



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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 attended the hearing. The Tenant did not attend the hearing or submit any evidence.

The Landlord advised they delivered the Notice of Dispute Resolution and evidence (collectively, the Proceeding Packages) to the Tenant on October 26, 2023. The Landlord provided a proof of service with a witness signature. Pursuant to section 90 of the Act, I find the Tenant is deemed served with the Proceeding Package the day it was delivered to them in person. I find the Landlord sufficiently served the Tenant with the Proceeding Package.

### **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.

The Landlord explained that this application applies to a residential dwelling that has two rental units, the basement is rented by the Tenant and the upstairs is rented by a new tenant that is not included in this application.

The Landlord testified they are seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's furnace, air conditioner and hot water tank (the Work).

Description	Date	Amount
Replace furnace, air conditioner and hot water tank	May 28, 2023	\$11,443.95
<b>Total</b>		<b>\$11,443.95</b>

The Landlord advised the rental unit was built in 1972 or 1974 and they bought the rental unit in 2017. The Landlord testified the furnace, air conditioner and hot water tank have not been replaced since they bought the residential property. Additionally, the Landlord submitted a copy of the invoice to support their claim.

#### Replace Furnace

The undisputed testimony of the Landlord is that the furnace is from 2003. The Landlord was advised by a technician that the furnace was on borrowed time and needed replacing soon. The Landlord submitted an invoice showing recent repairs done on the furnace.

#### Replace Air Conditioner

The Landlord was not aware of the exact age of the air conditioner but advised it is likely the same age as the furnace. The undisputed evidence of the Landlord is that the air conditioner was leaking, and a technician advised it was on borrowed time and needed replacing.

#### Hot Water Tank

The undisputed evidence of the Landlord is that the hot water tank was 20 years old and was also on borrowed time and needed replacing.

### 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));
  - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
  - o 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 this Tenant within the last 18 months.

## 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.

The Landlord explained that there is 2 specified dwelling units on the residential property. I accept that there are 2 specified dwelling units, the basement rental unit and upstairs rental unit.

#### 4. Amount of Capital Expenditure

The Landlords applied for \$11,443.95 for the replacement of the furnace, air conditioner and hot water tank.

#### 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.

The furnace replacement amounted to upgrades to the buildings' heating system. The Regulation explicitly identifies a residential property's heating system as a "major system". The Landlord replaced the furnace which provided heat to the entire residential property. These amount to significant components of the heating system, which causes them to be "major components", as defined by the Regulation.

I am satisfied the air conditioner work completed is considered a repair to a "major component" of a "major system". The Landlord replaced the air conditioner which provides a cooling service to the entire residential property.

I am satisfied the hot water tank work completed is considered a repair to a "major component", of a "major system" as it is part of the core plumbing and hot water system, as laid out in the Guidelines above.

As such, I find that the Work was undertaken to replace "major components" of a "major system" of the residential property.

b. Reason for Capital Expenditure

With no evidence to the contrary, I am satisfied that the Work was completed to replace aging building components. I am satisfied that the furnace and air conditioner were 21

years old if not older, and the hot water tank was 20 years old, and they were close to the end or past their useful life expectancy.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

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

I accept the landlords uncontroverted evidence that the payment for the Work was incurred May 2023, as supported by the invoice submitted into evidence. This falls within 18 months of the Landlords making this application.

d. Life expectancy of the Capital Expenditure

Policy Guidelines #40 sets out the useful life expectancy for typical building components. I note that the guideline indicates furnaces are expected to last around 15 years, air conditioners 20 years and hot water tanks 10 years.

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.

6. Tenant’s 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.

As the Tenant did not attend the hearing and they did not provide any evidence to the Landlord, no rebuttal was provided by the Tenant.

7. Outcome

The Landlord has been successful. They have 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 is 2 specified dwelling unit and that the amount of the eligible capital expenditure is \$11,443.95.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$47.68 ( $\$11,443.95 \div 2 \text{ unit} \div 120$ ). If this amount exceeds 3.5% 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**

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$47.68. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenant 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: January 15, 2024

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Residential Tenancy Branch