

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the Residential Tenancy Act (the Act) for an additional rent increase for capital expenditure in accordance with sections 43(1)(b) and 43(3) of Act and section 23.1 of the Residential Tenancy Regulation (the Regulation).

The Landlord's Agents, B.J. and C.A., attended the hearing for the Landlord. The Landlord's Agent, R.O., attended the previous hearing on this matter.

No one attended the hearing for the Tenants.

### **Service**

The Landlord's Agent confirmed service of the Notice of Dispute Resolution Hearing and proceeding package to the Tenants by registered mail on June 25, 2025. I therefore find the Tenants are deemed to have received these documents on June 30, 2025, in accordance with the Act, the fifth day after the registered mailing.

The Landlord's Agent also confirmed service of additional evidence on the Tenants in accordance with the August 8, 2025, Interim Decision and the September 11, 2025, Clarification, by posting it to their doors on August 29, 2025. I therefore find the Tenants are deemed to have received this evidence on September 1, 2025, in accordance with the Act, the third day after it was posted to their door.

The Tenants did not provide any documentary evidence for the hearing.

### **Issue to be Decided**

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

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord's Agent submitted that the rental building consists of 21 units; however, the Landlord is only seeking an additional rent increase for the five units that were served notice for this proceeding. R.O. explained that there are nine units on the west

side of the building that were affected by the capital expenditure, and that four of these units are already paying market rent.

R.O. advised that the Landlord acquired the building in August 2021, and that it was built around 1969. R.O. also confirmed that no additional rent increase under sections 23 or 23.1 of the Regulation had been imposed in the past 18 months.

The Landlord's application requests an additional rent increase for replacing nine balconies on the west side of the building. The total cost of the replacement was \$181,783.57, and the final payment was made by the Landlord on February 20, 2025. The Landlord's supporting documentation includes a Balcony Condition Assessment Report, invoices, and payment records.

R.O. testified that the balconies were original to the 1969 building and had significantly deteriorated due to age, moisture ingress, and lack of waterproofing. The Balcony Condition Assessment Report identifies structural concerns including elevated moisture levels, rotting wood, and non-compliant guardrails. The Landlord submitted that the balconies were found to be unsafe and not up to current building code standards, particularly in terms of guardrail height and fastening methods. The scope of work included removal of old decking and railings, replacement and reinforcement of joists, installation of waterproof vinyl decking, aluminum railings, soffits, and structural upgrades recommended by the engineering company.

The Tenants did not attend the hearing or provide documentary evidence to be considered at the hearing.

## **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 expenditure, the Landlord bears the burden of proof in support of its application.

### **Statutory Framework**

Section 43(3) of the Act allows a Landlord to request approval of a rent increase in an amount greater than the annual amount provided under the Regulation by submitting an application for dispute resolution.

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. I will not reproduce the sections here but 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 the tenant within the last 18 months;

- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the work was an eligible capital expenditure, specifically that:
  - 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; and
  - the capital expenditure is not expected to be incurred again within five years.

The Regulation provides that tenants may have an application for an additional rent increase for capital expenditure dismissed if they can prove on a balance of probabilities the capital expenditures were incurred:

- for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord; or
- for which the landlord has been paid, or is entitled to be paid, from another source.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an 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.

#### Prior Application for Additional Rent Increase

On behalf of the Landlord, R.O. testified they have not applied for an additional rent increase against these Tenants within the last 18 months. Therefore, I find there were no prior applications for an additional rent increase within the 18 months before this application was filed.

#### Number of Specified Dwelling Units

Section 21.1(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.

The Landlord's Agent submitted that the rental building consists of 21 units, but that only the nine units on the west side of the building were affected by the replacement as these are the nine units whose balconies were replaced.

In the August 8, 2025, Interim Decision and the September 11, 2025, Clarification on this matter, I invited further submissions regarding the number of specified dwelling units in the rental building. In response, the Landlord submitted a document outlining a policy interpretation on the application of the definition of "specified dwelling unit" under section 21.1 of the Regulation.

After reviewing this evidence, I find as follows:

- Clause (a) of the definition applies where the capital expenditure affects the building as a whole and benefits all tenants. In such cases, all units in the building may be considered specified dwelling units.
- Clause (b) applies where the capital expenditure affects only certain parts of the residential property. In these cases, only the units directly affected by the work qualify as specified dwelling units. Units that do not benefit from the repair are not considered affected and therefore do not qualify.

The key distinction between parts (a) and (b) of the definition of "specified dwelling unit" lies in the inclusion of "residential property" in part (b), which is defined under the Act to include individual rental units and parts of a building. In this case, because the balcony repairs were limited to a portion of the building and did not affect all units, I find that the repairs are considered to have been made "in or on a residential property," and that part (b) of the definition applies.

Therefore, I find that there are nine specified dwelling units to be used for calculation of the additional rent increase, although only those units which were included in the Landlord's application and served with a Notice of Hearing in this matter are subject to the additional rent increase.

Amount of the Capital Expenditure

The Landlord claims a total amount of \$181,783.57 for the balconies, as detailed in the Landlord's application and supporting evidence.

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; and
- the capital expenditure is not expected to be incurred again within five years.

I will address each of these in turn.

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;

Policy Guideline #37C 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.

Policy Guideline #37C also states that 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.

### *Balconies*

I find that balconies are a major system or component of a residential building, as they form part of the building's structural system and contribute to the physical integrity and function of the rental units.

The Landlord's Agent testified that the balconies were original to the 1969 building and had significantly deteriorated due to age, moisture ingress, and lack of waterproofing. The Balcony Condition Assessment Report corroborates this testimony, identifying elevated moisture levels, rotting wood, and structural deficiencies, including non-compliant guardrails and fastening methods that do not meet current building code standards. Accordingly, I find that the evidence establishes that the replacement was undertaken to comply with health, safety, and housing standards.

The final payment was made by the Landlord on February 20, 2025, which is within 18 months of the Landlord's application filed June 19, 2025. I also find it reasonable to conclude that this capital expenditure is not expected to recur within five years.

I therefore find the Landlord has provided sufficient evidence to satisfy the requirements of the Regulation for this capital expenditure.

### Summary

Based on the above, I find that the Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditure of \$181,783.57, for the replacement of the balconies on the west side of the building.

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditure divided by the number of specific dwelling units, divided by 120. In this case, I have found there are nine specified dwelling units and the total amount for the eligible capital expenditure is \$181,783.57.

I find the Landlord has established the basis for an additional rent increase for a capital expenditure of **\$168.32 per unit per month**  $[(\$181,783.57 \div 9 \text{ specified dwelling units}) \div 120 \text{ months} = \$168.32]$ . 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 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 Residential Tenancy Branch website for further guidance regarding how this rent increase made be imposed.

## **Conclusion**

I grant the application for an additional rent increase for the capital expenditures incurred by the Landlord for major systems or major components to the rental property totaling **\$181,783.57**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenants with a copy of 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 those Tenants by email if the Tenant provided an email address for service. The Landlord must also provide a printed copy to the Tenant if requested.

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

Dated: October 2, 2025

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Residential Tenancy Branch