 4, 2022 to June 5, 2023, and thus incurred within the 18-month period preceding the date on which the Landlord made this Application (the Application was made on June 21, 2023); and,
5. The capital expenditures are not expected to be incurred again for at least 5 years.

Submitted into documentary evidence were proof of the capital expenditures, proof of installations and replacement, and proof that the work was completed.

M.S. advised that the residential property is an approximately 16-year-old single-detached house that was purchased by the Landlord in 2016, and that she was hired in

2021 to manage the property. A copy of the signed tenancy agreement was submitted into evidence for consideration.

She testified that the Landlord has not imposed an additional rent increase pursuant to Sections 23 or 23.1 of the *Regulation* in the last 18 months, and that the Landlord was seeking to impose an additional rent increase for what is deemed to be capital expenditures incurred to pay for 8 items (collectively, the “Work”).

- 1. Major roof repair to address leaking issues.**
- 2. Second batch of roof repairs after the initial major roof repairs to address leaking.**
- 3. Hot water tank replacement, as old one had rusted out/leaked and was no longer functional.**
- 4. Fridge repair diagnostic.**
- 5. Fridge repair parts, labour and installation on a Sub-Zero refrigerator repair.**
- 6. New kitchen fume hood unit order from Trail Appliance, as old one had broken.**
- 7. Cost of installation, kitchen counter modifications, broken old unit removal, ductwork modifications, etc. for new kitchen fume hood.**
- 8. New furnace unit, installation + labour, haul away of old furnace unit, permit fee.**

- 1. Major roof repair**
- 2. Second batch of roof repairs**

M.S. testified that the house needed a new roof because it was leaking in portions, and the surrounding areas of the roof were rotting due to an issue with the gutter. She claimed that the Tenant brought this to her attention; however, she was unsure when this was. She stated that the roof was original to the house. She referenced the pictures submitted as documentary evidence of the issue.

The Landlord submitted two invoices into evidence relating to these items:

- A) An invoice dated March 23, 2023, for the roof repair at a cost of \$15,750.00.
- B) A second invoice dated March 23, 2023, for the roof repair at a cost of \$3,150.00.

The Tenant advised that there is a lack of essential information included in the Landlord's documentation as the invoices do not specifically indicate what work was done. As well, he stated that the timing of the invoice was incorrect as the gutter work was completed in the summer. He testified that there are no leaks in the home, that he requested that the severely blocked gutter be addressed once he moved in, and that he did not request a roof repair. He stated that M.S. failed to address the blocked gutter issue, so he emailed her about it on April 15, 2022, and again on May 15, 2022. It is his opinion that the roof issue is due to the clogged gutter that the Landlord has failed to maintain. As well, it is his belief that a roof would have a useful life of approximately 50 to 60 years.

### **3. Hot water tank replacement**

M.S. advised that one of the hot water tanks rusted and leaked, causing a safety hazard, and she cited the picture submitted of this tank. She stated that a plumber fixed this in a day, and she referenced an invoice dated April 4, 2022, for this work. She was unsure how old the hot water tank was, or what repairs, if any were completed on the hot water tank before her company took over. She submitted that this was a major system or component as hot water is critical, and the Tenant cannot live without it.

The Landlord submitted one invoice into evidence relating to this item:

A) An invoice dated April 4, 2022, at a cost of \$1,260.00.

The Tenant advised that the tank was leaking prior to the start of the tenancy, that this was discovered at the move-in inspection, and that a picture was taken accordingly. He testified that he emailed the Landlord about this on April 1, 2022, and it was repaired on April 4, 2022.

### **4. Fridge repair diagnostic**

### **5. Fridge repair parts, labour and installation on a Sub-Zero refrigerator repair**

M.S. made submissions on this issue, but then conceded that it was not a major system or component that would fall under the criteria for this type of Application.

**6. New kitchen fume hood unit order from Trail Appliance, as old one had broken**

M.S. advised that the Tenant informed her in April 2023 that the fume hood was not working properly, so a technician was dispatched approximately three days later. It was determined that the motor stopped working, and that there was no guarantee that repairing it would extend the life, so it was better to replace it. It was later determined that a specialty hood fan was required to fit into the area in the kitchen, and she stated that this was paid for on June 5, 2023. She testified that it was her belief that this was a major component as the Tenant had a problem with having to live with food smells.

The Landlord submitted one invoice into evidence relating to this item:

A) An invoice dated June 5, 2023, at a cost of \$2,320.64.

The Tenant advised that this fume hood stopped working on March 22, 2023, that he brought this to the Landlord's attention immediately, and that it took until August 2023 to fix. He stated that the vent was not replaced until after this Application was made.

**7. Cost of installation, kitchen counter modifications, broken old unit removal, ductwork modifications, etc. for new kitchen fume hood**

M.S. advised that the original fume hood was original to the house, and that a custom piece was specially installed. She claimed that this was part of a major system, and she referenced the estimate submitted to support this claim.

The Landlord submitted one estimate into evidence relating to this item:

A) An estimate dated May 31, 2023, at a total cost of \$1,522.50.

The Tenant reiterated that this was not completed at the time of the Application, and that this is contrary to the Residential Tenancy Regulation. As well, he advised that he waited half a year for this matter to be resolved.

**8. New furnace unit, installation + labour, haul away of old furnace unit, permit fee**

Finally, M.S. advised that the Tenant informed her that the furnace broke in or around April 2023, and that a company was brought in for a quote. She stated that a new

furnace was installed, and the Tenant was without heat for a few days. She testified that the old furnace was installed approximately 15 years ago.

The Landlord submitted one invoice into evidence relating to this item:

A) An invoice at a total cost of \$7,289.00.

The Tenant advised that the furnace required replacement due to a lack of maintenance by the Landlord. He testified that the furnace displayed a maintenance code at the start of the tenancy, and he would constantly inform the Landlord of this by email as early as June 2022. He stated that this code was only reset after the house was shown to prospective purchasers. He submitted that the furnace malfunctioned in early November 2022, and he referenced emails sent to the Landlord about this. He stated that the technician who attended to this mentioned that it had not been maintained in a long time and that it was clogged with debris. He advised that it took the technician two visits to fix this problem, and then it broke again in April 2023. He testified that the Landlord received an \$800.00 furnace rebate, but did not deduct this from the amount being sought on this Application.

M.S. advised that the furnace filter was changed regularly, and that when the technician attended on October 21, 2022, it was determined that a return valve had been closed. The technician opened this valve, and it solved the problem. She testified that the technician returned on October 26, 2022, because a trap was plugged in the furnace. She stated that the motor of the furnace had stopped running in April 2023, and she agreed that the maintenance of the furnace was “not on the dot”. As well, she noted that the maintenance code was not indicative of any of the issues that occurred.

## 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:
  - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
  - 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 Tenant may defeat an Application for an additional rent increase for capital expenditures 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 accept the M.S.'s testimony that the Landlord has not imposed a prior rent increase for capital expenditures in the last 18 months.

### 3. 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.

Based on the M.S.'s solemnly affirmed and undisputed testimony, I find that there is one specified dwelling unit in the residential property.

### 4. 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

Residential Tenancy Branch Policy Guideline # 37 states the following:

Major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. 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.

With respect to items 1 and 2, I accept that these were all part of the overall roof repair and replacement, which would qualify as a “major system” as defined by the *Regulation*.

I also accept that item 8 was for the replacement of a “major system” as defined by the *Regulation*.

However, with respect to items 3 through 7, I reject that the replacement of these items would qualify under the *Regulation* as these, in my view, are appliances and not a major component. As such, these are summarily rejected.

Accordingly, I find that some of the Work was undertaken to repair, replace, and/or install a “major system” and to replace a “major component” of the residential property.

b. Reason for Capital Expenditure

For items 1 and 2, I accept M.S.’s testimony that the roof had deteriorated and was in need of replacement to protect the residential property.

For item 8, I accept M.S.’s testimony that the furnace required replacement to protect the residential property.

Such reasons are consistent with the *Regulation's* requirements for an eligible capital expenditure.

c. Timing of Capital Expenditure

The Landlord made this Application on June 21, 2023. 18 months prior to that date was December 21, 2021. As such, any capital expenditures incurred prior to this date are ineligible to be recovered by an additional rent increase.

Residential Tenancy Branch Policy Guideline # 37 states:

A capital expenditure is considered "incurred" when payment for it is made.

In this Application, based on the evidence before me, it is my finding that the accepted capital expenditures were incurred in the 18-month period preceding the date on which the Landlord made this Application.

d. Life expectancy of the Capital Expenditure

I allow the Landlord's testimony that the life expectancy of the accepted capital expenditures is more than five years. Additionally, there is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at Policy Guideline # 40 (if noted). For this reason, I find that the life expectancy of the components replaced will exceed five years and that the accepted capital expenditures to replace them cannot reasonably be expected to reoccur within five years. For the above-stated reasons, I find that the accepted capital expenditures incurred to undertake the Work are eligible capital expenditures, as defined by the *Regulation*.

5. Amount of Capital Expenditure?

New roof replacement major roof repair to address leaking issues	\$15,570.00
Second batch of roof repairs	\$3,150.00
New furnace unit, installation + labour, haul away of old furnace unit, permit fee	\$7,269.00
<b>TOTAL</b>	<b>\$25,989.00</b>

## 6. Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a Tenant may raise to oppose an additional rent increase for capital expenditures. 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.

When reviewing the testimony and evidence before me, I find it important to note that there is documentary evidence of the Landlord being informed of the gutter blockage and leak shortly after the tenancy started. Furthermore, there is little evidence that the Landlord did anything about this until approximately a year later, when the roof was replaced. Given that there was a substantial blockage in the gutter at the start of the tenancy, with no evidence of any resolution, I find that this is likely indicative of a pattern of the Landlord's failure to maintain this gutter system in the past. As such, I find that this roof repair was required due to years of neglect on the Landlord's part.

Furthermore, when reviewing the Landlord's claims for capital expenditures that were dismissed, it was entirely evident that items 3 through 7 clearly did not qualify as capital expenditures, and it appears as if the Landlord is simply attempting to obtain relief for items that are the Landlord's responsibility to maintain and replace. As such, this causes me to doubt further the legitimacy of the Landlord's submissions that the roof repair was a legitimate claim. Based on a balance of probabilities, I am satisfied that this claim is merely a failed and deplorable attempt at portraying a situation that did not exist, and an attempt to saddle the Tenant with this cost. Consequently, I find the Landlord's submissions on this claim to be dubious and lacking in credibility.

With respect to the Landlord's claim for the furnace replacement, I find it important to note that there is documentary evidence of there being ongoing issues with the furnace during the tenancy, and the Landlord being aware of those issues. Moreover, M.S. acknowledged that the maintenance of the furnace was "not on the dot", and this is consistent with the pattern exhibited by the Landlord of a failure to maintain items on the property routinely. Furthermore, the consistent and undisputed evidence is that this furnace was approximately 15 years old, which is well below the average useful life of a furnace, according to Policy Guideline # 40, of around 20 to 25 years. Based on all of

these factors, I find it more likely than not that the furnace required being replaced because the Landlord failed to maintain it, resulting in its early demise.

Based on all of the above, I am satisfied that the Tenant has proven the Landlord's negligence and defeated an Application for an additional rent increase.

## 7. Outcome

Based on a review of the evidence before me, I find that the Landlord has not been successful and has not proven, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for the accepted capital expenditures.

## Conclusion

The Landlord has not been successful, and the Landlord's Application is dismissed in its entirety, without leave to reapply.

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: December 20, 2023

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Residential Tenancy Branch