



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Christian C. Hoy Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

On July 29, 2024 (the “Application date”) the Landlord filed the Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase for capital expenditures.

The Landlords (hereinafter, the “Landlord”) and one of the two Tenants (the “Tenant”) who reside in the rental unit attended the scheduled hearing.

### **Preliminary Issue – service and disclosure of evidence**

In the hearing, the Tenant confirmed they received the notice for the hearing and hearing information, as well as the Landlord’s document evidence. The Landlord also confirmed they received 10 pages of evidence from the Tenant.

### **Issue to be Decided**

- Is the Landlord authorized to impose an additional rent increase for capital expenditures?

### **Background and Evidence**

The single rental unit is a stand-alone home structure owned by the Landlord since spring 2016. The tenancy agreement that the Landlord provided for the hearing shows this tenancy starting on September 1, 2016. Neither the Landlord nor the Tenant mentioned any specific points relevant in the tenancy agreement.

The Landlord made this Application for a rent increased on a single capital expenditure: a replacement of the septic system at the rental unit property (\$16,980).

The Landlord consulted a service provider in February 2024. The investigation/assessment revealed blockage, and discussed possibilities. The Landlord at that time “would like estimate to install new field/septic upgrades.” The Landlord in the hearing described this as an attempt to flush the old septic system that was not successful.

The Landlord provided pictures showing the work involved with the installation of a new septic field. The Landlord paid the full invoice -- \$16,380 – for this work on June 6, 2024. Separately invoiced, the Landlord paid \$600 for the design plan on May 2, 2024.

The Landlord provided a copy of the new installed septic system record at the local municipality, dated June 18, 2024.

In the hearing, the Landlord described being aware of some issues with this system at the time of their purchase of the rental unit property. The instruction/guidance they received was to monitor the system, and have it pumped out every few years.

In the hearing the Tenant described there not being a lot of maintenance associated with this system over the years. Their record provided for this hearing sets out that they notified the Landlord about the septic system issue in March, as observed by a non-flushing toilet. They reveal this to be “the landlord’s failure to plan for maintenance that was needed before [the Tenant] moved in.” The Tenant submits this was a situation of inadequate maintenance on the part of the Landlord, for “the septic system that was beyond its useful life prior to tenancy.”

The Tenant also stated their objection to being held responsible for the costs associated with this septic system replacement. As stated in the hearing, the Tenant attributes this to the Landlord’s “failure to plan for repairs about well-pump issues.”

The total amount of \$16,980 is the capital expense that the Landlord submits is related to a major system or major component of the rental unit property.

### **Analysis**

The *Residential Tenancy Regulation* (the “*Regulation*”), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

### **Statutory Framework**

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
  - the number of specified dwelling units in the residential property;
  - the amount of capital expenditure;
  - whether the work was an *eligible* capital expenditure, specifically:
    - to repair, replace, or install a major system or a component of a major system; and
    - undertaken:
      - to comply with health, safety, and housing standards;
      - because the system/component was either:
        - close to the end of its' useful life, or
        - failed, malfunctioning, or inoperative
      - to achieve either:
        - a reduction in energy use or greenhouse gas emissions; or
        - an improvement in security at the residential property
- and
- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
- and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;
- or
- the landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

With no evidence to the contrary, I find the Landlord made no prior application for an additional rent increase of this type.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

“dwelling unit” means:

- (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.

As per this definition in the *Act*, I find there was 1 dwelling unit.

Eligibility and Amounts

I address whether the expenditure was *eligible*, and the expenditure *amount*.

As set out in s. 23.1(4) of the *Regulation*, I find the replacement of the septic system at the rental unit property qualifies as a replacement of a major component of a major system, with the major system supporting a critical function of the residential property: that being the septic system in the rental unit.

Therefore, this is an eligible expense under the statutory framework. This is also in line with the Landlord’s obligation to maintain the residential property in a state of repair that complies with the health, safety, and housing standards required by law.

The Tenant raised the issue of the Landlord’s failure to plan for repairs to the septic system. I conclude this is in reference to, or inquiry about, the Landlord’s capability of

continuing to maintain a failing system, or choice to replace rather than further repair the existing system that had failed. I note it is distinguished that the system had failed. I also note the system was determined to be beyond its useful life cycle which is what the legislation provides for in this capital expenditure program. I find it reasonable that the Landlord made the choice to replace the system, as a distinction of capital investment, rather than continue to re-fund a failing system. The *Act* and the *Regulation* allow for a reasonable reimbursement for this kind of capital expenditure.

In sum, I find there is inadequate proof of inadequate repair or maintenance on the Landlord's part. This was simply a system that had expired after its useful life cycle. I find the installation of a new septic system is an eligible expenditure under this statutory framework.

I find the expenditure amount was \$16,380. I exclude the amount for the apparent septic design (\$600 paid), with inadequate proof of the purpose of that fund. The expenditure amount is limited to actual work, and not the apparent planning thereof which is not adequately documented in this instance.

#### *Timing of the Capital Expenditure*

I accept the Landlord's evidence that they made payments for the new septic installation on June 6, 2024. This amount was \$16,380. I find the Landlord completed each expenditure within the 18-month timing requirement set out in the *Act*.

#### *Life Expectancy of the Capital Expenditure*

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find the septic system has a useful life of 20 years. On this basis, I am satisfied this capital expenditure will not reoccur, and there will be no expenditures again incurred for these items again within 5 years.

#### *Outcome*

The Landlord has proven all of the necessary elements for their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditures totalling \$16,380. This is pursuant of s. 43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation*, referred to above.

The *Regulation* s. 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of dwelling units, divided by 120. In this case, I found there is 1 specified dwelling unit, and that the amount of the eligible capital expenditure is \$16,380.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$136.50 (*i.e.*,  $\$16,380 \div 1 \div 120$ ) per month. This is as per s. 23.2 of the *Regulation*. **NOTE:** this amount may not exceed 3% of any tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount, calculated above, in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37C to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation.

I also direct the Landlord's attention to the Policy Guideline 37C section H., which sets out the need for use of the correct form<sup>1</sup>. The form itself establishes timelines for a landlord's service of a notice to each tenant.

As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

## **Conclusion**

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$16,380.

I order the Landlord to serve this Decision to the Tenant, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve The Tenant by sending it to them via email.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

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<sup>1</sup> Residential Tenancy Branch-53-p1: Notice of Additional Rent Increase – Eligible Capital Expenditures (Phase 1)

Dated: November 4, 2024

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Residential Tenancy Branch