



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

On June 13, 2024 (the “Application date”), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the Residential Tenancy Regulation (the “Regulation”) for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Regulation*.

The Landlord attended the hearing at the scheduled hearing time. Tenants who live in the rental unit property attended to present statements and queries in response to the Landlord’s Application.

### **Preliminary Issue – service and disclosure of evidence**

The Landlord provided proof of their service to each Tenant in the form of registered mail labels, handwritten for each Tenant/unit, and stamped at the post office on July 12, 2024.

In the hearing, the Landlord confirmed they served the Notice of Dispute Resolution Proceedings to 77 individual adult tenants.

Given the number of separate tenants involved, I find there is no issue with the Landlord’s service of the Notice of Dispute Resolution Proceedings, and their written submissions and evidence to all tenants involved. I am satisfied that the Landlord completed this task fully and completely as required, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

### **Issue to be Decided**

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

## **Background and Evidence**

The rental property consists of 77 individual units. The Landlord specified that 42 units are included in this Application. As noted in the Landlord's submission brief for this matter, provided as evidence:

We are seeking an additional rent increase to cover significant capital expenses incurred to address critical maintenance and safety issues identified during a pre-purchase building inspection and an exterior envelope assessment. The necessary improvements included the replacement of patio sliding doors, balcony railings and balcony vinyl decking to select units.

In the "Building Envelope Inspection" document that the Landlord provided in their evidence, the architect noted the age of the building to be 45 years. In the hearing, the Landlord clarified that they made their purchase of this building complete on December 15, 2021. This was after the Landlord completed a pre-purchase inspection at the property in October 2021.

The Landlord summarized the completed work – for which they are applying to this approval for rent increase Application – in a letter to all building residents, enclosing their prepared submission dated June 13:

The replacement of the balcony railings [*i.e.*, in select units] and vinyl decking maintains the property in a state of repair compliant with health, safety and housing standards. The railings and decking were at the end of their useful life and the patio doors achieve a reduction in energy usage and increase the security of the property.

More precisely, the work was:

- replacement of 9 patio sliders [*i.e.*, patio doors]
- replacement of 39 balcony railings & vinyl decking
- replacement of 1 patio slider, which was more urgent than the others.

The Landlord provided a record of 42 separate units, alternately requiring balcony/railing, or patio doors, or in some cases (8 instances) both. This number of 42 units forms the basis for the Landlord's established number of affected rental units in the rental unit property.

In the hearing, the Landlord clarified that no balcony structures were replaced; rather, the covering, or deck material, was replaced in some instances.

The Landlord summarized their documented evidence for these expenditures:

- a pre-purchase inspection: identified patio doors as damaged, and “thermally inefficient” and past their useful life expectancy, and balcony/decks/railings membranes on balconies allowing moisture to penetrate, loose/deteriorated guard railings
- building envelope assessment: windows/doors showing leakage/condensation/jamming, and balconies/guardrails with membrane peeling, requiring replacement and deterioration to “wood decking” – some guardrails loose and needing reinstallation
- invoices/proof of payments:

	Description	invoices/payments	paid
1.	deposit	Jun 17/22	\$2,900.00
2.	payment door supply/install	Nov 22/22	\$2,712.69
3.	supply/install vinyl decking	Oct 27/22	\$140,320.96
4.	supply/install balcony railings	Oct 26/22	\$69,347.54
5.	supply/install vinyl patio doors	Nov 7/22	\$35,953.70
		<b>Total</b>	<b>\$251,234.89</b>

- pictures showing new balcony railings, vinyl decking and patio doors
- records of payments, showing the Landlord’s final payment for this work on December 11, 2022

The Tenants, in some represented or representative capacity, provided 27 signed statements relating to the Landlord’s Application for the rent increase associated with these capital expenditures. Each statement, in the same template, refers to the Landlord’s July 10 communication about the capital expenditures, noting “costs that are the result of inadequate repair or maintenance”, in particular “the buildings repair and maintenance has been neglected for a significant amount of time.”

The second page allowed for individual tenants’ concerns/issues, relevant points raised as follows:

- water issues from the roof that caused a greater amount of water to flow onto the patio/deck, stemming from roof non-repair
- a tenant moving in only after the capital expenditure work was completed
- the pre-purchase inspection noted this needed capital expenditure work; therefore, this expense should have impacted the Landlord's purchase price
- balcony and/or patio door was not in disrepair, or noted by the contractors to not be at issue – meaning this work undertaken by the Landlord was simply to “beautify the front of the building”

In the hearing, the Tenants who attended raised the following points, and the Landlord responded:

- the Landlord was aware that these were more aesthetic issues, *i.e.*, just to make the building look good, also aware that ultimately this cost was pending from their purchase of the building, and not issues of structural integrity

The Landlord in the hearing reiterated that the work undertaken was based on the assessment which they included in their evidence. This was not for aesthetic or cosmetic reasons, and the work was integral to the structure of the building overall.

- this is not structural work as defined in the legislative scheme – instead, a membrane was replaced on top, and this is more of a maintenance issue
- a lack of maintenance overall, for example in the instance of one unit's facing water pooling issues on their deck/balcony which should have been repaired a long time ago
- while the Landlord submits that new/replaced sliding patio doors contribute to reduce greenhouse gas emissions, the previous Landlord had installed heat pumps, ostensibly for this same purpose

The Landlord in the hearing reiterated that the work undertaken was based on the assessment which they included in their evidence. This was not for aesthetic or cosmetic reasons, and the work was integral to the structure of the building overall.

The Landlord posited that there was no direct evidence of a contractor assessing individual units as not requiring work. The Landlord reiterated that they looked at the issue as a whole as part of a safety issue in individual buildings.

Also, the Landlord responded to say they took over all rights and responsibilities of the former landlord with their purchase. They had every right, as per the *Act*, to take this project on, and thereby seek an additional rent increase for these eligible capital expenditures.

## **Analysis**

The *Residential Tenancy Regulation* (the “*Regulation*”), s. 23.1 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*

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase within the previous 18 months.

*Number of specified dwelling units*

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) 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.

On the basis of the distinct definition of “specified dwelling unit” subsection (a), I find each of the 42 rental units listed by the Landlord were those in which an installation/repair/replacement carried out. I conclude there are 42 eligible dwelling units, as specified by the Landlord in their submissions.

Neither the Act nor the Regulation makes a distinction based on the recentness of a starting tenancy. The focus of the legislation for this is a “specified dwelling unit” affected by an

installation made, or repairs/replacement carried out in the property where the dwelling unit is located.

### Eligibility and Amounts

For each of the Landlord's submitted expenditures 1. through 5. above, I address whether each expenditure was *eligible*, and each expenditure *amount*.

As set out s. 23.1(4) of the *Regulation*, I find the work – specifically, the membrane upgrade/replacements, railing replacements, and patio door replacements – is replacement of a major component. As defined in the relevant policy guideline, this is “a component of the residential property that is integral to the property or a significant component of a major system.”<sup>1</sup> The Landlord's evidence on their consultation with an architect on this purpose was clear in establishing this need for these components at the rental unit property.

Moreover, I find the Landlord had to replace these items to comply with health, safety, and housing standards.

Stated thus, contractor work invoiced and paid for by the Landlord are expenditures that were eligible; in total this amount is \$251,234.89.

### Timing of the Capital Expenditure

The relevant policy guideline<sup>2</sup> address the 18-month requirement:

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

I accept the Landlord's evidence that the first payment for the work was on June 10, 2022 and the final payment was made on December 21, 2022. The final payment date is within 18 months of the Landlord making this Application on June 13, 2024.

### Life Expectancy of the Capital Expenditure

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<sup>1</sup> *Residential Tenancy Policy Guideline 37C Additional Rent Increase for Capital Expenditures* at page 4.

<sup>2</sup> *Ibid.* page 7.

With regard to the relevant policy guideline<sup>3</sup> I find all components of the building exterior that was the work involved are within 15 to 20 years.

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

### Outcome

The Landlord has proven all of the necessary elements for this Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$251,234.89. This is pursuant of s. 43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation*, referred to above.

The *Regulation* s. 23.2 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 42 specified dwelling units, and that the amount of the eligible capital expenditure is \$251,234.89.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$49.85 ( $\$251,234.89 \div 42 \div 120$ ) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of any tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount, calculated above, in a single year. The Landlord acknowledged this in their written submission, stating:

If successful, due to the 3% maximum allowable additional rent increase per year for three years, the landlord estimates that the average tenant in the building will see an additional rent increase of roughly \$30 - \$40 per year for three years.

As set out in their written submission, the Landlord made reference to the relevant policy guideline in making their calculations.<sup>4</sup> This accords with *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

### Conclusion

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<sup>3</sup> Residential Policy Guidelines 40: Useful Life of Building Elements

<sup>4</sup> Residential Policy Guidelines 37C: Additional Rent Increase for Capital Expenditures



I grant the Landlord's Application for an additional rent increase for the capital expenditure of \$251,234.89.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by sending it to them via email where possible. Within reason, the Landlord must also be able to provide a copy to any tenant that requires a printed copy in person.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 19, 2024

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Residential Tenancy Branch