



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKY-SIDE CONSTRUCTION  
CORP. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**    ARI-C

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") and the *Residential Tenancy Regulation* (the "**Regulation**") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The agent EA attended for the landlord ("the landlord"). The tenant was present at the hearing.

Issues regarding service upon the tenant were resolved. The tenant did not request an adjournment or accommodation and accepted service of the landlord's Notice of Hearing and evidence package in compliance with the Act. I find the landlord served the tenant as required under the Act.

### **Issues to be Decided**

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

### **Background and Evidence**

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 parties' claims and my findings are set out below.

The landlord testified that he has not applied for an additional rent increase for capital expenditure against the tenant prior to this application.

The landlord testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property in the amount of \$1,790.25. He testified the electrical hot water system required repairs and components were replaced (collectively, the "**Work**").

The landlord testified the Work was done because the hot water tank malfunctioned, related electrical work was required, the circuit breaker required replacement, and a water pipe required repairs/replacement.

The landlord testified the Cost of Work is set out in one invoice of March 12, 2022 in the total amount of \$1,790.25, a copy of which was submitted. The invoice reflected timely, cost efficient and prudent work of contractors as follows:

Description	Amount
Removal & Disposal of malfunctioning hot water tank. Supply and installation of a new 38gl hot water tank. 5 yrs Warranty – as per label submitted. Including mobilization, tools & material supplied	960.00
Electrical repair of water tank circuit including new supply and installation of a new breaker at electrical panel Includes. Two site visits (to check the malfunctioning and to repair issues)	380.00
Repair of broken water supply at craw level of the house. Price includes: mobilization, labor, tools, materials and equipment.	365.00
GST	85.25
<b>TOTAL</b>	<b>\$1,705.00</b>

The tenant acknowledged that the Work was necessary. However, the tenant stated the work took too long and they were without hot water for three weeks in difficult circumstances. The tenant also asserted that the electrical was not properly done, requiring the return of the electrician and unnecessary costs which the landlord is unfairly attempting to pass on to them.

The tenant submitted written argument stating:

The reasons why we disagree with the proposed Capital Expenditures rent increase of \$14.92.

1. Repairing a leak in a pipe is routine and on-going maintenance. To be eligible for a capital expenditure it is not expected to recur for at least 5 years. No one can say that water pipes won't leak again, as we rent an older mobile home.
2. There was no electrical problem until the new tank was installed. One of the breakers on the electrical panel overheated, it was bright red. This had the potential of causing a fire in our home.

Further to these facts,

Our landlord didn't complete the repairs in a timely fashion re: no hot water from Sunday March 14, 2021 to Monday April 5, 2021.

Being without hot water is considered an emergency and a landlord is expected to repair a problem within 24 hours. The BC Tenancy Act defines emergency repairs as urgent and necessary for the health and safety of anyone.

Being without hot water for 3 weeks and a leaking water pipe is considered an emergency. Being without hot water that long was very difficult because of my husband's physical disabilities. Our landlord was aware of this fact.

We were unable to attend to our basic needs including bathing. On Thursday March 25, 2021 at 9:05pm, our landlord text messaged us to turn the breaker to the tank off. On Friday March 26, 2021 our landlord again text messaged us that the plumber would be here on Saturday March 27, 2021 at 1:00pm. We had no water at all during this time.

We had to turn the breaker on to flush the toilet and get enough water for drinking and washing our hands. We were unable to wash dishes etc at this time. And had to turn the breaker to the tank off again.

Whenever I contacted our landlord regarding no hot water he put me off and told me I had to wait. When I text messaged him asking when either the plumber or electrician would arrive he texted me not to be pushy and that our monthly rent was not enough to cover the cost of these repairs.

On Monday April 5, 2021, the electrician stated that one of the wires on the new water tank wasn't tightened properly and only half of the tank was heating the water. So, since Thursday March 18, 2021 because of one wire not connected properly when the new tank was installed we had no hot water for 3 weeks.

We just wanted to know when these repairs would be completed because we were finding it very difficult to be without hot water for such a long period of time. We tried to be very accommodating during the whole repair process.

The landlord testified:

- the landlord has not successfully applied for an additional rent increase against the tenant within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property is one (s. 23.2(2));
- the amount of the capital expenditure is \$1,705.00 (s. 23.2(2));
- 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 (S. 23.1(4)); - repair of a hot water system and replacement of components (tank, pipe, and breaker)
- the Work was undertaken for one of the following reasons:
  - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i)), -, the provision of hot water to the residence,
  - because the system or component:
    - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii)); - the hot water system and related components malfunctioned
- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

## **Analysis**

### 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. 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 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:
  - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));

- 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));
- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

The tenant may defeat an application for an additional rent increase for capital expenditure 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 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.

## 2. Prior Application for Additional Rent Increase

I find there has been no prior 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.

I find there is one eligible dwelling unit in one building to which the Work related.

### 4. Amount of Capital Expenditure

I find the amount of the capital expenditure was \$1,790.25

### 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.

I will address each of these in turn.

a. Type of Capital Expenditure

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.

The Work was upgrades (replacement and repair) to the building's hot water system. The landlord replaced the hot water tank, the electrical circuit board, integral pipes and related components. These amount in their entirety to significant components of the hot water system which caused them to be "major components" as defined by the Act.

As such, I find that the Work was undertaken to replace "major components" of a "major system" of the residential property.

b. Reason for Capital Expenditure

The landlord testified that the hot water tank was off warranty and was less than 2 years old. The electrical, circuit breaker and pipes are believed by the landlord to date to the building's construction in 1998. The Work reflected malfunctioning of this integrated and interdependent system.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered "incurred" when payment for it is made.

I accept the landlord's uncontroverted evidence supported by a receipt that he paid for the work in full on March 30, 2021. This date is within 18 months of the landlord making this application.

d. Life Expectancy of the Capital Expenditure

The useful life for the components installed by the landlord all exceed five years. There is nothing in evidence which would suggest that the life expectancy of the components would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40.

For this reason, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

## 6. Tenant Rebuttals

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.

The tenant expressed dissatisfaction with the length of time they were without hot water. They also opined the electrical work was faulty and overbilled. However, neither of these arguments form a basis to dispute the application.

## 7. Outcome

The landlord has been successful. He has proved, on a balance of probabilities, all the elements required to be able to impose an additional rent increase for capital expenditure.

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 is 1 specified dwelling unit and that the amount of the eligible capital expenditure is \$1,790.25.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$1,790.25.

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 RTB Policy Guideline 37, 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**

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of \$1,790.25. The landlord must impose this increase in accordance with the Act and the Regulation.

I order the landlord to serve the tenant with a copy of this decision in accordance with section 88 of the Act.

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

Dated: October 28, 2022

---

Residential Tenancy Branch