



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Christian C. Hoy Corporation and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

On October 21, 2024 (the “Application date”) the Landlord filed the Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase for capital expenditures.

The Landlord’s agent (hereinafter, the “Landlord”) attended the scheduled hearing; the Tenant who was listed as the sole Respondent did not attend.

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

In the hearing, the Landlord presented that they served the notice of hearing documents (i.e., the Notice of Dispute Resolution Proceeding), as well as their evidence, to the Tenant via email, as well as posting the information to the door of the rental unit, on October 27. The Tenant confirmed via response “thank you for the update” on October 28.

I find the Landlord served the information to the Tenant in a reliable manner, and the Tenant received the hearing information and Landlord’s evidence in a timely manner. For the Landlord’s attaching the documentation to the Tenant’s door, I deem the material served by October 30. I accept the Landlord’s statement that the Tenant confirmed service via email on October 28.

The Tenant separately provided no evidence to the Residential Tenancy Branch. The Landlord confirmed they received no other submissions or evidence from the Tenant.

### **Issue to be Decided**

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

### **Background and Evidence**

The rental unit is one of two in a stand-alone home owned by the Landlord. The Landlord presented that the rental unit property was built in 1948. The owner (*i.e.*, Landlord) acquired the property in 2021; the Landlord's agent started in this role in 2022.

Each unit in the rental unit property has their own separate heat source. The rental unit that is the subject of this Application is on the top, with a boiler. The radiators in the rental unit are heated by the boiler. The Landlord described replacing the bedroom and bathroom radiators that were not working. By then, the boiler was past its life cycle, although the Landlord was not certain if the boiler had ever been replaced since the property was built in 1948.

The Landlord also described the stairs at the back of the rental unit property being unsafe. These are stairs leading from the ground level up to the back entrance of the rental unit. The Landlord provided photos showing broken unsafe stairs.

The Landlord made this Application for an additional rent increased based on eligible capital expenditures for three expenses to them: a furnace/boiler (\$16,199.40), new baseboard radiators (\$5,271.00), and replacement/repair of the exterior staircase at the rear entrance (\$1,186.92).

The Landlord provided the following evidence:

- Invoices:
  - a final invoice for the supply/install of boiler, \$16,199.40, dated September 5, 2024
  - a gas installation permit dated September 4, 2024
  - a final invoice for radiator supply/install, \$5,271.00, dated December 15, 2023
  - a final invoice for restructure of stairs at back entrance, \$1,186.92, dated October 15, 2024

- a work order/description showing the Tenant's request to replace the poorly functioning radiators in the rental unit bedroom and bathroom, stemming from November 2022
- pictures of the stairs before and after repair, a separate picture of the stringers' replacement
- pictures of the boiler after its installation, internal and external

The total amount of \$22,657.32 is the capital expense total that the Landlord submits is related to a major system or major component of the rental property.

### **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*

With no evidence to the contrary, I find the Landlord made no prior application for an additional rent increase of this type.

*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.

As per this definition in the *Act*, I find there is 1 dwelling unit.

### Eligibility and Amounts

I address whether the expenditure was *eligible*, and the expenditure *amount*.

As set out in s. 23.1(4) of the *Regulation*, I find the replacement of the boiler in the rental unit qualifies as a replacement of a major component or major system, with that major system supporting a critical function of the residential property: that of the heating system in the rental unit. I find this expenditure is eligible, in the amount of \$16,199.40.

I also find the replacement of two radiators qualified as replacement of major components of that same system, being part of the same system that supports a critical function at the residential property. I find the radiators more likely than not were past the end of their useful life; it was confirmed that they were not working to capacity by 2022. Therefore, I find it is an eligible expenditure, in the amount of \$5,271.00.

I find the replacement of the staircase was necessary in the circumstances. This is a major structural piece at the rental unit property, as contemplated by this *Regulation*. I find the evidence shows the stairs were past their useful life, posing a safety risk. I grant a repair expenditure amount of \$1,186.92 to the Landlord.

I conclude that each of these components either failed or exceeded their useful life at the residential property. For these reasons, I find each replacement is an eligible expense under this statutory framework.

### Timing of the Capital Expenditures

I accept the Landlord's evidence that they made payments for this work on December 15, 2023, September 5, 2024, and October 15, 2023. I find the Landlord completed each expenditure within the 18-month timing requirement set out in the *Act*.

### Life Expectancy of the Capital Expenditure

With reference to the *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements*, I find the boiler/radiators has a useful life of 20 – 25 years. I find more likely than not that the staircase has a useful life cycle of 15 – 20 years.

On this basis, I am satisfied each of these capital expenditures will not reoccur, and there will be no expenditures again incurred for these items again within 5 years.

### Outcome

The Landlord has proven all of the necessary elements for their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditures totalling \$22,657.32. This is pursuant of 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 is 1 specified dwelling unit, and that the amount of the eligible capital expenditure is \$22,657.32.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$188.81 (*i.e.*,  $\$22,657.32 \div 1 \div 120$ ) per month. 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, calculated above, in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37C to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation.

I also direct the Landlord's attention to the Policy Guideline 37C section H., which sets out the need for use of the correct form<sup>1</sup>. The form itself establishes timelines for a landlord's service of a notice to each tenant.

As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

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<sup>1</sup> Residential Tenancy Branch-53-p1: Notice of Additional Rent Increase – Eligible Capital Expenditures (Phase 1)

**Conclusion**

I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$22,657.32.

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: January 17, 2025

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Residential Tenancy Branch