



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 landlords and the tenant attended the hearing the appointed date and time.

The tenant confirmed receipt of the Notice of Hearing and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of 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 parties testified and agreed that the capital expenditures relate to one rental unit which is rented by the Tenant.

The landlords testified that they have not applied for an additional rent increase for capital expenditure against any of the tenant prior to this application.

The landlords testified that they were seeking to impose an additional rent increase for a capital expenditure incurred to pay for the replacement of a hot water tank, and furnace. The landlords are also claiming for an air conditioning unit which was installed at the

same time as the heating system, and to repair a fence and side door. (collectively, the **“Work”**).

The landlords testified the Work was done because the hot water tank and heating system were about 20 years old and had been repaired several times, however, upon investigation, the tank and heating system required replacement. The tenant confirmed the same.

The landlords stated that they decided to install an air conditioning unit at the same time as the heating system as it made financial sense to install both units at the same time. The parties agreed that the rental unit did not have an air conditioning unit prior to the new one being installed. The tenant stated that he did not ask for the air conditioning unit and doesn't feel his rent should increase as a result of this added expense.

The parties agreed that the fence and side door were repaired. The tenant was of the impression that the fence was damaged during some nearby construction in the neighbouring property. The landlords stated that this was not the case and asserts it was an old fence.

The landlords stated that he received a Fortis rebate for the work completed in the amount of \$800.00 which was applied to the landlord claims.

Description	Date#	Amount
Hot Water Tank	November 15, 2022	\$1,791.30
Furnace	December 17, 2022	\$6,057.50
AC Unit	December 14, 2022	\$5,775.00
Fence/Door	July 2021	\$945.00
<b>Total</b>		<b>\$14,568.80</b>

The landlords submitted copies of invoices supporting the hot water tank, furnace, and air conditioning unit. No receipt was found for the fence and door repair. The landlords stated that the \$800.00 Fortis rebate related to the heat and air conditioning units.

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 and 23.1 of the Regulations sets 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 made an application for an additional rent increase against these tenants 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
      - because it 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.

The tenants 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, 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.

## 2. Prior Application for Additional Rent Increase

I accept that the parties agreed that the landlord has not previously applied for an additional rent increase for capital expenditures.

### 3. Number of Specified Dwelling Units

Section 23.1(1) of the Act 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 accept that there is only one dwelling unit as the Tenant rents the entire rental property.

### 4. Amount of Capital Expenditure

The landlords submit that the capital expenditures total \$14,568.80. The landlords also submit that they received a Fortis rebate in the amount of \$800.00 in relation to the new furnace and air conditioning unit, which reduces the total capital expenditure to \$13,768.80.

For reasons outlined below, I find that it is appropriate to separate the landlord's capital expenditures to reflect the following;

Hot water tank and Furnace replacement \$7,848.80, less half of the Fortis rebate \$400 = \$7,448.80.

Airconditioning unit install and fence/door repair \$6,720.00 less half the Fortis rebate \$400 = \$6,320.00.

I find that the Landlord did not submit a receipt confirming the cost of the of the fence and door repair. As such, I find that the expenditure is not eligible and will not be considered.

### 5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order 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
    - because it 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

With respect to the hot water tank and furnace replacement, I find that these constitute major systems which had surpassed their useful life and required replacement.

I accept that the Air-conditioning unit install would also be considered a major system, however, I find that the rental unit did not have an Air-conditioning unit. I further accept that the Tenant stated that they did not want an Airconditioning unit. I find that the installation of the Air-conditioning unit was not necessary, therefore, I do not find that the Tenant should be required to pay for this cost. As such, I find that the cost associated with installing a new Air-conditioning unit is not eligible and will not be considered.

b. Reason for Capital Expenditure

Reducing the capital expenditures to the replacement of the hot water tank and furnace, I accept that the parties agreed that despite the Landlord's attempts at repairing these items, they had surpassed their useful life and required replacement.

c. Timing of Capital Expenditure

I accept the landlords uncontroverted evidence that the first payment for the work was incurred in November 15, 2022 and the final payment was incurred in December 17, 2022. Both of these dates are within 18 months of the landlord making this application.

d. Life expectancy of the Capital Expenditure

There is nothing in evidence which would suggest that the life expectancy of the components replaced 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 reasonably 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. Tenants' 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 objected to the cost of the fence and door repair as well as the addition of the air-conditioning unit. As previously determined, these items have been excluded from the Landlord's claim for capital expenditures.

#### 7. Outcome

The landlords have been successful. They have proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure with respect to the hot water tank and furnace replacement \$7,848.80, less half of the Fortis rebate \$400 = \$7,448.80.

Section 23.2 of the Regulate sets out the formula to be applied when calculating the amount of the addition 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 one specified dwelling unit and that the amount of the eligible capital expenditure is \$7,448.80.

So, the landlords have established the basis for an additional rent increase for capital expenditures of \$62.07 ( $\$7,448.80 \div 1 \text{ unit} \div 120$ ).

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**

The landlords have been partially successful. I grant the application for an additional rent increase for capital expenditure of \$62.07. The landlords must impose this increase in accordance with the Act and the Regulation.

I order the landlords 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: February 24, 2023

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Residential Tenancy Branch