



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding NV HIGHWAY PROPERTIES  
LTD. and [tenant name suppressed to protect privacy]

## **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 5, 2024.

The Landlord confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. The Landlord's representative testified the proceeding package, including Notice of Hearing and a letter with a link to evidence it had submitted, was posted to each Tenant's rental unit door on August 8, 2024. The Landlord submitted a signed declaration from its resident manager confirming this service. I find the Tenants were 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 respective submissions are reproduced in this Decision. Only relevant and material evidence related to the Landlord's application and necessary to my findings is set forth in my analysis.

The application concerns three residential rental properties:

- Building 2855 – constructed in 1967, it has 3 storeys and 9 rental units

- Building 2875 - constructed in 1967, it has 2 storeys and 18 rental units
- Building 2931 - constructed in 1968, it has 2 storeys and 19 rental units

The Landlord's representative stated the capital expenditures were incurred in relation to the work completed and paid for within 18 months preceding the application and the capital expenditure is not expected to reoccur for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The representative further confirmed each improvement was expected to last for at least 5 years and there was no other source of payment for the cost of the improvements.

The Landlord's application requests an additional rent increase for the capital expenditures made by it:

- Building 2875
  - Replacement of domestic hot water tanks in the amount of \$19,320.00 (paid February 15, 2023)
- Repair and replacement of external balconies for each building
  - Building 2855 - \$102,573.59
  - Building 2875 - \$205,147.17
  - Building 2931 - \$216,544.24

The last payment made by the Landlord for the exterior balcony repair and replacement was February 6, 2024.

The Landlord's property manager explained the domestic hot water tanks for building 2875 were leaking. The property manager stated the Landlord was uncertain how old the tanks were, but the tanks were leaking and could not be repaired so replacement was required. The Landlord provided a spreadsheet of invoices paid, with brief description, for the maintenance done on the hot water tanks since 2020. The representative explained the spreadsheet was prepared by the Landlord's accounting personnel and invoices were not retained but the spreadsheet provided the work description from the invoice. The Landlord's representative stated the new hot water tanks have a 10-year warranty and are expected to last beyond 5 years.

The three rental property buildings also underwent repair and replacement of the balconies which were original to each building. The Landlord submitted a consultant professional engineer's report referring to the poor condition of the balconies for the rental property. The Landlord's property manager stated the balconies were original to the building and were constructed with plywood and covered with vinyl. The engineer's report documented the joists were shifting and the balconies were dilapidated. The property manager stated this posed a safety concern for Tenants. The representative further testified the initial plan was to replace only the railings for the balconies but upon

discovery of the rotted joists, beams and plywood, a determination was made to undertake the necessary replacement of each balcony. The property manager stated the capital expenditure on the application included the reimbursement from the contractor when it determined it had overcharged by \$20,000.00.

The Tenants' advocate raised several objections to the Landlord's application. The advocate stated the Landlord had not provided revenue information and was concerned that this was a collective rent increase as the notices issued to each Tenant set for the same amount of additional rent increase. The Tenants' advocate stated the Landlord had not provided adequate maintenance records for the hot water tanks or balconies. Additionally, the advocate stated the Landlord would have known of these conditions at the time of purchasing the rental property. The advocate noted it appeared from the Landlord's photographs of the hot water tank that one tank may have been manufactured and installed in 2017 and thus was not beyond its useful life. She stated there was only a handwritten note regarding a leak with a water tank but no identifying information regarding which tank. The Tenants' advocate took the position the age of the boiler was critical for the Landlord's application. It was also noted that some of the balconies did not require replacement. The advocate further questioned the invoice for the balcony work and whether there had been other overcharges made by the contractor in addition to the overcharge the contractor brought to the Landlord's attention.

The Landlord's property manager replied the prior owner provided no maintenance records for the hot water tanks. The handwritten note regarding the one hot water tank was part of an internal logbook the resident manager was required to complete. The property manager further noted the information provided by the Landlord regarding prior repairs and maintenance did establish service calls with the plumber for maintenance to the tanks. With regard to the balconies, the property manager stated the Landlord deferred to the expertise of the engineering consultant who was on-site at the time of the replacement work. The property manager testified the deterioration of the balconies was not readily apparent from a visual inspection, but consultation was undertaken when a tenant in one building placed his foot on the balcony and almost fell through in late 2022. She noted the invoices from the contractor included the removal of any awnings without additional charge. The resident manager testified she examined the hot water tanks and noted that one tank was "rusted out" and leaking.

Tenant L.B. stated the Landlord had not advised Tenants of the risks posed by the balconies. Tenant J.N. stated he was unable to access the Landlord's evidence, but noted the buildings were in disrepair and the Regulation provides that lack of maintenance may preclude an application for a capital expenditure. He also commented the Landlord may not have done appropriate due diligence as to the condition of the building prior to purchase. Tenant K.C. stated she had resided in her unit for 14 years and considered it inequitable to pass the cost of the capital expenditures onto the Tenants.

Tenant G.H. stated there had been gutters with downspouts and the balconies were tiered such that water may run into the balcony below from above. Landlord's property manager noted the gutters and downspouts were included in the cost of roof replacement, which was not part of this application.

A few Tenants noted that it was inequitable to impose a rent increase for balcony replacement if they were on the ground/garden level and had no balcony. Tenant Y.M. stated she moved into her unit in April 2024, and the cost for the balcony repair would already have been included in her monthly rent. Some Tenants not in attendance at the hearing submitted correspondence questioning the Landlord's ability to impose an additional rent increase for property that the Landlord knew, or should have known, required repairs because of its age and/or condition.

The Tenants' advocate stated the lack of maintenance records precluded approval of the Landlord's application.

The property manager stated there was no litigation against the prior owner for the condition of the balconies and work commenced within 30 days of the discovery of the true condition of the balconies, thereby mitigating any potential harm Tenants may have encountered as a result of the balconies. She stated no Tenant was in imminent harm from a balcony failing but it was a safety concern. She also stated the balconies had begun to show signs of failure. The property manager confirmed there were no rebates for the hot water tanks. The property manager acknowledged that those units without balconies she considered should not be subject to an additional rent increase.

## **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 representative'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 9 specified dwelling units for building 2855; 18 specified units for building 2875; and, 19 specified dwelling units for building 2931, to be used for calculation of the additional rent increase for each building.

#### 4. Amount of Capital Expenditure

The Landlord claims the total amount of \$102,573.59 for building 2855; \$224,467.17 (including the cost for replacement of the hot water tanks) for building 2875; and, \$216,544.24 for building 2931 as detailed in the Landlord's itemized capital expenditure set forth above, there being no collateral source or rebates 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.

Each item of capital expenditure will be reviewed under this analysis.

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.”

### Replacement of Hot Water Tanks

I find hot water tanks are a component of a major system in a residential building, and are necessary for health and safety reasons for occupants. I find the Landlord provided sufficient evidence, to establish on a balance of probabilities, that the hot water tanks had failed or required replacement. I find the Landlord provided sufficient documentation regarding the maintenance work for the hot water tanks from the time of its purchase of the building as none were provided by the previous owner. Although the Landlord did not have the original invoices, the spreadsheet detailed the date, work subject to invoice as well as payment. These documents were created and maintained by the Landlord's accountants, who would be bound to record accurate invoice information. I find the resident manager's testimony persuasive that the hot water tanks were leaking or otherwise required replacement due to a deteriorated condition.

I further accept the Landlord's submission that there was no other source of payment for this expenditure and the expenditure is not expected to reoccur within 5 years. The Landlord's property manager stated the tanks would exceed 5 years in operation and came with a 10-year warranty. The final payment for each tank was made on February 15, 2023. I find the final payment was made within the 18-month period prior to the Landlord filing this application on August 12, 2024.

### Replacement of Balconies

I find the balconies are a major component or system of the exterior envelope of the rental unit building. Policy Guideline 40 provides that the useful life of the wood railing on a balcony is 10 years and decks are 20 years. I find the balconies for the three rental buildings were at or beyond the useful life as provided under this Guideline. Photographs provided in evidence demonstrate the poor condition of the balconies. The engineer's report confirms the decks required replacement. The necessity for the replacement was not founded in a lack of maintenance but rather the age and condition of the balconies.

I accept the Landlord's submission that there is no other source of payment for this work, and that the work is not anticipated to reoccur within 5 years. I find the Landlord made the final payment for this work on February 6, 2024, within 18-months from the date of the Landlord's application filed August 12, 2024.

### Tenant Objections to the Capital Expenditures

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.

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

While several Tenants urged that the Landlord was aware, or should have been aware, of the age and condition of the building at the time of purchase and thus should not be permitted to shift the cost of replacing the hot water tanks and balconies to the Tenants, this is not a basis under the Regulation for the director to dismiss the Landlord's application.



The Tenants' advocate raised objection to each capital expenditures on the grounds the Landlord's maintenance records were lacking. While copies of invoices were not provided, I find the maintenance records submitted were sufficient to establish the Landlord had the hot water tanks professionally serviced by a plumber. I find the engineer's report is sufficient probative evidence to establish the need to replace the balconies which were original to the building and had exceeded their useful life.

Based on the above, I find the Landlord is entitled to recover for the hot water tanks, and the replacement of the balconies for the three rental buildings in the total amount of **\$524,265.00**.

## Summary

The Landlord has been successful with its application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures for those major components described herein:

- **\$19,320.00** for replacement of the hot water tanks for building 2875
- **\$205,147.17** for replacement of the balconies for building 2875
- **\$102,573.59** for replacement of the balconies for building 2855
- **\$216,544.24** for replacement of the balconies for building 2931

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 find the following for additional rent increases for each building based upon the capital expenditure per rental unit in the building amortized over a 120-month (10 year) period as follows:

- Hot Water Tanks – Building 2875 -  **$(\$19,320.00 \div 18 \text{ units}) \div 120 \text{ months} = \$8.94 \text{ per rental unit per month}$**
- Balcony Replacement – Building 2875 -  **$(\$205,147.17 \div 18 \text{ units}) \div 120 \text{ months} = \$94.98 \text{ per rental unit per month}$**
- Balcony Replacement – Building 2855 -  **$(\$102,573.59 \div 9 \text{ units}) \div 120 \text{ months} = \$94.98 \text{ per rental unit per month}$**
- Balcony Replacement – Building 2855 -  **$(\$216,544.24 \div 19 \text{ units}) \div 120 \text{ months} = \$94.98 \text{ per rental unit per month}$**

If this amount (combined for both capital expenditures for building 2875) 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.

During the hearing, the Landlord's property manager stated 6 units in building 2855 and 14 units in building 2875 and building 2931 each, had balconies. The property

manager stated that those rental units without balconies would not be subject to the additional rent increase. Policy Guideline 37C states that all specified dwelling units must be included “if it is located in a building (or is the unit) for which the capital expenditure was incurred....” I find it appropriate to include all units in each building as specified dwelling units for the balcony replacement as this is a major component of the exterior building envelope.

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 as set forth above. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve all tenants with this Decision, in accordance with section 88 of the Act, within two weeks of this Decision. I authorize the Landlord to serve a Tenant by email if the Tenant provided an email address for service and to provide any Tenant with a printed copy if requested by the Tenant.

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

Dated: December 02, 2024

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Residential Tenancy Branch