# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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

## DECISION

## Introduction

On September 12, 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. A number of tenants were present in the hearing, along with their advocate. Collectively, I refer to the tenants and/or their advocate for this hearing as the "Tenant" in this decision.

## Preliminary Issue – service and disclosure of evidence

The Tenant acknowledged servicer of the Notice of Dispute Resolution Proceedings and hearing information from the Landlord. This included the evidence the Landlord provided in the form of invoices for completed work.

The Landlord acknowledged they received evidence from the Tenant for this hearing.

## Issue to be Decided

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

## Background and Evidence

The rental property consists of a single building with 11 rental units. One Tenant provided that the building was constructed in 1928. The Landlord provided that they came into the role of Landlord/owner in November 2020.

The Landlord cited pre-existing issues in the building, and then noted that the total heating system broke down. They added heating elements, and this turned out to be a prolonged project through 2022, due to supply issues. Given the building's age, a lot of required information, such as a blueprint, was not in place and this made it difficult for contractors to commit to the project.

In their evidence, the Landlord provided a series of invoices from December 10, 2020, through to September 12, 2022. The Landlord did not provide a calculation sheet or other means of tabulating the expenses for a total amount for the project.

Eventually the electrical panel needed an upgrade to 400A, and this was invoiced to the Landlord in April 2023.

The Landlord provided one invoice dated March 15, 2023, for a service upgrade to the electrical panel. This amount shown on the invoice was $1,916.45, though the Landlord entered the amount of $16,9165.45. The invoice itself shows a prior payment of $15,000.

In the hearing, the Tenant submitted that all of the Landlord's invoices pre-date the legislated 18-month requirement as set out in s. 23.1 of the *Regulation*. The Tenant also provided that no work was completed after February 2023, meaning that the definition of "incurred" does not really apply to the Landlord's expenses. The 15, 2023 invoices was merely an invoice, not reflective of the actual work completed.

The Landlord, in response, stated that the panel upgrade required the electrician to return later to finish the work, related to the project. The Landlord also provided that they did not receive the final invoice in a timely manner.

In total, the Landlord provided a requested amount on their Application of $64,158.38.

## 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 evidence 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 11 dwelling units, of which all 11 are eligible. There was brief testimony on which units would benefit from a heating system upgrade; however, in total I find there are 11 eligible dwelling units.

*Eligibility and Amounts*

I find the Landlord undertook work to replace a major system, as defined in the *Regulation* s. 21.1(1). I find this was undertaken to maintain the residential property in a state of repair that complies with health, safety, and housing standards. Additionally, more likely than not this was replacement of a major system that was past the end of its useful life. This is in line with the *Regulation* s. 23.1(4)(a)(i) and (ii).

I find that the Landlord's final piece of work – of which neither party could establish a firm date – regarding the replacement of the electrical panel was not part of the project involving heating system upgrades. The Landlord did not provide sufficient evidence to show this to be the case. I find this single piece of work, invoice dated March 15, 2023, was not within the scope of the project involving the Landlord's capital expenditures.

The Tenant raised the issue of the Landlord's final payment schedule for this project. In particular, they took issue with the timing of the Landlord's single final payment that brought it within the 18-month timeframe, aside from all other earlier payments that were outside the timeframe. The *Regulation* s. 23.1(4)(b) sets out that I must grant an application for the portion in question in which the Landlord establishes that "the capital

expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application."

The *Residential Tenancy Policy Guidelines: 37C. Additional Rent Increase for Capital Expenditures* addresses the 18-month requirement:

> A "capital expenditure" refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted . . . As such, 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 this single, final expense in the form of the March 15, 2023 invoice is outside the project scope; therefore, I find the Landlord's incurred payments for the project all fall outside the 18-month timeframe prior to the Landlord's Application to the Residential Tenancy Branch on September 12, 2024. This final payment for a separate piece of work that I am not satisfied is related to the heating system replacements does not mean all other payments qualify because of their timing. The burden of proof on this point was on the Landlord, and they did not provide sufficient evidence to show this final piece of work was related.

Additionally, the Landlord did not provide a succinct accounting of all costs associated with the project. My role is not to complete the Landlord's accounting on their own, separate from what the Landlord provided on the Application form. I find I cannot reach a final amount without more guidance from the Landlord on this point.

In conclusion, I dismiss the Landlord's Application for the capital expenditures related to the heating system replacement. I find the expenses were not incurred less than 18-months prior to the Landlord's Application. Additionally, I cannot, based on the Landlord's evidence, perform the accounting necessary to determine the requested capital expense amount.

*Outcome*

The Landlord did not prove all of the necessary elements in their Application; therefore, I dismiss the Landlord's Application without leave to reapply.

## Conclusion

I dismiss the Landlord's Application for an additional rent increase.

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 sending it to Tenants via email. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a printed copy in person.

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

Dated: December 14, 2024

Residential Tenancy Branch