



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

A matter regarding GORAN HOLDINGS 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 December 12, 2024.

The Landlord confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence it filed. The Landlord served the Tenants in person or by posting to the rental unit door on October 11, 2024. The Landlord submitted a completed Proof of Service for each Tenant to confirm this service. The Landlord's representative stated a few Tenants did contact him regarding the application. 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 Landlord, 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 are set forth in my analysis.

The residential rental property was constructed in 1966, has 4-storeys and a total of 43 rental units.

The Landlord's application requests an additional rent increase for the capital expenditure in the amount of \$246,134.99 for the reconstruction of balconies on the north-side of the rental building. The Landlord's submissions in support of the additional rent increase application notes the balconies are part of the rental building envelope.

Landlord's representative states the capital expenditures were incurred in relation to the balcony replacement project within 18 months preceding the application and this expenditure is not expected to occur again for at least five years. Documentation of invoices and payments made by the Landlord were provided in evidence. The representative further confirmed the capital improvement was expected to last for at least 5 years and there was no other source of payment for the expenditure.

The representative explained the subject balconies were original to the rental building and although repaired and maintained over time, it was determined by a structural engineer the balconies had exceeded their useful life. The Landlord submitted a copy of the structural engineer's report detailing the rot damage to these balconies, and specifically noting that one balcony was unsafe and not to be used as the damage was extensive. The structural engineer's report states the deck sheathing and several cantilever deck joists had deteriorated and required replacement. The Landlord's representative stated during the hearing the original design of the balcony was the source of the later deterioration to the membrane. The structural engineer's documentation included photographs of the damage and deterioration to the balconies.

As part of the reconstruction of these balconies, the railings were also replaced and the new railing was upgraded to height safety standards. Privacy partitions were placed between neighboring balcony units as well. The Landlord submitted photographs of the completed balconies, together with the structural engineer's report confirming completion.

The Landlord's submissions state the work was completed on November 22, 2023 (a copy of the structural engineer's report submitted into evidence) and final payment was made on September 13, 2024. The representative stated that only those rental units with balconies were intended for the additional rent increase.

No Tenant attended the hearing and made submissions, and no written submissions from a Tenant were received.

## **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, I accept the Landlord's testimony and accordingly I find there have been no prior applications for an additional rent increase in the prior 18 months preceding the filing of this application.

## 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.

Policy Guideline 37C explains that all units in a rental building for which a capital expenditure has been incurred are included as a "specified dwelling unit" for purposes of calculating an additional rent increase. The Policy Guideline states: "A specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred....If the roof of a building has been replaced, all dwelling units located in the building are specified dwelling units." In this case, the balcony replacement was part of the building envelope which is a major system, and thus all units in the rental building are specified dwelling units to be included in the calculation.

I find there are 43 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 **\$246,134.99** as detailed in the Landlord's submissions including copies of invoices. I accept the Landlord's representative's statement at the hearing there were no other sources of payment for this work.

#### 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 rental building balconies are a major component or system as these are part of the building’s envelope. I find the balconies had reached the end of their useful life as they were original to the building when constructed in 1966 and as the structural engineer had documented the deterioration of the balconies. Policy Guideline 40 states the useful life of balcony railings to be 15 years. In this case, the Landlord’s replacement balcony railings were brought up to the height required by Code (a copy of which was provided in evidence) for safety standards.

I accept the Landlords evidence that final payment for this work was made on September 13, 2024, within 18 months prior to the Landlord filing this application on September 17, 2024. I find it reasonable to conclude this capital expenditure is not expected to reoccur again within five years. I further accept the Landlord’s representative’s testimony there was no other source of payment (such as insurance proceeds or rebates) to pay for this capital expenditure in whole or in part.

#### 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.

In this case, no Tenant attended the proceeding and none provided written submissions objecting the Landlord’s application.

Based on the above, I find the Landlord is entitled to recover the capital expenditure in the amount of **\$246,134.99** for the balcony replacement.

## 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 a total capital expenditure in the amount of **\$246,134.99**, for the major component or major system as described herein for those Tenants with balconies that were identified by the Landlord in its application.

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, representing a 10-year amortization period. In this case, I have found that there are 43 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$246,134.99**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$47.70** ( **$\$246,134.99 \div 43 \text{ specified dwelling units} \div 120 \text{ months} = \$47.70 \text{ per unit}$** ). 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 **\$246,134.99**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenants identified by the Landlord in its application 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 12, 2024

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Residential Tenancy Branch