



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Code      ARI-C

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 Landlord was represented at the hearing by its legal counsel CD and MD, as well as its agents NM, NN, and PV. None of the Tenants attended this hearing.

This matter was reconvened from a preliminary hearing on May 4, 2023. Following that hearing I issued an interim decision dated May 5, 2023, in which I ordered the Landlord to serve each of the Tenants with a copy of the notice of hearing and the interim decision. The Landlord submitted a signed certificate of personal service confirming that these documents were left in the Tenants' door mail slot on May 17, 2023. The Landlord also submitted a signed certificate of personal service confirming that the Landlord's evidence and submissions were served on each of the Tenants by leaving the documents in their door mail slot on July 19, 2023. I find the Tenants were sufficiently served with the required documents in accordance with the Act. None of the Tenants submitted any evidence for the adjudicative hearing.

### Preliminary Matter: Tenants Vacated

The Landlord's evidence indicates that some tenants have moved out since this application was filed (unit numbers referenced on the cover page of this decision). Pursuant to section 64(3)(c) of the Act, I have amended the style of cause to remove those tenants as respondents.

### 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 residential property is a single building with 44 dwelling units built in 1965. The Landlord took over ownership and operation in 2015.

The Landlord seeks to impose an additional rent increase for capital expenditures incurred to pay for its asphalt paving project as well as balcony and soffit repairs (collectively, the “**Work**”).

The Landlord submits that the Work was done because:

- The asphalt paving project was performed because the asphalt in the parking lot was cracking, and a new catch basin was needed. The pavement in the parking lot was removed and replaced to address drainage concerns. The project consisted of removing existing asphalt, regrading, putting down new asphalt, putting down new catch basins, repairing drains and pipes, excavating soft spots and gravel infill, and disposing of removed base materials.
- The balcony and soffit repairs consisted of addressing a plumbing issue and repairing the water damaged soffit finishes of the balconies, which also serve as the soffit of the parkade. These repairs were undertaken to remedy leaks and ensure the structural integrity of the roof. Waterproofing on the balconies was removed and replaced as necessary. Sheathing was removed and replaced with marine grade plywood. Deteriorated wood joists were replaced. New drains on the second floor decks were supplied, installed, and re-sealed to prevent water ingress and prolong the useful life of the components.

The Landlord provided evidence including:

- Invoices for expenditures paid with respect to each project
- Before and after photos for the Work done
- Statement from the Landlord’s senior manager AM, a certified LEED Green Associate regarding the asphalt paving project
- Statement dated July 17, 2023 from DC, a professional engineer, explaining the soffit repairs

The Landlord submits that the total cost for the Work is as follows:

### **Cost of Work**

<b>Description</b>		<b>Amount</b>
Asphalt Paving Project		\$72,742.48
Balcony/Soffit Repairs		\$175,119.83
<b>Total</b>		<b>\$247,862.31</b>

### **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, a 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)).

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 (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 is no evidence that the Landlord has previously imposed an additional rent increase on any of the Tenants within the last 18 months.

### 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.

RTB Policy Guideline 37C states that a specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred, or if not located in the building, is affected by the capital expenditure at the residential property.

I find the number of specified dwelling units for the purposes of the Work is equal to the total number of units in the building, or 44 units. I find all units are located in the same building in which the Work was performed, and therefore, no units are exempted.

### 4. Amount of Capital Expenditure

I find the Landlord has submitted invoices to support all expenditures claimed. Therefore, I accept that the Landlord has incurred expenditures of \$247,862.31 in relation to the Work.

### 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
- 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;

(emphasis underlined)

"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 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.

(emphasis underlined)

The Work consisted of replacing the asphalt pavement for the parking lot and repairing balcony soffits.

I find the pavement in parking facilities to be an example of major systems or major components as stated above.

Furthermore, I accept DC's statement that the soffit repairs were required due to excessive water leaks causing damage to the structural integrity of the parkade roof deck. I find these repairs were related to the building's structural system, which is a major system as defined in the Regulations.

As such, I find the Work was undertaken to repair or replace a "major system" or "major component" of the residential property.

b. Reason for Capital Expenditure

I find the original asphalt in the parking lot was old, cracked, and damaged. I accept AM's statement that the Landlord had performed patching work from time-to-time as necessary, but it did not work well or for very long. I accept the Landlord's evidence that it had not replaced the asphalt pavement since it first took over ownership of the building. Based on the Landlord's evidence, I find it is likely that the asphalt was close to the end of its useful life.

I find the balcony and soffit repairs were undertaken to remedy leaks and ensure the structural integrity of the roof. I accept DC's statement that these repairs were needed due to the age of the building components, and were necessary to keep the building safe for residents. Therefore, I am satisfied that these repairs were undertaken to comply with health, safety, and housing standards in accordance with section 32(1)(a) of the Act.

c. Timing of Capital Expenditure

As stated in RTB Policy Guideline 37C, the capital expenditure must have been incurred in the 18-month period preceding the date the landlord submits their application. 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 find the Landlord submitted this application on December 18, 2022, which means the cut-off date for the 18-month period was June 18, 2021.

I accept the Landlord's evidence that it paid the two invoices for the asphalt paving project on February 1, 2022 and June 14, 2022.

I find the Landlord paid seven invoices to two contractors for the balcony and soffit repairs between May and August 2021. I find the final payment for this project was made on August 10, 2021.

Based on the foregoing, I find the Landlord's capital expenditures for the Work were incurred within the 18-month period as required.

d. Life expectancy of the Capital Expenditure

According to RTB Policy Guideline 40, the useful life of asphalt is 15 years. I do not find any evidence to indicate that the life expectancy of the asphalt pavement replaced by the Landlord would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40.

Furthermore, I accept the Landlord's evidence that the soffits repaired by the Landlord are comparable to wood balcony railings and wood decks and porches, which have an estimated useful life of 15 to 20 years according to RTB Policy Guideline 40.

Therefore, I find the capital expenditures incurred by the Landlord cannot reasonably be expected to re-occur within five years.

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), tenants 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.

I find there is insufficient evidence to prove that there was inadequate repair or maintenance on the Landlord's part which necessitated the Work.

I also do not find the evidence to indicate that the Landlord has been paid or is entitled to be paid for the Work from another source.

7. Outcome

The Landlord has been successful in this application. The Landlord has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for some of the capital expenditures claimed. 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 44 specified dwelling units. I find the amount of eligible capital expenditures established by the Landlord is **\$247,862.31**.

Therefore, I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$46.94** ( $\$247,862.31 \div 44 \text{ units} \div 120$ ). 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

I grant the Landlord's application for an additional rent increase for capital expenditures as specified above. 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.

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: October 22, 2023

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Residential Tenancy Branch