



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding HORIZON TOWERS HOLDINGS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

On August 15, 2024 (the “Application date”), the Landlord filed an application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”).

The Landlord attended the hearing at the scheduled hearing time. Two Tenants from the rental unit property were present at the hearing on November 5, 2024.

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

The Landlord provided a September 10 affidavit that set out their service of the hearing material package containing the Notice of Dispute Resolution Proceedings to all tenants at the rental property. This was on August 27, 2024, by posting the material to the door of individual rental units. The Landlord provided evidence to all tenants via download portal, and confirmed that a number of tenants had downloaded the material.

I find the Landlord served each tenant at the rental unit property in accordance with the *Act*. Those tenants (2) present in the hearing did not raise an issue with the timelines or service of the evidence in the Landlord’s possession.

No tenants from the rental unit property provided documentary evidence in this proceeding.

### **Issue to be Decided**

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

## **Background and Evidence**

The rental unit property consists of a single four-storey building with 43 rental units. This was constructed in 1977. The Landlord in the hearing stated they took ownership of this rental unit property on June 28, 2022.

The Landlord clarified that they bring this Application against all residents at the rental unit property. The Landlord clarified that the calculation of rent increase involves all rental units in the rental unit property; however, they choose to impose the rental increase with the exception of rental units vacant since the Tenant moved out, and those who moved into units within the rental unit property after June 26, 2023. In the hearing the Landlord clarified there are 8 rental units that fit this description.

In the November 5 hearing, the Landlord presented each of the four capital expenditures, which they submit are related to major systems or major components of the rental unit property, as follows:

	Description	payment incurred	paid amount
1.	efficient toilet upgrades (43)	Aug 7/23	\$21,547.05
2.	security upgrades	Dec 11/23	\$30,511.63
3.	LED lighting upgrade	Mar 20/23	\$13,202.70
4.	emergency door hardware replacement	May 1/2023	\$3,538.58
<b>Total</b>			<b>\$68,799.96</b>

For each item, the Landlord presented written submissions, evidence in the form of professional reports, and invoices. In the hearing, an agent for the Landlord attested to the need for each capital expenditure.

### **1. efficient toilet upgrades - \$21,547.05**

The Landlord installed toilets that use approximately one-third of water per flush, as they described in the hearing. They installed these toilets in all 43 building rental units.

The Landlord in their evidence presented two invoices totaling the listed amount. The second and final payment was on August 7, 2023.

The Landlord presented a prior arbitrator decision wherein the arbitrator made a finding about water savings equating to energy savings. The Landlord submits this is an installation that is

environmentally beneficial in line with what the legislation provides for in a landlord's capital expenditures being deemed eligible for the reason of a positive reduction in energy use or greenhouse gas emissions.

The Tenants who attended the hearing questioned the efficacy of installed toilets that don't appear to work as well as the preceding models.

2. security upgrades - \$30,511.63

The Landlord had an agreement with a communications firm to remodel the rental unit property security system. This entailed a replacement of the entry phone system, access car reader systems, and cameras. The Landlord provided photos of several of the components of this installed system.

The installations were in 2023. The Landlord presented copies of the two invoices they paid for this work. The final payment was on December 11, 2023.

The Landlord submitted in the hearing that this work was for replacement of a system that was near or past the end of its useful life. Additionally, this was for replacement of a system that improves the security at the residential property.

One Tenant who attended the hearing noted their observations that the system, after its replacement, does not appear to have had an effect; therefore, why should the cost for this be imposed on tenants.

3. LED energy efficient lighting upgrade - \$13,202.70

In their written submission, the Landlord set out that they obtained a quote in late 2022 to shift the lighting from fluorescent to energy-efficient LED lighting. This was to the rental unit property's common areas. In addition to reducing energy consumption, the Landlord submits the lighting is an improvement in building security.

The Landlord presented evidence on the impact: a reduction from 15076 KWH to 3,705 KWH. This was a worksheet provided by the lighting installer that set out the proposed make/model of lighting.

The Landlord's final payment for this lighting was on March 20, 2023, in a single invoice for the capital expenditure amount.

One Tenant in the hearing questioned the legitimacy of the Landlord's claim to added security, and also stated that there are other common areas that are not receiving adequate lighting.

4. emergency door hardware replacement - \$3,538.58

The Landlord clarified that this was for door fixtures, as opposed to actual door replacement. The door would not function in tandem with the security upgrades. In particular, this was for installation of push bars, in line with the fire code.

The Landlord paid the single invoice for this on May 1, 2023.

A Tenant in the hearing questioned the ability of the door to close, quietly and fully in colder weather.

## **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

In this case, there was no indication that the Landlord made a prior application, for any of their capital expenditures, for an additional rent increase within the previous 18 months.

#### 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.

I find there are 43 rental units, of which 43 are factored into the calculation of percentage rent increase. This is as set out on page 12 of the associated policy guideline<sup>1</sup>. The focus of the legislation for this is a “specified dwelling unit” affected by an installation made, or repairs/replacement carried out in the property where the dwelling unit is located.

### Eligibility and Amounts

For each of the Landlord’s submitted expenditures listed above, I address whether each expenditure was *eligible*, and each expenditure *amount*. I also make findings on whether each expenditure will be incurred again within 5 years.

#### 1. efficient toilet upgrades - \$21,547.05

I find this work was not replacement of a major system, as defined in the *Regulation* s. 21.1(1). It is not an electrical system, mechanical system, or similar system integral to the rental unit property.

Though the Landlord proposed this was a system/component to reduce energy use of greenhouse gas emissions, they did not provide sufficient proof thereof. A noticeable impact on water consumption does not appear to equate to a reduction in energy use. Quite simply, there is no use of electricity or greenhouse gas emissions associated with this hardware.

I dismiss this piece from the Landlord’s Application, without leave to reapply.

#### 2. security upgrades - \$30,511.63

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<sup>1</sup> Residential Tenancy Policy Guideline 37C: Additional Rent Increase for Capital Expenditures

I find this installation/update has benefit to all rental unit property residents. This qualifies as a major system. I find the system that was in place was past its useful life. The system achieves an improvement in security in the rental unit property.

Though one tenant questioned the effectiveness of this after its installation, I find the question of specific incidents and observations has no bearing on the Landlord's eligibility requirements which they have met in this Application.

I find the Landlord made their payment within the 18-month time period prior to the Application. Moreover, I find this work will not reoccur within 5 years.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of \$30,511.63.

3. energy efficient lighting upgrade - \$13,202.70

The *Regulation* provides for "major system" installation/repairs/replacements – this is an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants. These are "essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property."<sup>2</sup>

Moreover, installations/repairs/replacements will qualify for additional rent increase if the system has failed, malfunctioning, or inoperative, or close to or past its useful life.

The Landlord made submissions on the replacement of lights with LEDs. The Landlord provided a record from the lighting installer that shows a positive reduction in energy consumption from this lighting set up. This is verified with actual numbers analyzing the KWH equation.

Because the Landlord provided sufficient proof in the form of raw data on energy consumption, I find this capital expenditure qualifies.

I find the Landlord made their payment within the 18-month time period prior to their Application. The work will not reoccur within 5 years.

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<sup>2</sup> Policy Guideline 37C page 5

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of \$13,202.70.

4. emergency door hardware replacement - \$3,538.58

I find this installation was for a component to a major system at the rental unit property. This particular expense contributes to safety and security at the rental unit property.

I find the Landlord made their payment within the 18-month timeframe. I find this work will not reoccur within 5 years.

I grant this portion of the Landlord's Application for the capital expenditure of \$3,538.58.

Outcome

The Landlord has proven all the necessary elements for the three authorized capital expenditures outlined above.

The Tenants did not meet the onus to establish, on a balance of probabilities, that this capital expenditures was ineligible, showing neither inadequate repair/maintenance on the Landlord's part, or that the Landlord was paid from some other source. The Tenants in the hearing raised individual points they may choose to take up with the Landlord separately.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure outlined above totalling \$55,597.26. This is pursuant to 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 are 43 specified dwelling units, and that the amount of the eligible capital expenditure is \$55,597.26.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$10.77 ( $\$55,597.26 \div 43 \div 120$ ) per month, per affected tenancy. 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 in a single year.



**Conclusion**

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$55,597.26.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by any means appropriate.

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*.

Dated: November 8, 2024

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Residential Tenancy Branch