



# 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* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase for capital expenditures under section 43 of the Act, and section 23.1 of the Regulation.

The Landlord's property manager T.L., and the two Tenants D.Q. and J.Q. attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. All parties testified that they were not recording this dispute resolution hearing.

This Decision should be read in conjunction with one Interim Decision dated August 13, 2024.

### **Service of Notice of Dispute Resolution Proceeding and evidence (Proceeding Package)**

Property manager T.L. testified that they attached the Proceeding Package to both Tenants' doors on August 16, 2024.

Tenant D.Q. confirmed receipt of the posting of the Proceeding Package on their door. Tenant D.Q. said that their sister found it and gave it to them.

Tenant J.Q. confirmed receipt of the Proceeding Package which they found to the right of their door.

I find that both Tenants were sufficiently served with the Proceeding Package on August 19, 2024, in accordance with section 71(2)(b) of the Act.

## **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 Landlord's claim, and my findings are set out below.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### Summary of Proceedings

The hearing for this matter covered two hearing times. On August 13, 2024, I could not find that the Landlord had served their Proceeding Package on the two Tenants. Neither Tenant attended, so I ordered the Landlord to re-serve their Proceeding Package on the two Tenants.

Both Tenants made remarks that they only received my Interim Decision after the first hearing date. The property manager confirmed that they re-printed out their evidence for the second service for this hearing date. Both Tenants called into the hearing, and provided testimony about the requirement for new roofing.

The Tenants did not submit written submissions or evidence for this matter. I accept the Landlord's convincing and credible testimony about the capital expenditures.

The Landlord purchased the residential property four years ago. The property manager said that they worked for the previous owner for 15 years, and in that time, the roof was never replaced. Sand and grit had begun to be blown down on the lawn beside the building, and roof shingles were noticeably folding up.

Tenant D.Q. commented on the state of the roof. They stated that the roof shingles needed to be redone. Tenant D.Q. correctly commented that the building was older than 42 years. The property manager looked up the property on the BC Assessment and it was built in 1978.

The property manager said the residential property is a house with a three bedroom upper suite, and a two bedroom lower suite. The total square footage is 2400.

#### **A. Statutory Framework**

Sections 21 and 23.1 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 made an application for an additional rent increase against these Tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the submitted capital expenditures were:
  - o an *eligible* capital expenditure;
  - o incurred less than 18 months prior to making the application; and,
  - o not expected to be incurred again within five years.

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, or
- for which the Landlord has been paid, or is entitled to be paid, from another source.

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.

## **B. Prior Application for Additional Rent Increase**

The property manager submitted that they have not applied for an additional rent increase for the capital expenditures against any of the Tenants prior to this application. Based on the Landlord's undisputed testimony, I find the Landlord has not made a previous application for an additional rent increase for the eligible capital expenditures in the last 18 months in accordance with section 23.1(2) of the Regulation.

## **C. 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.

I find the number of specified dwelling units for the purposes of the capital expenditures is equal to the total number of units in the building, or two units. I find the calculation of the additional rent increase will include the total number of specified dwelling units as two for this residential property.

## **D. Amount of Capital Expenditure**

The Landlord submitted this application on May 17, 2024. I find the prior 18-month cut-off date for eligible capital expenditures is November 17, 2022.

The Landlord testified that they are seeking, under section 23.1(4) of the Regulation, to impose an additional rent increase for the following capital expenditures incurred:

Capital expenditures		Amount
1	Roof replacement	\$7,134.64

### **E. Is the Work an *Eligible* Capital Expenditure?**

For the capital expenditure to be considered eligible, the Landlord must prove all the following:

- the capital expenditure was to repair, replace, or install a major system or a component of a major system;
- the capital expenditure 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; and,
- the capital expenditure is not expected to be incurred again within five years.

The property manager testified they did not receive payments from another source for any of the above capital expenditures. Further they testified that the Landlord is not eligible to receive any payments going towards any of the capital expenditures. No Tenants submitted that the repairs or replacements were required because of inadequate repair or maintenance on the part of the Landlord.

Based on the Landlord's undisputed testimony, I find the Landlord has established that the capital expenditures undertaken neither have been required for repairs or replacement because of inadequate repair or maintenance on the part of the Landlord, nor has the Landlord been paid, or is entitled to be paid, from another source for the above capital expenditures in accordance with section 23.1(5) of the Regulation.

### **Types of Capital Expenditure**

Section 21.1(1) of the Regulation defines "major system" and "major component" as:

***"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;*
- "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;*

## 1. Roof replacement

### Reason for Roof replacement

Tenant D.Q. brought to the property manager's attention the state of the roof on the residential property. They noted that the shingles were folding up, and that the roof needed to be redone.

The property manager informed the Landlord about the need for a new roof on the home, and the Landlord asked the property manager to have their handyperson assess the roof. It was determined that the roof needed to be replaced.

The property manager, in all their years managing the home, knows that the roof had never been replaced. The property manager stressed to the Landlord that the roof shingles needed to be replaced to prevent any further damage to her rental property.

Residential Tenancy Policy Guideline #40-Useful Life of Building Elements (PG#40) provides a general guide for determining the useful life of building elements. The useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. PG#40 states that the useful life of a sloped asphalt shingle roof is 15 years. I find the roof replacement was required as the existing roof was past its useful life.

The property manager testified that they expected the new roof replacement to last another 20 years.

The property manager explained that the roof replacement is a major system in relation to the residential property. The roofing shingles are a major component to the structural system that protects the whole residential property, and it provides a significant service

in maintaining the home's integrity to withstand nature's elements for the benefit of the Tenants and occupants of the residential property.

I find the roof replacement is a major component part of a major system in the residential property. The new roof replacement fits the definition of a major component and a major system of the residential property and the roof replacement was necessary for the betterment of the residential property.

I find the Landlord has established that the roof replacement was required as the existing roof was past its useful life. I find the capital expenditures for the roof replacement are not expected to be incurred again for at least five years.

#### Timing of Common Area Improvements

The property manager provided copies of invoices for materials and labour for the roof replacement. The invoicing for the roof materials is dated April 17, 2024, and the labour was completed on April 23, 2024. All payments for materials and labour were completed by May 5, 2024.

RTB Policy Guideline 37C-Additional Rent Increase for Capital Expenditures (June 2023) states:

*The capital expenditure must have been incurred in the 18-month period preceding the date the landlord submits their application to be eligible for an additional rent increase. A "capital expenditure" refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted (see section C.1). 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 was made.*

The expenditures claimed by the Landlord must have been incurred in the 18-month period prior to the application date. The onus is on the Landlord to establish on a balance of probabilities that the expenditures meet these requirements to be eligible for an additional rent increase.

I accept that the Landlord paid for the invoices for the roof replacement by May 5, 2024.

I find that payment for the invoices for the roof replacement were dated within the 18-month period preceding the date on which the Landlord made the application, and I

accept that the capital expenditures totalling **\$7,134.64** supported by the detailed invoicing were paid for within the allotted timeframe.

For the above-stated reasons, I find that the following capital expenditures incurred are eligible capital expenditures as defined by the Regulation:

Capital expenditures	Amount
Roof replacement	\$7,134.64
Total capital expenditures	\$7,134.64

## OUTCOME

The Landlord has been successful. They have proven, on a balance of probabilities, all the elements required to be able to impose an additional rent increase for capital expenditures. Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as such:

$$\begin{aligned} \text{Additional rent increase} &= \left[ \frac{\text{Eligible capital expenditure}}{\text{Number of specified dwelling units}} \right] / 120 \\ &= \left[ \frac{\$7,134.64}{2} \right] / 120 = \$29.73 \end{aligned}$$

In this case, I have found that there are 2 specified dwelling units and that the amount of the eligible capital expenditures is \$7,134.64.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$29.73. 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 Guidelines 37C (June 2023), and 40 (March 2012), 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 may be imposed.



## **Conclusion**

The Landlord has been successful. I grant the application for an additional rent increase of \$29.73 for a capital expenditure of \$7,134.64. 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 Act.

Dated: October 06, 2024

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Residential Tenancy Branch