



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

A matter regarding CAMSTA 3868 SHELBOURNE APARTMENTS  
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 January 10, 2025.

The Landlord's counsel confirmed the Landlord's Affidavit of Service of the application and link to the Landlord's evidence for download that was posted to each occupied rental unit door on November 28, 2024. Landlord's counsel confirmed three Tenants accessed the link and downloaded the Landlord's evidence and no Tenant contacted him to advise of issues with their ability to access the Landlord's evidence.

Prior to this hearing, on December 10, 2024, the Landlord withdrew a request from this application for an additional rent increase for low-water usage toilets it had installed in rental units. Tenants were notified of the Landlord's withdrawal of this request from its application, with confirmation the Landlord would proceed with the remaining items in its application. Notification was made to the Tenants by posting to the rental unit door. I grant the Landlord's withdrawal of the low-water usage toilets from the Landlord's application.

Tenant M.J. submitted evidence to the RTB on January 7, 2025, regarding maintenance requests for the upgraded security system and photographs of the hallway lights on the main floor of the building. Tenant M.J. stated she did not serve Landlord with this evidence as she believed the RTB system automatically forwarded the documents to the Landlord. The Landlord was advised of the nature of the evidence and Tenant M.J. was informed her evidence would not be admitted as it had not been properly served to the Landlord, although she would be permitted to testify as to the contents of the documents.

## **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 are set forth in my analysis.

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

- Security system upgrades totaling \$42,913.59
- LED lighting upgrade in common areas in the amount of \$63,471.07
- Installation of a building automation system for the domestic hot water and heating system for \$22,121.93

The residential rental property was constructed in 1973, is 4-storeys and has a total of 128 rental units. Landlord's counsel states the capital expenditures were incurred in relation to the projects within 18 months preceding the application. Documentation of invoices and payments made by the Landlord were provided in evidence. The representative further confirmed that each capital improvement was expected to last for at least 5 years and there was no other source of payment for these expenditures.

The security system upgrade made by the Landlord consisted of the installation of security cameras at entrances to the building as well as at the bike room, pool/sauna entries, boiler room, laundry room, north and south hallways and an exit door by the main elevator. Additionally, the security upgrade included the installation of an updated intercom system that video-recorded individuals entering the building as well as providing Tenants with remote access (through their cell phones) to permit authorized individuals entry into the building. The Landlord's director of capital expenditures, A.S. testified the system replaced an older intercom that used a dial-in/push button method and this system was approximately 10 years old. Landlord's counsel confirmed the last payment made for the security system upgrades was on August 15, 2024, and further confirmed there was no rebates or other source of payment for the cost.

The Landlord also upgraded the lighting system to energy efficient LED lighting throughout the common areas of the rental property including hallways, stairwells, parking area, storage room area, laundry room and exterior lighting. The LED lighting

replaced fluorescent lighting in these areas. The Landlord submitted evidence that over the course of the year since installation, energy consumption for the lighting reduced from 72,480 kW hours to approximately 41,000 kW hours. General information provided by the Landlord regarding LED lighting notes it has an “energy star” rating and is generally 75 percent more energy efficient than traditional lighting. The last invoice for this work was paid on June 26, 2023. There was no other rebate or source of payment for this capital expenditure.

Lastly, the Landlord’s application requests an additional rent increase for the installation of a building automation system for the domestic hot water and heating system in the building and the pool water. The building automation system utilizes outdoor temperature monitors to digitally and better respond to temperature changes for heating purposes. Additionally, Landlord’s director of energy services G.W. stated the building automation system provides remote alarms to management for repairs or when the system fails. The last payment for this capital improvement was made on July 24, 2023, and Landlord’s counsel again confirmed there were no rebates or other sources of payment for this improvement.

Tenant C.F. questioned the necessity of these upgrades and noted that the Landlord receives rent increases under the Act. He raised the policy argument that an additional rent increase allowed the Landlord to shift cost of the improvement to the Tenant while obtaining the benefit of the improvement.

Tenant N.F. testified he moved into the rental property in May 2023 and at that time the LED lighting fixtures had already been installed. Undersigned explained the lighting upgrade was properly part of the Landlord’s application as the regulation looked to the date of last payment for the improvement to be within the 18-month period before the filing of the application.

Tenant M.J. stated the new intercom system frequently was nonoperational, and she had informed the building manager. She characterized the intercom system as unreliable. Additionally, she stated the LED lighting, particularly on the main floor, with the sconces produced a dimmer light than what had previously been used. Landlord’s counsel stated the Landlord had sustained its burden of proof in establishing the lighting was energy efficient. Landlord’s director of energy G.W. stated the lights would dim when not in use and are motion-activated. Tenant M.J. disputed the lighting was motion-activated.

Tenant M.J. stated the intercom system was unreliable and several repair requests had been made to the building manager. She also stated Tenant’s did not have access to the security system video. Landlord’s counsel explained the system’s video is only reviewed by management and the system was in tact, and although maintenance may be necessary, the system did not require replacement.

Tenant J.W. also questioned the necessity of the upgrade in lighting and shifting of the cost of the improvement to the Tenant while the Landlord retains any benefit in lower energy bills. She further stated there were no overhead lighting fixtures on the first floor of the building, only the wall sconces, and these did not illuminate well. Tenant J.W. inquired as to available rebates, noting one particular program during the hearing. Landlord's counsel stated the general procedure of the Landlord and its contractors engaging in a review of available rebates when the work is commissioned. Counsel stated in response to the particular rebate program referenced by Tenant J.W. that it was not offered until after September 2024, and was not an available rebate in mid-2023 when the work was done.

With regard to the intercom system, Tenant J.W. also commented the new system often does not work and requires repair (noting that twice in a month the intercom needed repair). Tenant J.W. suggested that better energy savings could be had with the replacement of the rental building's single pane windows, which would be to the individual tenant's benefit as lowering their cost for heating the unit.

Tenant L.B. stated he had no additional comments.

Tenant G.C. testified the intercom system was frequently "down," and not working. She requested security cameras be placed by the garbage disposal area, lighting added to the parking lot for security purposes, and the upgrades made by the Landlord had decreased the overall enjoyment of the rental property.

## **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 find there have been no prior applications for an additional rent increase within the 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.

There are 128 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 **\$128,506.59** as detailed in the Landlord's itemized capital expenditure set forth above, there being no other sources 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."

### Security System Upgrades

Policy Guideline 37C provides that security systems, including cameras and other mechanisms to prevent unauthorized entry, are a major system and major component "essential to support or enclose a building...or support a critical function of the residential property." I find the upgraded security system, including upgraded security cameras meet the criteria of the Regulation allowing for the installation of a major component or system that improves the security of the residential property. Policy Guideline 40 provides that intercom systems have a useful life of 15 years, and based upon the Landlord's evidence, the intercom system was at or near the end of useful life. While the old intercom may have remained functional, being near or at the end of its useful life, the Landlord would be required to replace it. The security cameras promote and enhance security to Tenants, the building and its contents.

I accept the Landlord's payment for this work occurred on August 15, 2024, as documented by the Landlord, with the total cost for the security system upgrade at

\$42,913.59. This is within the 18 months preceding the Landlord's application. I accept the Landlord's submission it is not anticipated this work will be required again within 5 years. I further accept the Landlord's submission there was no other source of payment for this work.

LED Lighting Upgrade in Common Areas and Rental Units

I find the lighting in the residential rental building is a major component or major system. I further find the LED lighting qualifies as an energy efficiency capital expenditure permissible under the Regulation for an additional rent increase. Based upon the Landlord's evidence establishing the decreased consumption of energy use for the LED lighting, I find the LED lighting installed by the Landlord is an energy efficient system and results in the reduction of energy use.

I accept the Landlord's evidence the final payment for the lighting upgrade was made June 26, 2023, within the preceding 18 months of the Landlord making this application on November 6, 2024. I further accept the Landlord's statement there was no other source of payment (such as utility company rebates) to pay for some or all of the capital expenditure and the expenditure for the lighting upgrade is not expected to reoccur for at least 5 years.

Based upon the evidence, the Landlord's capital expenditure in the amount of \$63,471.07 qualifies for an additional rent increase as the lighting upgrade reduces energy use.

Building Automation System

In this case, I find the installation of the building automation system which monitors the outdoor ambient temperature to initiate and maintain heating in the building, as well as controlling the domestic hot water to qualify as a major component or system of the building. Based upon the Landlord's documentary evidence and testimony, I find this capital expenditure enhances energy efficiency. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure and the final payment on July 24, 2023, was incurred within 18 months prior to the Landlord submitting this application. I accept the Landlord's submission and therefore I find it is reasonable to conclude this capital expenditure is not expected to occur again within five years. I further accept the Landlord's submission there is no other source of payment for this capital improvement.



Based on the above, I find the Landlord is entitled to recover the amount of \$22,121.93 for the cost of this capital expenditure as it qualifies for an additional rent increase under the Regulation.

### 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, I find the Tenants' objections do not establish a basis under the Regulation to dismiss the Landlord's application.

Based on the above, I find the Landlord is entitled to recover for the total cost of the security system upgrades, LED lighting upgrade and installation of the building automation system in the amount of \$128,506.59.

### **Summary**

The Landlord has been successful with this application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$128,506.59**, for those major components and system 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 128 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$128,506.59**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$8.37 ( $\$128,506.59 \div 128 \text{ specified dwelling units} \div 120 \text{ months} = \$8.37 \text{ per month per unit}$ )**. 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. I further accept the Landlord's submission that this additional rent increase will be imposed as against all Tenants except for those Tenants who moved into their respective rental unit on or after June 26, 2023.

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 **\$128,506.59**. The Landlord may only impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenants with this Decision, in accordance with section 88 of the Act, within two weeks of the date 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: January 15, 2025

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Residential Tenancy Branch