



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      ARI-C

### **Introduction**

This hearing concerned the Landlord's application pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act (the Act) and section 23.1 of the Residential Tenancy Regulation (the Regulation) for an additional rent increase for capital expenditure.

The parties listed on the cover page attended the hearing on November 18, 2024.

The parties confirmed service by the Landlord on October 10, 2024, by Canada Post registered mail of the Notice of Dispute Resolution Proceeding and documentary evidence submitted by the Landlord for this application. The Tenant stated she received the Landlord's materials on October 18, 2024, and has had an opportunity to review the documents prior to the hearing. I find the Tenant was served with the required materials in accordance with the Act.

### **Issue for Decision**

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

### **Background and Evidence**

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants attending the hearing. However, not all details of the parties' respective submissions are reproduced in this Decision. Only relevant and material evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The Landlord requests an additional rent increase for the capital expenditure in the amount of \$35,265.55, for the replacement of the rental property roof. The Landlord testified the rental property is a duplex and consists of two rental units. The Landlord

stated the tenant(s) occupying the other unit in the rental property were not included in this application as they moved in after the completion of the work.

The Landlord testified the rental property was constructed in 2001, it is sloped and has a pitch. The roof that was replaced was original to the building. The Landlord submitted a copy of the contract with the roofing company for replacement of the roof. He stated he paid \$23,000.00 with loan proceeds and financed the balance with payments to the roofing company. The Landlord testified, consistent with his application, the work was completed on September 13, 2024.

The Landlord explained the insurance company refused to renew the policy for the property unless the roof was replaced as it was beyond its useful life. He noted the roof was not damaged, so insurance would not cover the cost of replacement. The new roof is composite shingle and has a 20-year warranty.

The Tenant stated she moved into the rental unit in 2011 and her rent has been increased three times: 2017, 2019 and 2022. She testified her husband has assisted with maintenance of the property, including maintaining the gutters for the rental unit. Additionally, she stated her husband provided extensive assistance at no charge to the Landlord when the unit next door was remodelled. Her husband also installed a fence for the property. The Tenant stated she and her husband are on a fixed income. She explained the Landlord requested the full cost for the capital expenditure as calculated on the RTB website. The Tenant objected to the manner in which the Landlord requested the additional rent increase. She noted one of the roofers informed her the replaced roof had 3 years of remaining useful life.

The Landlord reiterated the insurance company would not renew the policy without replacement of the roof, due to its age and end of useful life. He stated this information was provided to him in conversation with the insurance agent.

## **Analysis**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not the facts occurred as claimed. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord bears the burden of proof in support of its application.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount greater than the annual amount provided under the Regulations by submitting an application for dispute resolution.

## 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. 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 Regulations provide tenants may have an application for an additional rent increase for capital expenditure dismissed 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 its evidentiary burden and the tenant fails to establish the 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

In this matter, based upon the Landlord's testimony, I find there have been no prior applications for an additional rent increase within the last 18 months before the application was filed.

## 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.

There are 2 specified dwelling units to be used for calculation of the additional rent increase.

## 4. Amount of Capital Expenditure

The Landlord claims the total amount of **\$35,265.55**, there being no other source of payment (rebates, insurance) to off-set this cost fully or partially.

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

As stated above, 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.

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.

Residential Tenancy Branch Policy Guideline 37 states:

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

Policy Guideline 37C provides “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.”

I find the roof is a major component of the rental property as provided for in the Regulation. I accept the Landlord’s testimony he incurred the capital expenditure on September 13, 2024, when he made payment for the roof. I further accept the Landlord’s testimony there was no other source of payment (such as insurance proceeds or rebates) to pay for some or all of this capital expenditure.

Policy Guideline 40 provides the useful life for the type of roof at issue (sloped, composite shingle) is 15 years. The Landlord testified the roof was original to the

residential building when constructed in 2001. Replacement was necessary as the roof had exceeded its useful life. I accept the Landlord's testimony the insurance provider would not renew the policy for the rental property until the roof had been replaced due to its age. Furthermore, the roof is not expected to require replacement within the next 5 years, as evidenced by the 20-year warranty covering the roof.

### Tenant Objections to the Capital Expenditure

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.

Although the Tenant objected to the manner by which the Landlord discussed the additional rent increase for this capital expenditure and advised of an opinion by a roofer that the roof had approximately 3 more years of useful life, I find these objections are beyond the scope of what may be considered under the Regulation.

I find the Tenant has not provided sufficient evidence to support a dismissal of the Landlord's application for an additional rent increase for capital expenditure.

I find the Landlord completed necessary repairs, had to pay for such repairs, and is bound only by the statutory framework in seeking the capital expenditures.

Based on the above, I find the Landlord is entitled to recover for the replacement of roof in the amount of **\$35,265.55**.

### **Summary**

The Landlord has been successful with its application. The Landlord has established, on a balance of probabilities, the elements required in order to be able to impose an additional rent increase for total capital expenditures of **\$35,265.55**, for the replacement of the major component as described herein.

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 are 2 specified dwelling unit and the total amount of the eligible capital expenditures is the amount of **\$35,265.55**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$146.94 (calculated as:  $\$35,265.55 \div 2 \div 120 = \$146.94$ )**. 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 Guideline 40, 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**

I grant the application for an additional rent increase for capital expenditures totaling **\$35,265.55**. 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 the manner required by section 88 of the Act.

This decision is issued based on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 18, 2024

---

Residential Tenancy Branch