



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      ARI - C

### Introduction

This hearing dealt with a Landlord's applicant for an additional rent increase for a capital expenditure pursuant to section 43 of the *Residential Tenancy Act* (the Act) and 23.1 of the *Residential Tenancy Regulation* (the Regulations).

The Landlord and three Tenants appeared for the hearing.

### Service of proceeding materials

The Landlord submitted that all of the Tenants were served with the proceeding documents by email and that the Tenants had provided consent to being served by email. The Tenants in attendance at the hearing confirmed receipt of the proceeding documents and did not take issue with service. I was satisfied the Tenants were duly served and I admitted the materials submitted by the Landlord.

None of the Tenants submitted documents prior to the hearing. The Tenants indicated they would provide their position orally.

### Issue(s) to be Decided

Has the Landlord established an entitlement to an additional rent increase due to capital improvements made?

### Background and Evidence

The Landlord is an individual who owns three condominium units in the strata building.

The Landlord submitted that the elevators in the building were 17 years old and were experiencing breakdowns. After consulting elevator contractor(s) the strata counsel recommended an elevator repair and modernization project. On October 6, 2022 the

owners voted to approve the project. The Landlord estimated that in completing the project, the elevators will have at least another 10 years of use.

According to the strata minutes, the elevator project would be funded by using some of the contingency fund, but mostly by way of \$1,125,455.00 derived from special levies. Owners would be responsible for paying their special levy in 3 payments due on November 1, 2022, March 1, 2023 and July 1, 2023.

The Landlord provided evidence to show that he has paid the special levies for the three rental units he owns in the building in the sum of \$21,548.85.

On June 8, 2023 the property management company for the strata corporation issued the following update about the elevator project (names omitted by me for privacy purposes).

## **ELEVATOR UPDATE**

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Both elevators are now “repaired” and await modernization. Occasional stoppage may occur, please continue to plan accordingly. [REDACTED] Elevator continues to monitor both cars to ensure they are reliable and as smooth as possible.

Scheduled outages, ongoing troubleshooting and calibration work will continue for both cars to ensure the elevators are functioning as expected. As you may recall from the SGM, this is Phase 1 – Repairs where old and new parts are working together.

We are progressing towards Phase 2 – Modernization. After a thorough bidding process, Phase 2 - Modernization was awarded to [REDACTED] Elevators and [REDACTED] Contractors. Details are being finalised by [REDACTED] Consultants and we expect to receive their project plan and timeline, which we will share once it becomes available.

During the hearing, I asked the Landlord whether the modernization has been completed. The Landlord responded that he was uncertain and he would defer to the Tenants. The above update is the last update he has seen.

Two of the Tenants stated they have not seen any indication that the modernization has been done. The third tenant indicated that he believes the modernization has not yet started on the elevators. The Tenants also stated that they have not seen any further “updates” other than the one seen above, issued in the summer of 2023.

The Landlord explained that although the modernization component of the project may not have been completed, he has already paid the special levies for the project and from his own personal experience in the building in which he resides, an elevator modernization project can take years to complete.

### Analysis

Section 23.1 of the Regulations sets out the framework for determining if a Landlord can impose an additional rent increase for capital expenditures.

Residential Tenancy Policy Guideline 37C also provides information and policy statements with respect to additional rent increases for eligible capital expenditures. Below, I have reproduced a portion of the policy guideline:

#### **C. Eligibility Requirements for Capital Expenditures**

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:

- is in respect of a rental unit that is a **specified dwelling unit**;
- was incurred in the 18-month period preceding the date on which a Landlord made the application;
- is not expected to recur for at least five years; and
- was incurred for one or more of the following reasons:
  - o to install, repair, replace a major system, or major component in order to maintain the residential property in a state of repair that complies with section 32(1)(a) of the RTA;
  - o to install, repair, replace a major system, or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life; or
  - o to install, repair, replace a major system or major component to:
    - ☐ reduce energy use or greenhouse gas emissions; or
    - ☐ improve the security of the residential property.

The Regulation defines a “**specified dwelling unit**” as:

(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 capital expenditures were incurred.

As can be seen by the use of past tense in the Regulation, **a rental unit is only considered a “specified dwelling unit” once the work** associated with a capital expenditure (e.g., installation, repair, or replacement) **is completed**. In other words, ARI-C applications can only be made once the work associated with the capital expenditure is complete.

[My emphasis added]

As the applicant, the Landlord bears the burden to prove, among other things, the rental units are specified dwelling units. That means, the Landlord must be able to demonstrate the work that is the subject of the application has been completed before the additional was made.

I find there is insufficient evidence before me to demonstrate that the elevator repair and modernization project has been completed. The Landlord was uncertain as to whether the elevator modernization has been completed and the Tenants were of the position they do not think it has been completed. Since the amount paid by the Landlord was to repair and modernize the elevator(s), the elevators must have been repaired and modernized in order to consider the work completed and in order for the Landlord to apply for the additional rent increase. Therefore, I find the rental units do not meet the definition of “specified dwelling units”.

Though the Landlord submitted that the payment of the special levies has already been made, which is not uncommon in strata buildings where projects are funded by upfront special levy payments, the project has not been completed and I find the Landlord’s application to be pre-mature. Therefore, I dismiss the Landlord’s application with leave to reapply after the elevator and modernization project is complete.

### Conclusion

The Landlord’s application for an additional rent increase for capital expenditures is pre-mature and it is dismissed with 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: March 05, 2024

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Residential Tenancy Branch