



## **DECISION**

### **Introduction**

On January 14, 2025, the Landlord filed an application pursuant to section 43 of the Residential Tenancy Act (the “Act”) and section 23.1 of the Residential Tenancy Regulation (the “RTR”) for an additional rent increase for a capital expenditure.

Agent for the Landlord, C.T. attended the hearing at the scheduled hearing time. Tenant A.F., Tenant B.S. and Tenant T.J. were present for the entire duration of the hearing on March 25, 2025.

### **Service of Notice of Dispute Resolution Proceeding and Evidence**

C.T. testified that she served the notices of dispute resolution proceeding and evidence (the materials) on January 17, 2025 on all of the named Tenants by registered mails. The Landlord uploaded the Canada Post customer receipts with tracking numbers to confirm the services.

Tenant A.F., Tenant B.S. and Tenant T.J. confirmed receipt of the materials.

No Tenant submitted any documentary evidence for consideration in this proceeding.

Based on convincing testimony of the parties and the evidence before me, I find the Landlord served the materials in accordance with the Act. Thus, I accept service of the Landlord’s evidence.

### **Issue to be Decided**

Is the Landlord entitled to impose an additional rent increase for a capital expenditure?

### **Background, Evidence and Analysis**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the Landlord’s claim, and my findings are set out below.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Landlord is seeking an additional rent increase for a roof replacement in the amount of \$54,300.75.

Section 23.1 of the RTR 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

There was no evidence that the Landlord made a prior application for an additional rent increase affiliated with capital expenditures within the previous 18 months.

C.T. stated the Landlord did not submit any prior application for an additional rent increase for capital expenditures within the previous 18 months.

Based on C.T.'s testimony, I find that the Landlord has not submitted a prior application for an additional rent increase in the 18 months preceding the date on which the Landlord submitted this application, per section 23.1(2) of the RTR.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, section 21.1(1) of the RTR 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.

C.T. stated that there are 16 rental units within the building. She said that the Landlord intends to impose rent increase on only 13 of them, which are the named Tenants, because the other 3 rental units are at their reasonable market rent.

In accordance with section 21.1(1) of the RTR, I find there are 16 dwelling units to be used for calculation of the additional rent increase.

Expenditures incurred in the 18-month prior to the application

The Landlord submitted this application on January 14, 2025.

Section 23.1(1) of the RTR states the Landlord may seek an additional rent increase for expenditures incurred in the 18-month period preceding the date on which the landlord applied.

Thus, the 18-month period is between July 13, 2023 and January 13, 2025.

Policy Guideline 37C discusses when a payment outside the 18-month window is considered part of a project which qualifies for an additional rent increase:

A “capital expenditure” refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted (see section C.1). 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.

A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

I accept C.T.’s testimony and the Landlord’s evidence that the payment for the work was incurred on April 16, 2024. I find the expense occurred within 18 months prior to the Landlord making their application.

*Expenditure not expected to occur again for at least 5 years*

C.T. stated the expenditure is not expected to occur again for at least 5 years.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years.

*Eligibility and Amount*

C.T. stated that the roof was 22 years old, beyond its useful life, and leaking.

The Landlord submitted evidence including photographs and communications showing the roof was leaking into one of the units causing mold issue resulting the relocation of the tenants in the said unit.

Policy Guideline #40 indicates the useful life of a bitumen roof is 20 years.

Based on the C.T.’s testimony and the evidence before me, I find the Landlord proved that they replaced the roof because it was beyond its useful life and leaking.

Policy guideline 37C indicates that a roof is a major system.

I find the roof is a major system, as it is integral to the rental units, encloses the building and protect its physical integrity, per section 21.1 of the RTR and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$54,300.75 to replace the roof is in accordance with Regulation 23.1(4)(a)(ii), as the Landlord replaced the roof because it was beyond its useful life and malfunctioning.

*The Tenants’ submissions*

Tenant A.F. stated that she had no idea when the roof should have been replaced or whether it should have been replaced earlier. She said that she did not know why the costs of the roof replacement would be at the expense of higher rent to the Tenants.

Tenant B.S. stated that a rent increase of \$28.00 would exceed 3% of his current rent of \$714.00.

Tenant T.J. stated that the roof was 22 years old and it should have been replaced by the Landlord a few years ago. She said that the Tenants should not be responsible for the roof replacement if the Landlord had failed to maintain or provide proper repair to the roof.

While I am sympathetic about the hardship a rent increase of any amount may pose for the named Tenants, the RTR limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure, and I find the Tenants' submissions are insufficient under the RTR to result in dismissing the Landlord's application.

## **Conclusion**

The Landlord has proven all the necessary elements for the capital expenditure.

I grant the Landlord's application for the additional rent increase, based on the eligible capital expenditure of \$54,300.75. This is pursuant to section 43(1)(b) of the Act, and section 23.1(4) of the RTR referred to above.

Section 23.2 of the RTR 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 are 16 specified dwelling units, and that the amount of the eligible capital expenditure is \$54,300.75

Therefore, the Landlord has established the basis for an additional rent increase for a capital expenditure of \$28.28 ( $\$54,300.75 \div 16 \div 120$ ) per month, per affected tenancy. This is as per section 23.2 of the RTR. Note this amount may not exceed 3% of any named Tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

I order the Landlord to serve all the named Tenants with this Decision, in accordance with section 88 of the Act. This must occur within two weeks of this Decision. The Landlord may serve each named Tenant by posting a copy of the decision to each rental unit door. Within reason, the Landlord must also be able to provide a copy to any named Tenant that requests a copy via email.

The parties may refer to RTB Policy Guideline 37C, sections 23.2 and 23.3 of the RTR, 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(<http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1>) for further guidance regarding how this rent increase may be imposed.

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

Dated: March 26, 2025

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Residential Tenancy Branch